SUPREME COURT OF THE UNITED STATES.

No. 945.

THOMAS L. JAMES, APPELLANT,

vs.

CHRISTOPHER C. CAMPBELL, CHARLES EDDY, HORACE T. CASWELL, AND SAMUEL R. CLEXTON.

No. 1098.

SAMUEL R. CLEXTON, APPELLANT,

vs.

CHRISTOPHER C. CAMPBELL, ASSIGNEE, &c., THOMAS L. JAMES, HORACE T. CASWELL, CHARLES EDDY, AND CHARLES EDDY, AS TRUSTEE FOR H. T. CASWELL AND SAMUEL R. CLEXTON.

No. 1101.

CHRISTOPHER C. CAMPBELL, ASSIGNEE, &c., APPELLANT,

vs.

THOMAS L. JAMES, CHARLES EDDY, HORACE T. CASWELL, AND SAMUEL R. CLEXTON.

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No. 111 A.	Extract from Congressional Globe	2403	1233
No. 112.	Letter Norton to Postmaster-General, December 26, 1866	2405	1235
No. 113.	Norton to Postmaster-General, December 28, 1866	2409	1237
No. 114.	Letter Norton to Shavor, January 9, 1867	2411	1238
No. 115.	Letter Norton to Shavor, March 25, 1867	2414	1239
No. 116.	Letter Norton to Shavor, March 26, 1867	2415	1240
No. 117.	Letter Norton to Shavor, April 20, 1867	2417	1241
No. 118.	Letter Norton to Shavor, April 25, 1867	2420	1243
No. 119.	Letter Norton to Shavor, April 25, 1867	2422	1244
No. 120.	Letter Norton to Shavor, April 22, 1869	2426	1246
No. 121.	Letter Norton to Shavor, May 13, 1869	2428	1247
No. 122.	Letter Shavor & Corse to Postmaster-General, June 10, 1868	2431	1249
No. 123.	Letter Norton to Corse, October 23, 1869	2432	1249
No. 125.	Agreement between Norton and Eddy for himself, Shavor, and Corse, October 23, 1869	2435	1251
No. 126.	Assignment by Shavor & Corse to Norton, February 23, 1864	2440	1254
No. 127.	Letter Norton to Shavor, May 17, 1864	2450	1259
No. 128.	Letter Norton to Shavor, June 11, 1866	2451	1259
No. 129.	Letter Norton to Rev. Mr. Baldwin, June 22, 1866	2454	1261
No. 130.	Letter Norton to Shavor, January 2, 1867	2456	1262
No. 131.	Letter Norton to Shavor, April 21, 1867	2460	1264
No. 132.	Letter Norton to Shavor, June 27, 1868	2465	1266
No. 133.	Letter Norton to Corse, March 15, 1869	2469	1269

	Original.	Print.
Defendant's Exhibit No. 134. Number of words on lines and pages of Exhibit No. 126	2472	1270
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No. 145. Ransford & Louis patent of August 9, 1859.	2476	1270
No. 147. Norton's patent of December 16, 1862	2489	1276
No. 150. Moore's patent of January 16, 1849	2497	1279
No. 151. Chambers' patent of September 23, 1851	2506	1284
No. 152. Ruggles' patent of August 21, 1855	2511	1286
No. 153. Miller's patent of March 22, 1859	2518	1288
No. 154. Pearson Hill's English patent of September 25, 1857	2523	1291
No. 155. Robinson's English patent of April 6, 1858.	2542	1298
No. 156. File wrapper and contents in the matter of letters patent granted to M. P. Norton, April 14, 1863, No. 38175	2548	1299
No. 157. File wrapper and contents of reissued letters patent granted M. P. Norton, August 3, 1869, No. 3586	2560	1306
No. 158. Petition, &c., in Court of Claims, Jacob Shavor and Albert C. Corse *vs.* The United States.	2583	1320
No. 159. Deposition of M. P. Norton in Shavor & Corse *vs.* The United States	2610	1329
No. 160. Norton's caveat of October 20, 1853	2624	1340
No. 161. Copy of certain charges against M. P. Norton, and action of Patent Office thereon	2641	1348
No. 162. Copy of Exhibits A, B, C, and D, referred to in charges made by Commissioner of Patents against M. P. Norton	2648	1352
No. 163. Letter Assistant Postmaster-General to postmaster New York, dated August 10, 1860	2663	1360
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No. 166. Statement of postage stamps sent to New York in 1847 and 1851	2667	1362
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No. 170. Robertson's patent of September 22, 1857	2674	1364
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No. 180. Letter of Norton to postmaster at New York, February 6, 1864	2680	1367
No. 181. Letter of Norton to Postmaster-General, March 14, 1866	2683	1368
No. 182. Receipt of C. C. Nott for services in Cleveland post-office during February, 1853	2685	1369
No. 183. Application to Postmaster-General for compensation for use of postage-stamp cancelling device	2686	1369
No. 184. Indictment against Norton	2714	1383
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	Original.	Print.
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	Original.	Print.
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Defendant's Exhibit Norton. Letter, August 29, 1871	3258	1618
Defendant's Exhibit Norton. Letter, September 19, 1871	3260	1619
Defendant's Exhibit Norton and Green agreement	3261	1620
Defendant's Exhibit Norton. Letter September 29, 1879	3264	1621
Defendant's Exhibit Norton. Letter October 5, 1871	3265	1622
Defendant's Exhibit Charles Eddy. Letter March 25, 1872	3266	1623
Defendant's Exhibit Secombe. Original, January 23, 1880	3268	1623
Defendant's Exhibit Secombe. Envelope	3270	1625
Defendant's Exhibit Norton. Letter, August 28, 1872	3271	1625
Defendant's Exhibit Norton. Letter April 15, 1876	3272	1626
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	Original.	Print.
Assignment of S. R. Clexton to Horace T. Caswell	3299	1641
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Original bill of complaint.—May 28, A. D. 1877.

In the circuit court of the United States, second circuit, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, U. S. POSTMASTER, NEW York.

To the honorable the judges of the circuit court of the United States within and for the southern district of New York:

Christopher C. Campbell, of East Chatham, in the town of Chatham, county of Columbia, and State of New York, and a citizen of the said State, and also a citizen of the United States of America, brings this his bill into this honorable court against Thomas L. James, United States postmaster in and for the city of New York, State and southern district of New York, aforesaid, who is a citizen of said State, and also a citizen of said United States; and thereupon your orator complains, and says: That the above named defendant is now, and has been for several years last past, postmaster for the United States of
2 America at the city of New York, in the county of New York, State and southern district aforesaid, he having been appointed to the office of postmaster for the United States post-office in the said city of New York by the President of the said United States, and duly confirmed as such by the Senate of the Congress of the said United States, and thereupon was duly commissioned by the President of the said United States as such postmaster; whereupon the said defendant entered upon the duties of the said office, and during all of the time aforesaid has exercised the functions of that office, and managed and controlled the business and affairs of the same, as this complainant is informed, and verily believes the same to be true.

And your orator, the above-named complainant, further complains and says: That heretofore, and before the 14th day of April, A. D. 1863, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, was the true, original and first inventor of a certain new and useful improvement in post-office post-marking and canceling hand stamp, machine or device for the post marking of letters or other mail matter, and for the cancellation of the postage stamps thereon in the manner and by the means hereinafter more fully described and set forth; and the same was not known or used before the invention and discovery thereof by the said Marcus P. Norton, and was not, at the time of his application for the letters patent of the said United States thereon, in public use or on sale with his knowledge, consent or allowance.

And your said orator further shows unto your honors, that the said Marcus P. Norton so being the inventor of said improvements and invention, and being a citizen of the United States aforesaid, in due and lawful time made an application in writing to the Commissioner of Patents, and to the proper department of the Government of the United States of America for letters patent, in accordance to and with the then existing laws or acts of the Congress of the said United States; and he having duly complied in all respects with the conditions and require-
3 ments of the said laws or acts of Congress, on the 14th day of April, A. D. 1863, the letters patent of the said United States of

America, signed, sealed and executed in due form of law, for his said discovery, improvements and invention, were issued and delivered to him, the said Marcus P. Norton, and the same were dated so as aforesaid, and were numbered 38175 by the said Commissioner of Patents; whereby and by means thereof there was secured to him, his heirs, executors, administrators and assigns for the full term of seventeen years from and after the said 14th day of April, A. D. 1863, the full and the exclusive right, liberty and privilege of making, using and vending to others to use and to be used, the said improvements or invention.

And your said orator further shows unto your honors that the aforesaid named and described letters patent were duly and lawfully issued and delivered in the name of the United States of America, and were under the seal of the Patent Office of said United States of America, and they were duly signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and they were thereafter duly delivered to the said Marcus P. Norton; that the said letters patent, after reciting that the said Marcus P. Norton had invented new and useful improvements in a machine or device for post-marking letters or other mail packets, and for the cancellation of the postage stamp or stamps thereon, which he stated had not been used before his said application for letters patent thereon, save by himself and others, with his approval, in the line of lawful experiments, to test and to prove the true character, usefulness, and value of his said improvements and invention, and had made oath that he was a citizen of the United States, and that he did verily believe that he was the original and first inventor and discoverer of the said improvements and invention, and that the same had not, to the best of his knowledge, information, and belief, been previously known or used by any other person or persons, except-
4 ing and only for the purposes of experimenting in the manner hereinbefore stated, and had presented a petition in writing to the Commissioner of Patents signifying a desire of obtaining an exclusive right and property in said improvements in post-marking and postage-canceling hand-stamp, and praying that the letters patent of the United States of America might be duly granted to him for that purpose, did grant to him, the said Marcus P. Norton, his heirs, administrators or assigns, for the term of seventeen years from and after the said fourteenth day of April, A. D. 1863, the full and exclusive right, liberty, and privilege of making, constructing, using, and vending to others to vend, or to use, or to be used, the said improvements and invention, a description whereof is given in the words, figures, and drawings contained in the schedule of specifications annexed to said letters patent, and making a part thereof, which said letters patent so granted, issued, and delivered unto the said Marcus P. Norton, your orator prays may be deemed to be and taken as a part of this bill of complaint, and to which your orator most respectfully asks the leave of this honorable court at all times to refer, as the same or the case shall or may require.

Your said orator most respectfully shows to this honorable court that the said Marcus P. Norton was and is the true, original, and first inventor of the aforesaid named improvement and invention set forth, described, and claimed in and by the said letters patent so dated and numbered; that the same were not known or used by any other person or persons before the invention or discovery thereof by the said Marcus P. Norton, and were not at the time of his said application for letters patent upon the same in public use or on sale with his knowledge, consent, or allowance previous to a term of two years prior to the said application to the Commissioners of Patents for the letters patent there-

for and thereon, made in due form of law as hereinbefore set forth, other than the legitimate experimenting by the said Marcus P. Norton as hereinbefore stated.

5 And your orator further shows unto this honorable court that a description and specifications in writing of the aforesaid named improvement and invention were given in the schedule annexed to the said letters patent, and the same were accompanied by certain drawings referred to in said last-mentioned schedule, and forming a part of said original letters patent; that the aforesaid mentioned and described letters patent were duly entered of record in the Patent Office of the said United States as by law required.

And your orator further shows unto your honors that on or about the 20th day of April, A. D. 1863, the said Marcus P. Norton, by an assignment in writing, bearing that date, but not of record in the said Patent Office until about one year thereafter, sold, assigned, and transferred in trust, unto Jacob Shavor and Albert C. Corse, of the said city of Troy, all his right, title, and interest in and to the said letters patent and invention, which assignment was recorded in the Patent Office of said United States, as by a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in this court to be produced, will fully and at large appear.

And your orator further shows unto this honorable court that the said Jacob Shavor and Albert C. Corse, at the request of the said Marcus P. Norton, surrendered the aforesaid mentioned and described original letters patent to the Commissioner of Patents, and having made application in writing therefor, and having in all things complied with the acts of Congress, and with the law in such case made and provided, did, on the 23d day of August, A. D. 1864, obtain new letters patent for the same invention, upon reformed and amended specifications and claims, for the residue of the said term of seventeen years then unexpired, numbered 1748 of reissued letters patent, which last-mentioned letters patent so reissued were issued in due form of law, under the seal of the Patent Office of said United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date on the said 23d of August, A. D. 1864, and were num-

6 bered 1748, as aforesaid stated, as by the said last-mentioned letters patent, or by a duly certified copy thereof, ready in this court to be produced, will at large appear.

And your orator further shows unto your honors, that immediately after the granting and issuing of the said reissued letters patent, dated and numbered as last aforesaid, the said Jacob Shavor and Albert C. Corse commenced a suit at law in the circuit court of the said United States, in and for the northern district of New York, second circuit, against one Edmund Hoole, who was at that time infringing upon the said letters patent so granted and reissued, by manufacturing hand-stamps and machines for use in the postal service of the said United States, under a contract made with the Postmaster General of said United States, or with some other person authorized by him to manufacture the said invention and improvements for use in such postal service, in violation of the rights and privileges secured in and by the said letters patent, which said suit was brought on for trial at a regular term of the said court, held at the city of Albany, State of New York, in the month of October, 1864, before a jury and the court, and upon pleadings and evidence then and there duly submitted under the rulings of said court, the said jury returned a verdict in favor of the said plaintiffs, to wit: Jacob Shavor and Albert C. Corse; and thereupon the court directed

said jury by special verdict to find, that said defendant had infringed upon the said letters patent, as charged in the narr or complaint in that suit; and that said letters patent were good and valid, as by an exemplified or duly authenticated copy of the pleadings and proceedings in that court in the said cause, now ready here in this honorable court to be produced for the purpose of showing to your honors that the aforesaid named letters patent have been declared to be good, sufficient, and valid in law, by a court of competent jurisdiction, will fully and at large appear by an inspection of the said authenticated court record.

7 And your orator further shows unto your honors, that on or about the 23d day of February, A. D. 1864, the said Jacob Shavor and Albert C. Corse, by a deed of assignment bearing that date, sold, reassigned, and reconveyed unto the said Marcus P. Norton the aforesaid named letters patent and any and all reissues thereof, which assignment and deed of reconveyance being accompanied by the sworn statement of the said Jacob Shavor and Albert C. Corse, the said statement and affidavit being thereto attached and a part thereof, were each duly and lawfully entered of record in said United States Patent Office, on the 24th day of July. A. D. 1869, in Liber U 11, page 319 of Transfers of Patents, as will fully and at large appear by the original deed of assignment, reconveyance, and retransfer, now in the possession of your orator, or by a duly authenticated copy of the same, now ready in this honorable court to be produced, will also fully and at large appear, which said deed of assignment and reconveyance with said statement and affidavit thereto attached and made a part thereof, your orator prays your honors that the same may be deemed and taken as a part of this his bill of complaint.

And your orator further shows unto this honorable court, that the said Marcus P. Norton, having for good and lawful cause surrendered said last-mentioned reissued letters patent to the Commissioner of Patents, and having made due application in writing therefor as by the law made and provided, and he having in all things complied with the acts of Congress in such case provided, did, on the third day of August, A. D. 1869, obtain new letters patent for the same invention and improvements, upon reformed, corrected, and amended specifications for the residue of the said term of seventeen years then unexpired; which last-mentioned reissued letters patent were issued to, and in the name of the said Marcus P. Norton, the original and first inventor of the said improvements and invention so as aforesaid stated; and the same were in due form of law, and were under the seal of the Patent Office

8 of the United States; and they were duly signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were dated the third day of August, A. D. 1869, and were numbered 3586 of reissue of patents, as by the said last-mentioned reissued letters patent, or a duly authenticated copy thereof, in court ready to be produced, will fully and at large appear.

And your orator further shows unto this honorable court, that on or about the 20th day of October, A. D. 1869, by an assignment and transfer in writing of that date, the said Marcus P. Norton sold, assigned, and transferred unto Helen M. Ingalls, of the city of Troy, county of Rensselaer, and State of New York, his entire right, title, and interest in and to the said letters patent and invention and all reissues of the same; and also all and every right to compensation, and to recover by suit or otherwise for the use of the same, past or future or for both, or for any violation of or infringement upon the said letters patent by any one; which deed of assignment was duly recorded in the Patent Office

of said United States on the 1st day of August, A. D. 1870, in Liber B 13, page 351, of Transfers of Patents, as by the said deed of assignment or a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in this court to be produced, will fully and at large appear.

And your orator further shows unto this honorable court, that the said Helen M. Ingalls being the true and lawful owner and holder of the said invention and letters patent, duly surrendered the same to the Commissioner of Patents for the purpose of reissuing the said letters patent in two divisions, as by law then provided; and thereupon, upon the petition of the said Helen M. Ingalls, in writing, to the Commissioner of Patents, in conformity to the law, the said Commissioner of Patents in due time allowed and thereupon granted a reissue of the said letters patent unto the said Helen M. Ingalls according to her said petition so made and filed by her in said Patent Office. The said reissue was granted
9 and was issued to her in two divisions, under and bearing date the fourth day of October, A. D. 1870, to wit: "Division A" and "Division B," and each bearing the same date, namely, October, 4th, A. D. 1870—"Division A" being numbered 4143, and "Division B" being numbered 4144 of reissue of patents in said Patent Office, and to the specifications, drawings, and claims, of each of which reference is now and hereby had for a more full, correct, and perfect description of the said improvements and invention, as well as of the letters patent upon which this bill is founded. The specifications, drawings, and claims, or summary of invention in the aforesaid named and described "Division A" are the same, or substantially and materially the same, as those contained in the said reissued letters patent granted, issued, and delivered to the said Marcus P. Norton on the 3d day of August, A. D. 1869, and numbered 3586 of reissued patents in said Patent Office, as aforesaid stated; which said letters patent, so reissued in two divisions, in the manner and form as stated herein, were issued in due form of law, under the seal of the Patent Office of said United States, and the same were duly signed by W. T. Otto, Acting Secretary of the Interior, and were countersigned by Samuel S. Fisher, Commissioner of Patents, and bearing date as aforesaid stated, to wit: the 4th day of October, A. D. 1870, and in two divisions, as hereinbefore stated—"Division A" being numbered 4143, as by the said last-mentioned division of the said last reissued letters patent, or a duly authenticated copy thereof, now ready in this court to be produced, will more fully and at large appear.

And your orator further shows unto your honors, that on or about the 4th day of March, A. D. 1871, the said Helen M. Ingalls, by an assignment in writing of that date, conditionally assigned and transferred unto William W. Secombe, then of the city, county, and State of New York, and in trust, according to the terms and conditions of a deed of trust, signed by the said William W. Secombe, and bearing date on the said 4th day of March, A. D. 1871, and by him delivered to the
10 said Helen M. Ingalls, and a part of the said conditional assignment and transfer of the said letters patent, her right, title, and interest in and to the said "Division A" of the said reissued letters patent and invention, which said assignment was recorded in the Patent Office of the said United States, on the 11th day of March, A. D. 1871, in Liber X 13, page 316 of Transfers of Patents, as by said assignment, or a duly certified copy thereof, and the certificate of such recording thereto affixed, ready in this court to be produced, will fully appear; which deed of assignment being in trust and upon certain conditions stated in the said deed of trust so signed, executed, and deliv-

ered unto said Helen M. Ingalls, by the said William W. Secombe, has long since become absolutely void and of none effect either in law or in equity; that the said William W. Secombe has not only wholly and entirely failed to keep and to maintain the conditions and obligations stated in said deed of trust, and made as a part of the said deed of assignment from the said Helen M. Ingalls, to him, the said William W. Secombe, dated and recorded so as aforesaid, as the sole and only grounds for the said "trust" assignment, but he has repeatedly refused to keep, observe, and carry out the same in good faith. The considerations wherein and whereby the said deed of assignment and trust were executed and delivered, so as aforesaid stated, were not, and have not been kept, maintained, and observed by and on the part of the said William W. Secombe, as in said "deed of trust" was and is required of him, but on the contrary, the same were and have been utterly disregarded, neglected, and refused, on the part and behalf of him, the said William W. Secombe; whereupon the said invention and letters patent, and each and every part thereof, whether of right, title, ownership, or interest therein or thereto, became in law as well as in equity, reinvested in, and the sole and exclusive property of her, the said Helen M. Ingalls, the same as though no assignment "in trust" had been made by her to the said William W. Secombe; and therefore, and by rea-
11 son of such facts, so as aforesaid stated with reference to said assignment in trust, your orator most respectfully asks this honorable court to make its order and decree, declaring, and absolutely and forever rendering the said assignment in trust to the said William W. Secombe null and void, and without force or effect in law or in equity, if it shall be found necessary by your honors so to do.

And your orator further shows unto this honorable court that on or about the second day of January, A. D. 1877, the said Helen M. Ingalls, by an assignment in writing of that date, sold, assigned, and transferred in trust unto your orator, Christopher C. Campbell, of East Chatham, in the town of Chatham, county of Columbia, and State of New York, all her right, title, and interest in and to the said letters patent and invention reissued on the fourth day of October, A. D. 1870, as "Division A," and numbered 4143 of reissued patents in the said Patent Office, which deed of assignment in trust has been duly recorded in the Patent Office of said United States, as by said assignment, or a duly certified copy of the same, and the certificate of such recording thereto affixed, now ready here in this court to be produced, will fully and at large appear. Your orator further shows unto your honors that the said deed of assignment and transfer in trust was and is in the following words and figures, that is to say:

Whereas letters patent of the United States of America were duly granted, issued, and delivered unto Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, for and upon new and useful improvements in post-office postmarking and canceling hand-stamp for post-marking of letters, and for the cancellation of the postage stamps in the manner, and for the purposes, and by the means therein described and set forth; which letters patent were issued and delivered bearing date the 14th day of April, A. D. 1863, and were numbered 38175, which letters patent have been three times reissued in the manner as by law provided, to wit, on the 23d day of August, A.
12 D. 1864, numbered 1748; also, on the 3d day of August, A. D. 1869, numbered 3586; and again, and for the third and the last time, reissued on the 4th day of October, A. D. 1870, in two divisions of the same

date, to wit, "Division A" and "Division B," division A being numbered 4143, and division B being numbered 4144, of reissue of patents in the said Patent Office, to the specifications and drawings of each reference is now and hereby had for a more full and perfect description of the said invention and improvements, as well as for full information of the same, and of the letters patent herein and hereby assigned in trust in the manner and form following in this deed of trust as herein stated and set forth.

And whereas the original letters patent, dated as aforesaid, on the 14th day of April, A. D. 1863, and numbered 38175, were by the said Marcus P. Norton, on the 20th day of April, A. D. 1863, assigned and transferred, in trust, to Jacob Shavor and Albert C. Corse, of the said city of Troy, in the manner and for the purposes stated in the reassignment and retransfer to the said Marcus P. Norton, dated February 23d, 1864; and whereas, on the 23d day of February, A. D. 1864, they, the said Jacob Shavor and Albert C. Corse, reassigned and reconveyed the aforesaid named letters patent and all reissues thereof to the said Marcus P. Norton, which assignment and deed of reconveyance being accompanied by the sworn affidavit and statement of the said Jacob Shavor and of the said Albert C. Corse, was duly and lawfully entered of record, and was recorded in the said United States Patent Office on the 24th day of July, A. D. 1869, in liber U, 11, page 319, of transfer of patents, as will fully and at large appear by the original deed of reassignment and retransfer, now in the possession of the undersigned; and whereas the said Marcus P. Norton did, on the 20th day of October, A. D. 1869, by deed of assignment and transfer, and for a valuable consideration, sell, assign, and convey unto Helen M. Ingalls, of the said city of Troy, county of Rensselaer, and State of New York, his
13 entire right, title, and interest in the invention, improvements, and letters patent, and of any and every reissue of the same; and also all and every right to compensation and to recover by suit or otherwise for the use of the same, past or future, or for both, by the said United States, as by reference thereto will fully and at large appear. The said Helen M. Ingalls, being the true and lawful owner and holder of the said invention and letters patent, duly surrendered the same to the Commissioner of Patents for the purpose of reissuing the same in two divisions; and thereupon, upon the petition of the said Helen M. Ingalls, the said Commissioner of Patents, in conformity to law, granted a reissue of the said letters patent unto the said Helen M. Ingalls, according to her said petition so made and filed by her in said Patent Office.

The said reissue was granted to her in two parts or divisions, under date of October 4, 1870, as hereinbefore stated, of which "Division A" is the same, or substantially the same, as the said reissued letters patent granted to the said Marcus P. Norton on the 3d day of August, A. D. 1869, and numbered 3586, as aforesaid stated. The said deed of assignment to the said Helen M. Ingalls was duly entered of record and was recorded in said Patent Office on the 1st day of August, A. D. 1870, in liber B 13, page 351 of transfers of patents, as will appear by reference to the original deed of assignment and conveyance now in the possession of the undersigned, Helen M. Ingalls; and whereas on or about the 4th day of March, A. D. 1871, the said Helen M. Ingalls, by a certain deed of assignment, and upon the terms and conditions stated therein as a part thereof, did, in trust, assign and convey to William W. Secombe, then of the city, county, and State of New York, her right and title to the said invention and letters patent, which was recorded in

said Patent Office on the 11th day of March, A. D. 1871, in liber X 13, page 316, of transfers of patents, and which deed of assignment "in trust" has long since become void and of none effect, because and for
14 the reason that the said William W. Secombe has not only wholly and entirely failed to keep and carry out the conditions therein named as the sole and only grounds for that "trust" but has repeatedly refused so to do. The consideration wherein said deed of trust was executed and delivered so as aforesaid and named therein were not and have not been kept and faithfully observed by the said William W. Secombe in the manner as in the said deed of trust was and is required of him in and thereby, but, on the other hand, the same were and have been utterly neglected and refused on the part and behalf of him, the said William W. Secombe; whereupon the said invention and letters patent, and each and every right, title, and interest became reinvested in, and the sole and exclusive property of the said Helen M. Ingalls, the same as though no assignment "in trust" had been made to the said William W. Secombe in the manner as aforesaid.

And whereas, it has been deemed advisable that Christopher C. Campbell, of East Chatham, county of Columbia and State of New York, should become fully vested with, and should have vested in him, in trust, all the right, title, and interest which I now have, or ever have had, in, to, or for the said invention and letters patent, and of each of the several reissues thereof; also, of any and every claim or claims for past use of the said invention in the postal service of the said United States from the date of the said letters patent, to wit, the 14th day of April, A. D. 1863.

The right, title, and ownership of the said invention and letters patent is, in trust, vested in the said Christopher C. Campbell upon the conditions that he shall have the sole management of said trust, and be at the expense of the same, until a fair, just, and reasonable settlement shall be had with the United States aforesaid for such use of said invention in the postal service of said United States by the Post-Office Department, for which the said Christopher C. Campbell shall have and shall receive one-third of such sum as may here-
15 after be determined upon by the Court of Claims of said United States, in payment for the past or for the future use of said invention in the said postal service; and the said Helen M. Ingalls shall have and shall receive two-thirds of such sum as may hereafter be determined upon by the said Court of Claims, in payment for the past or for the future use of the said invention in said postal service; and the said Court of Claims, in the making and entering of any judgment against said United States for the use of said invention, improvements, and letters patent in such postal service, is now and hereby authorized and *and* requested to make and enter such judgment, as follows, to wit, one-third of the whole sum or amount to the said Christopher C. Campbell, and two-thirds of the whole sum or amount to the said Helen M. Ingalls, and thereby to require each of said named persons to sign and acknowledge satisfaction of such judgment, or to receipt therefor when the same is paid by the Treasurer of the said United States, in the manner provided by law, which payment shall be at the same time, and in the presence of each, who thereupon shall sign a receipt or make satisfaction for such judgment on receipt of payment, or by their legal representatives, as by law may be provided; and the said Court of Claims shall have full power to make such an order or decree in the premises as hereinbefore stated, so that one-third of the recovery or judgment determined and fixed by said court as by law may be provided, shall be

paid to the said Christopher C. Campbell, and two-thirds thereof shall be paid to the said Helen M. Ingalls, directly from the Treasury of said United States, and in no other manner shall payment be made for such use by the said United States of the said invention and letters patent.

Now, therefore, this deed of assignment and transfer, in trust, witnesseth, that for and in consideration of the sum of one dollar to me in hand paid, the receipt whereof is now and hereby acknowledged, and in the further and other valuable consideration hereinbefore
16 and herein stated as the main conditions upon which this instrument is now and hereby made and executed in trust, I, the said Helen M. Ingalls, have, in trust, so as aforesaid sold, assigned, and transfered, and I do in like manner hereby sell, assign, and transfer in trust unto the said Christopher C. Campbell, all the right, title and interest which I now have or ever had, in, to, or for the said invention and letters patent, and the several re-issues thereof, which is, as aforesaid stated, the entire invention, improvements, and letters patent, named, dated, and numbered so as aforesaid, and in like manner, in trust, and upon the same terms and conditions. I also sell, assign, and convey unto him, the said Christopher C. Campbell, all the right, interest, and claim for and to the past use of the said invention and improvements under the said letters patent, or any reissue thereof obtained by me from the said Marcus P. Norton, by the said deed of assignment, dated the 20th day of October, A. D. 1869, and now of record, in the manner so as aforesaid stated and set forth, intending herein and hereby to sell, assign and convey, in trust, unto the said Christopher C. Campbell, in the manner herein provided and set forth, all my right, title, and interest, or claim against said United States, for the past or future use of the invention and letters patent in the postal service of said United States by the Post Office Department; and also, in like manner, the entire invention, improvements, and letters patent, and all and every reissue of the same since the 14th day of April, A. D. 1863. The same, and each and every thereof, to be held in trust in the manner and for the benefit of each of the persons herein named and as herein specified and set forth, and on no other grounds and for no other use or purpose.

In testimony whereof, I have on this second day of January, A. D. 1877, hereto set my hand and seal.

HELEN M. INGALLS. [SEAL.]

Sealed and delivered in presence of—
JOHN W. SMITH.

17 STATE OF NEW YORK,
Columbia County, ss:

On this second day of January, A. D. 1877, before me, the subscriber, personally appeared Helen M. Ingalls, to me known to be the person described in, and who executed the within instrument, and acknowledged that she executed the same.

JOHN W. SMITH,
Justice of the Peace, in and for Columbia County, N. Y.

And now your orator hereby prays this honorable court, that the aforesaid named letters patent, dated the 14th day of April, A. D. 1863, numbered 38175; also the reissued letters patent, dated the 23d day of August, A. D. 1864, numbered 1748, of reissue of letters patent; also the reissued letters patent, dated the 3d day of August, A. D. 1869, numbered 3586; also the reissued letters patent, reissued in two divisions, to wit, "division A" and "division B," dated the 4th day of Oc-

said Patent Office on the 11th day of March, A. D. 1871, in liber X 13, page 316, of transfers of patents, and which deed of assignment "in trust" has long since become void and of none effect, because and for
14 the reason that the said William W. Secombe has not only wholly and entirely failed to keep and carry out the conditions therein named as the sole and only grounds for that "trust" but has repeatedly refused so to do. The consideration wherein said deed of trust was executed and delivered so as aforesaid and named therein were not and have not been kept and faithfully observed by the said William W. Secombe in the manner as in the said deed of trust was and is required of him in and thereby, but, on the other hand, the same were and have been utterly neglected and refused on the part and behalf of him, the said William W. Secombe; whereupon the said invention and letters patent, and each and every right, title, and interest became reinvested in, and the sole and exclusive property of the said Helen M. Ingalls, the same as though no assignment "in trust" had been made to the said William W. Secombe in the manner as aforesaid.

And whereas, it has been deemed advisable that Christopher C. Campbell, of East Chatham, county of Columbia and State of New York, should become fully vested with, and should have vested in him, in trust, all the right, title, and interest which I now have, or ever have had, in, to, or for the said invention and letters patent, and of each of the several reissues thereof; also, of any and every claim or claims for past use of the said invention in the postal service of the said United States from the date of the said letters patent, to wit, the 14th day of April, A. D. 1863.

The right, title, and ownership of the said invention and letters patent is, in trust, vested in the said Christopher C. Campbell upon the conditions that he shall have the sole management of said trust, and be at the expense of the same, until a fair, just, and reasonable settlement shall be had with the United States aforesaid for such use of said invention in the postal service of said United States by the Post-Office Department, for which the said Christopher C. Campbell shall have and shall receive one-third of such sum as may here-
15 after be determined upon by the Court of Claims of said United States, in payment for the past or for the future use of said invention in the said postal service; and the said Helen M. Ingalls shall have and shall receive two-thirds of such sum as may hereafter be determined upon by the said Court of Claims, in payment for the past or for the future use of the said invention in said postal service; and the said Court of Claims, in the making and entering of any judgment against said United States for the use of said invention, improvements, and letters patent in such postal service, is now and hereby authorized and *and* requested to make and enter such judgment, as follows, to wit, one-third of the whole sum or amount to the said Christopher C. Campbell, and two-thirds of the whole sum or amount to the said Helen M. Ingalls, and thereby to require each of said named persons to sign and acknowledge satisfaction of such judgment, or to receipt therefor when the same is paid by the Treasurer of the said United States, in the manner provided by law, which payment shall be at the same time, and in the presence of each, who thereupon shall sign a receipt or make satisfaction for such judgment on receipt of payment, or by their legal representatives, as by law may be provided; and the said Court of Claims shall have full power to make such an order or decree in the premises as hereinbefore stated, so that one-third of the recovery or judgment determined and fixed by said court as by law may be provided, shall be

paid to the said Christopher C. Campbell, and two-thirds thereof shall be paid to the said Helen M. Ingalls, directly from the Treasury of said United States, and in no other manner shall payment be made for such use by the said United States of the said invention and letters patent.

Now, therefore, this deed of assignment and transfer, in trust, witnesseth, that for and in consideration of the sum of one dollar to me in hand paid, the receipt whereof is now and hereby acknowledged, and in the further and other valuable consideration hereinbefore
16 and herein stated as the main conditions upon which this instrument is now and hereby made and executed in trust, I, the said Helen M. Ingalls, have, in trust, so as aforesaid sold, assigned, and transfered, and I do in like manner hereby sell, assign, and transfer in trust unto the said Christopher C. Campbell, all the right, title and interest which I now have or ever had, in, to, or for the said invention and letters patent, and the several re-issues thereof, which is, as aforesaid stated, the entire invention, improvements, and letters patent, named, dated, and numbered so as aforesaid, and in like manner, in trust, and upon the same terms and conditions. I also sell, assign, and convey unto him, the said Christopher C. Campbell, all the right, interest, and claim for and to the past use of the said invention and improvements under the said letters patent, or any reissue thereof obtained by me from the said Marcus P. Norton, by the said deed of assignment, dated the 20th day of October, A. D. 1869, and now of record, in the manner so as aforesaid stated and set forth, intending herein and hereby to sell, assign and convey, in trust, unto the said Christopher C. Campbell, in the manner herein provided and set forth, all my right, title, and interest, or claim against said United States, for the past or future use of the invention and letters patent in the postal service of said United States by the Post Office Department; and also, in like manner, the entire invention, improvements, and letters patent, and all and every reissue of the same since the 14th day of April, A. D. 1863. The same, and each and every thereof, to be held in trust in the manner and for the benefit of each of the persons herein named and as herein specified and set forth, and on no other grounds and for no other use or purpose.

In testimony whereof, I have on this second day of January, A. D. 1877, hereto set my hand and seal.

HELEN M. INGALLS. [SEAL.]

Sealed and delivered in presence of—
JOHN W. SMITH.

17 STATE OF NEW YORK,
Columbia County, ss:

On this second day of January, A. D. 1877, before me, the subscriber, personally appeared Helen M. Ingalls, to me known to be the person described in, and who executed the within instrument, and acknowledged that she executed the same.

JOHN W. SMITH,
Justice of the Peace, in and for Columbia County, N. Y.

And now your orator hereby prays this honorable court, that the aforesaid named letters patent, dated the 14th day of April, A. D. 1863, numbered 38175; also the reissued letters patent, dated the 23d day of August, A. D. 1864, numbered 1748, of reissue of letters patent; also the reissued letters patent, dated the 3d day of August, A. D. 1869, numbered 3586; also the reissued letters patent, reissued in two divisions, to wit, "division A" and "division B," dated the 4th day of Oc-

ments and invention as those which are described in the aforesaid described reissued letters patent, dated the 4th day of October, A. D. 1870, "division A," numbered 4143 of reissued letters patent by the said Commissioner of Patents, and therein and thereby claimed in and by the several claims thereof, and secured to your orator in the manner hereinbefore stated, and the same was and are an infringement of and upon the said letters patent so mentioned, numbered and dated, and are in violation of the exclusive rights and privileges thereunder and thereby secured.

And your orator further shows unto your honors that after the granting of the said letters patent so as aforesaid, and before and since the making of the deed of assignment of the same in trust, in the manner as hereinbefore stated, and during the term of time of the said reissued letters patent from the date thereof, and at divers times and on divers days, and before the commencement of this suit, hitherto, to wit, at the said city of New York, and in the said post-office of the said United States in and for the said city of New York, the said defendant Thomas L. James unlawfully and wrongfully, and without the consent, permission, or license, and against the will of your orator, the complainant, Christopher C. Campbell, did purchase, or caused to be purchased and used, and did use, and did put in practice the said machines, devices, improvements, and invention for the post-marking of letters or other mail matter, and for the cancellation of postage stamps thereon, substantially as specified and described in the specifications, drawings, and claims of the said last-mentioned reissued letters patent of the date of October 4th, 1870, "division A," and numbered 4143, all and every of which was and is in violation of and in infringement upon the said exclusive rights and privileges so secured to your orator, the complainant herein, by the said letters patent, so reissued, dated, numbered, and assigned in trust in the manner aforesaid; and the same
22 was and is contrary to the form, force, and effect of the statutes of the said United States in such case made and provided by the Congress of the said United States in Senate and House of Representatives assembled.

Whereby, and by the means of which grievances, your orator, Christopher C. Campbell, has been greatly injured and deprived of large gains, profits, and advantages which he might and otherwise would have derived from said improvements and said invention and letters patent thereon, reissued, dated, and numbered as last aforesaid, to wit, at the post-office of the United States of America in and for the city of New York, county and State aforesaid, southern district of New York, and within the jurisdiction of this honorable court, and has sustained by such several and continued acts of unjust and deliberate infringement by the said defendant, Thomas L. James, postmaster of said United States, actual damages to the sum and amount of thirty thouand dollars and upwards, and more than that sum and amount for and during each and every year of the use of the said improvements and invention, and infringements upon the said letters patent by the said defendant.

And your orator further shows unto this honorable court that by the means of the several facts and premises, and by the force and provisions of the laws or statutes of said United States hereinbefore mentioned, an action or suit in equity has accrued to him, your said orator and complainant, Christopher C. Campbell, and against the said defendant, Thomas L. James, to recover in this court, by and through this bill of complaint, the said actual damages and such additional sum or amount

not exceeding in the whole sum three times the amount of all such actual damages as this honorable court may be pleased to order, adjudge, and determine under and as provided by sections 55 and 59 of the act of the Congress of the said United States entited *an* "An act to revise, consolidate, and amend the statutes relating to patents and copyrights," approved on the 8th day of July, A. D. 1870.

23 And forasmuch as your orator is utterly remediless at the common law, and can have no relief except in this court, in or upon the premises herein stated and set forth:

To the end, therefore, that the said defendant, Thomas L. James, United States postmaster, in and for the United States post-office at the said city of New York, may, if he can, show why your said orator should not have the relief herein demanded and hereby prayed for, and upon his corporal oath, and according to the best and uttermost knowledge, remembrance, information and belief, full, true, direct and perfect answers make to the premises, and to all the several matters hereinbefore stated, set forth, and charged, as fully and as particularly as if interrogated as to each and every of such matters; and that said defendant may be compelled to account for and to pay to your orator the profits acquired, and also the damages suffered by your orator from and by reason of the aforesaid infringements and unlawful acts of said defendant,

May it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal, and by the order and authority of this honorable court in due form of law, commanding, enjoining, and restraining the said defendant, his servants, agents, attorneys, and workmen, and each and every of them, and all other persons under the command or the control of the said defendant, from directly or indirectly making, using, or vending to others to be used, or in any manner counterfeiting or imitating the said invention or any part or portion thereof, or from using, or furnishing others to use or to be used, any post office post-marking and canceling hand stamp or other machine or device embracing the improvements or the invention, or any part or any portion thereof, or anything substantially and materially the same, invented, patented, and assigned as aforesaid stated and set forth; and that such injunction be made by your honors perpetual in its character and operation.

And to grant unto your orator such other or further relief as
24 shall be agreeable to equity, and as this honorable court shall deem meet and sufficient. And specially, that your honors, upon the entering of your decree for an infringement as above prayed for, may also proceed to assess or cause to be assessed, under your direction, in addition to the profits and gains to be accounted for by the defendant aforesaid, the damages your orator has sustained by reason of such infringements; and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the unlawful acts and the unjust infringements by the said defendant at the times and at the place hereinbefore set forth, and as provided by the "patent act" of July 8, A. D. 1870, and hereinbefore referred to by the title thereof, and especially sections 55 and 59 of the said patent law.

And your orator, Christopher C. Campbell, prays your honors that the said defendant, Thomas L. James, United States postmaster at the said city of New York, may, by the order of this honorable court, be decreed and required to pay to your orator all the costs and expenses of this suit, because of the unjust and unlawful acts of infringement upon and violation of the said letters-patent, in the manner and during

the time hereinbefore stated; and that damages may be recovered herein in the manner aforesaid; and that the preliminary injunction, upon due notice to the said defendant, as well as a perpetual injunction at the final hearing of this cause, may each be granted and issued as and in the manner herein prayed; and that all other relief asked for by this bill may be fully decreed and ordered by your honors,

May it please your honors to grant to your orator, Christopher C. Campbell, a provisional or preliminary injunction, issuing out of and under the seal of this honorable court, restraining the defendant, Thomas L. James, his attorneys, solicitors, clerks, servants, workmen and agents, to the same purport, tenor and effect hereinbefore prayed for, in regard to a perpetual injunction.

25 May it also please your honors to grant to your orator, Christopher C. Campbell, a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court, directed to the said defendant, Thomas L. James, United States postmaster at the said post-office in the said city of New York, commanding him to be and to appear in this court, and then and there to make answer unto this bill of complaint, and to perform and to abide by such order and decree herein as to this court may seem meet and to be required by the law, by the principles of equity and of good conscience.

And your orator, as in duty bound, will every pray, &c.

Dated this 28th day of May, A. D. 1877.

CHRISTOPHER C. CAMPBELL,
Complainant and assignee in trust.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

GEORGE H. WILLIAMS,
Of counsel for Complainant, Washington, D. C.

26 UNITED STATES OF AMERICA,
State of New York, County of Columbia, ss:

Christopher C. Campbell, the complainant named in the foregoing bill of complaint as orator, personally appeared before me, the undersigned, county judge of the county court and court of sessions, the same being courts of record, and having a seal, and he, the said Christopher C. Campbell, being by me duly sworn, says on oath that he has read the foregoing bill of complaint in equity signed by him, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on belief and on information derived from others, and as to those matters he believes it to be true.

And he further says: That he verily believes that the aforesaid named Marcus P. Norton, patentee and assignee to Helen M. Ingalls as stated and set forth in said bill, to be the original, true and first inventor and discoverer of the new, useful and valuable invention and improvements in machines, devices, or post-office post-marking and canceling hand-stamps which is and are described and mentioned in the said bill of complaint, and more especially specified, set forth, described and claimed in and by the drawings and specifications of the letters patent granted to the said Marcus P. Norton on the 14th day of April, A. D. 1863, numbered 38175, and for the third and last time reissued on the 4th day of October, A. D. 1870, "division A" of that reissue, numbered 4143, and mentioned and described in the foregoing bill of complaint

as the reissued or new letters patent upon which the said foregoing bill is founded or predicated.

And the deponent further says that he verily believes that the title of the complainant to said improvements, invention and letters patent, as set forth in detail and at large in said bill, is true, correct and lawful, and that the said letters patent contained in the said bill by date and number as therein stated and set forth are good, sufficient and
27 valid in law and in equity, and that the said invention and improvements contained in the drawings, specifications and claims of such letters patent, and in each of the several reissues thereof, are useful, valuable, and of very great importance to the public in the postal service of the United States for the use and purposes stated, specified and claimed therein.

CHRISTOPHER C. CAMPBELL,
Complainant and Assignee in trust.

Subscribed and sworn to before me on this 30th day of May, A. D. 1877.

JOHN CADMAN,
County Judge of Columbia County, N. Y.

MARCUS P. NORTON,
Counsel for Complainant, Troy, N. Y.

GEORGE H. WILLIAMS,
Of counsel for Complainant, Washington, D. C.

(Here follows diagram, marked page 28.)

29 No. 4143. Reissue.

The United States of America to all to whom these letters patent shall come:

Whereas Marcus P. Norton, of Troy, N. Y., assignor to Helen M. Ingalls, of same place, has alleged that he has invented a new and useful improvement in post-office post-marking and canceling hand-stamps (for which letters patent were issued to him, dated April 14, 1863, the same surrendered and new letters issued to him, dated August 23, 1864, which second letters were surrendered and new letters issued to him, dated August 3, 1869; which last letters, having been surrendered, as well as letters patent for improvement in hand stamps issued to Helen M. Ingalls, as assignee of said Marcus P. Norton, dated August 23, 1870, the said two letters patent last named have been canceled and new letters ordered to issue to said assignee on two separate amended specifications), has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to said Helen M. Ingalls, her executors, administrators, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

30 Given under my hand, at the city of Washington, this fourth day of October, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

W. T. OTTO,
Acting Sec. of the Interior.

Countersigned and sealed with the seal of the Patent Office.

SAM'L S. FISHER,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Marcus P. Norton, of Troy, New York, assignor to Helen M. Ingalls, of same place.

Letters patent Nos. 38175, dated April 14, 1863; reissue No. 1748, dated August 23, 1864; reissue No. 3586, dated August 3, 1869; reissue No. 4143, dated October 4, 1870; and also letters patent No. 106716, dated Aug. 23, 1870.

DIVISION A.

Improvement in post-office post-marking and canceling hand-stamps.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, have invented new and useful improvements in "post-marking letters," "packets," &c., and in the "canceling" of the "postage stamps" thereon, in the manner and by the means substantially as hereinafter described and set forth; that letters pat-

31 ent of the United States were duly issued thereon, under and bearing date April 14, 1863, which were assigned and transferred under a certain agreement, and by virtue of a certain instrument in writing, bearing date the 20th day of April, 1863, and recorded in the United States Patent Office on the 8th day of March, 1864, in liber C^7, page 458 of transfers of patents, to Jacob Shavor and Albert C. Corse, of said city of Troy, county and State, and who, on or about the 23d day of February, A. D. 1864, duly reassigned and retransferred the said invention, improvements and letters patent to the said Marcus P. Norton, inventor and assignee aforesaid, by a certain instrument in writing, duly executed, and bearing date on the said 23d day of February, 1864, and which assignment and transfer from Jacob Shavor and Albert C. Corse was duly recorded in the said United States Patent Office on the 24th day of July, 1869, in liber U^{11}, page 319 of transfers of patents. On or about the 23d day of October, A. D. 1869, I, the said Marcus P. Norton, by deed of assignment in writing, did lawfully assign and transfer unto Helen M. Ingalls, of the city of Troy, State of New York, the said invention and letters patent dated and reissued as hereinbefore stated and set forth, which deed of assignment was duly recorded in the United States Patent Office on the 1st day of August, 1870, in liber

B[13], page 351 of transfers of patents, and who is now the lawful owner thereof under and by virtue of the said sale, assignment and transfer so made, executed and delivered, and recorded as before stated.

Now, therefore, I, the said Marcus P. Norton, do hereby declare the following to be a full, clear and exact description of the construction and operation thereof, reference being had hereinafter to the accompanying drawings and to the letters of reference marked thereon, which drawings so marked and lettered hereby make a part of these my specifications of and concerning my said invention and improvements herein contained and set forth.

Like letters refer to and represent like and corresponding parts of my said invention.

32 Figure 1 represents a side elevation of the postage-stamp canceling and post-marking device hereinafter described and set forth for canceling postage stamps with any suitable ink contained upon such instrument at the same time, blow, and operation of the making of the post-mark on the letter, envelope, or packet, one side of, and from, such postage stamp or frank so canceled.

Figure 2 represents a vertical section. taken on a line through the center of the various parts of the post-marking and postage-canceling device or instrument herein contained, described, and set forth.

Figure 3 represents a face view of the device, showing the post-marking stamp ready for use, and the postage-canceling die or device, made of wood, used endwise, or of cork, rubber, or other suitable material therein inserted, in the manner substantially as shown and more at large described hereinafter.

Figure 4 shows a device for the purpose of canceling postage stamps or letter-franks used to represent value, by the use and power of any suitable ink, by the means of wood, cork, or any elastic material for the type or dye, which may be used for that purpose separate and alone or in combination with any suitably-constructed post-marking stamp or device, substantially as shown at fig. 3 of the said drawings.

Figure 5 represents a vertical section of a post-marking and postage-stamp canceling device or die combined, and constructed entirely of iron, steel, or other metal, and more fully described hereinafter.

Figure 6 is a plan or face view of fig. 5, showing the postage-stamp canceling device or die, made of iron, steel or other suitable metal or material.

Figure 7 represents the wrench used for securing the dating type in a proper place within the post-marking device, having the name of the town or post-office where used engraved thereon in relief letters.

Figure 8 represents the tool or instrument used for removing the cork, wood, or rubber die or type used for canceling postage-
33 stamps from the tube or surrounding case where held or contained, so as to repair or replace the same with a new one when worn out or unfit for use.

The nature of my said invention and improvements herein contained and described consists in the employment and combination of a device or die used for the more complete and perfect cancellation of postage-stamps and letter-franks, by means of soft wood, used endwise, or of cork, rubber, or other suitable material, whereby such stamp or frank is effaced and canceled, in and by indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of a postage-stamp canceling device or die, constructed of wood, cork, rubber, or any suitable material, with

any suitably-arranged and constructed post-marking stamp or device, so as to cancel, efface, or destroy the postage-stamp or letter-frank with indelible or any suitable ink at the same time, blow, or operation of the stamp or instrument by which the post-mark is given or made upon the letter, envelope, or packet, substantially as herein described and set forth.

It also consists of the post-marking of letters, envelopes, or packets and in the cancellation of the postage-stamp or stamps thereon with, in, or by any suitable ink, or similar material, by means of some soft wood, used endwise against the postage-stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material, so combined with the post-marking stamp or instrument as to cancel, efface, or destroy the postage-stamp or stamps at one and the same blow or operation of the entire instrument, thus constructed for that purpose, whereby to prevent a second or re-use of such postage stamp or stamps.

To enable others skilled in the art to which my said invention and improvements relate to make and use the same, I will here proceed to describe the construction and operation thereof, which are substantially as follows; that is to say:

34 I construct the post-marking device or stamp D of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device and die or type.

E, fig. 3, is the mortise or recess, of suitable dimensions to receive the type for the month, day of the month, and for the year, and called or known as the dating-type, around which is the name of the town or post-office where used, in relief-letters, and upon the lower face of such post-marking stamp or device.

I construct the postage canceling stamp or device G (for the purpose of canceling, in a more perfect and thorough manner, the postage-stamps on letters, envelopes, or packets), of wood, used endwise upon the postage-stamp, or of cork, rubber, or of any suitable or elastic material, and insert the same in the tube or recess F, which is that part of the canceling device marked C of the accompanying drawings, and which is connected to and combined with the said cross piece B, as herein described.

I prefer to have the diameter of the canceling device and die or type F, figs. 2, 3, and 4, about the same as the width of the postage-stamp to be canceled or destroyed by means of the same.

The said canceling-die or type G may be of any length required, and so made as to correspond with the tube or recess F, and closely to fit the same, and it may be made of wood, cork, rubber or of any elastic material as aforesaid.

The face of this device may contain a plan or form for canceling the postage stamp in, with, or by ink, like unto that shown at fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

The said device, die, or type G will project somewhat below the face of the post-marking device D, if deemed best so to do, and it may be removed out of the said tube or recess F by means of a pin or bolt, substantially like that shown at fig. 8, the lower end of which operates in and through the aperture *a*, figs. 2 and 4, for the purpose of repairs, or to replace it by a new one when desired.

35 A is the operating handle, firmly secured to the cross-bar B by any suitable mechanical means, and it will be made of wood, &c.

The said postage-stamp canceling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and com-

bined with the said device C, with recess or tube F therein as aforesaid, will receive and contain on the face or configuration thereof the ink aforesaid in quantities sufficient to permanently cancel, efface, or destroy the postage-stamp whereon the same is used while post-marking letters, packets, &c., in such manner as to prevent the said postage-stamp being cleansed of the said canceling ink by any chemical or other process; for the said canceling ink, so put upon the postage stamp by means of said cork die or type, would be so effectual that any attempt or effort to remove it therefrom would entirely destroy, or nearly so, the aforesaid postage-stamp, and thus and thereby render the same incapable for or of a second or other use without immediate detection.

The said cork, rubber, or other suitable elastic material, used as aforesaid, will render the said post-marking and postage-stamp canceling die or type of a more easy, and consequently rapid use, because of there being a yielding of the said canceling die or type G when the blow is given upon the letter, envelope, or packet, and postage stamp as aforesaid; the operator will not tire as much by means of a constant, continuous, and rapid use of the same; and it will also somewhat aid the operator in raising the entire instrument or apparatus from the paper or packet and postage-stamp when the impression thereon and the cancellation of such postage-stamp shall have been given by the operator in the manner subs antially as aforesaid.

The said canceling type or dye can be easily repaired or replaced by a new one whenever desired, and at very little expense; and such canceling die or type G may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small
36 bolt. In such case there would not be any tube or pipe surrounding said canceling die or type G. The operation or effect produced would in such case of construction be the same.

The said postage-stamp canceling device, die, or type G may be of any desired distance from the aforesaid post-marking or dating device or stamp D, or it may be securely fastened to the immediate side of the said post-marking and dating part or stamp or device D by any convenient and suitable mechanical means.

The said canceling die, type, or device G, I prefer to use made of cork, as it will hold a much greater quantity of canceling ink upon, and in the lower face thereof, and when it comes in contact with the printed surface of the postage stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with the said canceling ink, whereby such postage-stamp so operated upon, and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be refused or used a second time in fraud upon the postal revenue without immediate detection of the same.

Soft wood, used endwise, will answer nearly the same purpose. Still long and continued use after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the canceling die or type used upon postage stamps as aforesaid.

The said tube or cylinder C, figs. 2, 3, and four, may be constructed in any suitable manner, or by any convenient means, and thereafter fastened to the under side of the said cross-bar B in or by any mechanical means which will answer the required purpose. It may also be of any form or shape deemed best.

I also construct my said postage-stamp canceling device, die, or type of cast-iron, steel, or other suitable metal, substantially as shown at G′, figs. 5 and 6, and which may be secured to the said cross-bar or piece B,

any suitably-arranged and constructed post-marking stamp or device, so as to cancel, efface, or destroy the postage-stamp or letter-frank with indelible or any suitable ink at the same time, blow, or operation of the stamp or instrument by which the post-mark is given or made upon the letter, envelope, or packet, substantially as herein described and set forth.

It also consists of the post-marking of letters, envelopes, or packets and in the cancellation of the postage-stamp or stamps thereon with, in, or by any suitable ink, or similar material, by means of some soft wood, used endwise against the postage-stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material, so combined with the post-marking stamp or instrument as to cancel, efface, or destroy the postage-stamp or stamps at one and the same blow or operation of the entire instrument, thus constructed for that purpose, whereby to prevent a second or re-use of such postage stamp or stamps.

To enable others skilled in the art to which my said invention and improvements relate to make and use the same, I will here proceed to describe the construction and operation thereof, which are substantially as follows; that is to say:

34 I construct the post-marking device or stamp D of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device and die or type.

E, fig. 3, is the mortise or recess, of suitable dimensions to receive the type for the month, day of the month, and for the year, and called or known as the dating-type, around which is the name of the town or post-office where used, in relief-letters, and upon the lower face of such post-marking stamp or device.

I construct the postage canceling stamp or device G (for the purpose of canceling, in a more perfect and thorough manner, the postage-stamps on letters, envelopes, or packets), of wood, used endwise upon the postage-stamp, or of cork, rubber, or of any suitable or elastic material, and insert the same in the tube or recess F, which is that part of the canceling device marked C of the accompanying drawings, and which is connected to and combined with the said cross piece B, as herein described.

I prefer to have the diameter of the canceling device and die or type F, figs. 2, 3, and 4, about the same as the width of the postage-stamp to be canceled or destroyed by means of the same.

The said canceling-die or type G may be of any length required, and so made as to correspond with the tube or recess F, and closely to fit the same, and it may be made of wood, cork, rubber or of any elastic material as aforesaid.

The face of this device may contain a plan or form for canceling the postage stamp in, with, or by ink, like unto that shown at fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

The said device, die, or type G will project somewhat below the face of the post-marking device D, if deemed best so to do, and it may be removed out of the said tube or recess F by means of a pin or bolt, substantially like that shown at fig. 8, the lower end of which operates in and through the aperture *a*, figs. 2 and 4, for the purpose of repairs, or to replace it by a new one when desired.

35 A is the operating handle, firmly secured to the cross-bar B by any suitable mechanical means, and it will be made of wood, &c.

The said postage-stamp canceling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and com-

bined with the said device C, with recess or tube F therein as aforesaid, will receive and contain on the face or configuration thereof the ink aforesaid in quantities sufficient to permanently cancel, efface, or destroy the postage-stamp whereon the same is used while post-marking letters, packets, &c., in such manner as to prevent the said postage-stamp being cleansed of the said canceling ink by any chemical or other process; for the said canceling ink, so put upon the postage stamp by means of said cork die or type, would be so effectual that any attempt or effort to remove it therefrom would entirely destroy, or nearly so, the aforesaid postage-stamp, and thus and thereby render the same incapable for or of a second or other use without immediate detection.

The said cork, rubber, or other suitable elastic material, used as aforesaid, will render the said post-marking and postage-stamp canceling die or type of a more easy, and consequently rapid use, because of there being a yielding of the said canceling die or type G when the blow is given upon the letter, envelope, or packet, and postage stamp as aforesaid; the operator will not tire as much by means of a constant, continuous, and rapid use of the same; and it will also somewhat aid the operator in raising the entire instrument or apparatus from the paper or packet and postage-stamp when the impression thereon and the cancellation of such postage-stamp shall have been given by the operator in the manner subs antially as aforesaid.

The said canceling type or dye can be easily repaired or replaced by a new one whenever desired, and at very little expense; and such canceling die or type G may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small
36 bolt. In such case there would not be any tube or pipe surrounding said canceling die or type G. The operation or effect produced would in such case of construction be the same.

The said postage-stamp canceling device, die, or type G may be of any desired distance from the aforesaid post-marking or dating device or stamp D, or it may be securely fastened to the immediate side of the said post-marking and dating part or stamp or device D by any convenient and suitable mechanical means.

The said canceling die, type, or device G, I prefer to use made of cork, as it will hold a much greater quantity of canceling ink upon, and in the lower face thereof, and when it comes in contact with the printed surface of the postage stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with the said canceling ink, whereby such postage-stamp so operated upon, and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be refused or used a second time in fraud upon the postal revenue without immediate detection of the same.

Soft wood, used endwise, will answer nearly the same purpose. Still long and continued use after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the canceling die or type used upon postage stamps as aforesaid.

The said tube or cylinder C, figs. 2, 3, and four, may be constructed in any suitable manner, or by any convenient means, and thereafter fastened to the under side of the said cross-bar B in or by any mechanical means which will answer the required purpose. It may also be of any form or shape deemed best.

I also construct my said postage-stamp canceling device, die, or type of cast-iron, steel, or other suitable metal, substantially as shown at G′, figs. 5 and 6, and which may be secured to the said cross-bar or piece B,

in like manner as the said tube or cylinder C, figs 2 and 4, and which is done either by screw and nut where the same unites with the said
37 cross-bar, or it may there be firmly fastened by means of suitably constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece B, or otherwise attached thereto.

The said post-marking and dating device D is also secured to the under side of said cross-bar or piece B, and at or near the end thereof opposite that where said tube or cylinder C, or canceling die, type, or device G, is securely fastened, as aforesaid, in like manner and by substantially the same means as used for such fastening of said canceling device to said cross-bar upon the under side of the same as aforesaid.

The aforesaid metal canceling device, die, or type G′, figs. 5 and 6, may also be fastened or secured to the immediate side of the said post-marking device by any good and sufficient means substantially as hereinbefore described and set forth, in reference to the said device C, or tube or cylinder, constructed to receive and contain the said type or die G, figs. 2, 3, and 4.

Such metallic device, die, or type may also have, upon its lower face or lower surface, any suitable configuration deemed best to use for the purpose of canceling the postage-stamp in, with, or by any suitable ink at the same time, blow, and operation of the instrument or apparatus, as hereinbefore stated and set forth.

In any and every case the post marking of the letter, envelope, or packet, and the effacing or cancellation of the postage-stamp or letter frank thereon representing value, are done at the same time, and by the same blow or operation of the said several devices and parts, constructed and combined in the manner and by the means substantially as herein described and set forth.

Both the post-marking and cancellation of the said postage-stamp are done with indelible or other and suitable ink used for such cancellation or effacing of the postage-stamp, and that, too, without any injury to the letter, envelope, or packet, or to the contents thereof, as would be the case were the said postage stamp cancelled by being cut in several parts and places by means of cutters or knives constructed for
38 that express use and purpose, as is the case by the cutters or knives contained and set forth in letters patent granted to me on the ninth day of August, A. D. 1859, also on the 16th day of December, A. D. 1862, the first of which contains no guard or guards to said knives or cutters, while the second contains such guard or guards for the purpose of preventing such cutters or knives from cutting too much or too deep in and upon said postage-stamps.

The said instrument and devices herein set forth and described will not, under any circumstances, cut either the letter, envelope, or postage-stamp thereon in any way or manner, but perform the cancellation required to be done in, with, and by ink only, as aforesaid, no cutting device whatever being used. But the said cork device, die, or type will, when it comes in contact with the printed or enameled-like surface of the postage-stamp, somewhat mar, bruise, or break the same, by means of the blow given by the instrument, whereby to prepare the same to be filled by or impregnated with any suitable ink used for such cancellation, substantially as aforesaid.

In no case could a fraud be committed by a second or reuse of the government postage-stamp or letter-frank representing value without being discovered.

This arrangement and combination of devices will greatly hasten or

facilitate the making up of the mails for transportation. It will also economize in labor, and reduce the labor in post-marking letters, and in the canceling of the postage-stamps thereon, to about, if not entirely, one half of the number of workmen, laborers, or clerks absolutely necessary when and where this combined instrument is not used in the manner aforesaid.

It therefore saves at least one-half of the labor required in the post-marking of letters, envelopes, or packets, and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the postage-stamps more effectual or permanent, so as to prevent a second or reuse of such postage stamps by any means whatever, which is very important in the successful management of the post-offices in this coun-
39 try, whereby and by means of which large sums of money are annually saved this government; and frauds upon the postal revenue, by the second or reuse of postage-stamps, are also prevented by the use of my invention and improvements herein contained, described, and set forth.

By the use of said invention the letters to be mailed and prepared for transportation, by means of post-marking the same, and in canceling the postage-stamps thereon, as aforesaid, need not be handled over but once, thus and thereby economizing in time and in labor.

The cross-bar, or piece B, figs. 1, 2, 3, and 5, may be of any suitable width or thickness, or of any metal which will answer the required purpose. It may also be of any length deemed best to use, in order to get the said post-marking device and the said postage-canceling device, die, or type suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened or attached, in the manner substantially as aforesaid.

The type whereby to give the date are arranged in the said mortise E, as shown at figs. 3 and 6, and are there held in their proper place by means of a set-screw, substantially as shown in figs. 2, 3, and 6.

The cork or other material used for the canceling-device, die, or type will be pressed into the said tube or pipe at recess F, cylinder C, fig. 2, and the same is there firmly held, substantially as shown at G, fig. 4.

The device or configuration for the cancellation of the postage-stamp, in the manner substantially as aforesaid, may be seen at C and G, fig. 3, where cork is used; but when iron, steel, or other suitable metal is used the device or configuration may be seen at G′, fig. 6.

The invention and improvements contained in and covered by the several claims hereto annexed, or below given, is and are not contained in the letters patent granted on my application, in due form, on "the 9th day of August, 1859," nor is, nor are, the same to be found in my said letters patent granted to me "December 16, 1862;" but the said invention and improvements are contained in my caveat duly
40 filed in the United States Patent-Office in the year 1853, containing also other improvements.

Having thus described my original invention and improvements in "post-marking" and "postage-canceling" devices, combined and arranged for the purpose aforesaid,

What I claim and desire to secure by letters patent of the United States of America is—

1. The postage-stamp-canceling device, cylinder or tube C, containing a die or type G, made of cork, wood, or other suitable material, or any equivalent for said cylinder or tube C, or for the said canceling die or type G, whereby to efface, cancel, or destroy the postage-stamp with in-

delible or other ink, in the manner and for the purposes substantially as herein described and set forth.

2. The canceling device, cylinder or tube C, with cork or wood, or any substantial equivalent thereof, forming the die or type G therein, in combination with the cross-bar or piece B, and with the post-marking device D, substantially as and for the purposes herein described and set forth.

3. The post-marking of letters, envelopes, and packets, and the cancellation of the postage-stamps thereon with ink at one and the same blow, or operation of the instrument, in the manner and by the means substantially as herein described and set forth.

4. The employment and combination of a post-marking device with a postage stamp-canceling device, both being operated by one and the same handle, for the post-marking of letters, envelopes, or packets, and for the cancellation of the postage-stamps thereon, with indelible or other ink, in the manner substantially as herein described and set forth.

In testimony whereof I have on this 14th day of September, 1870, hereunto set my hand in the presence of two witnesses, to wit:

MARCUS P. NORTON.

Witnesses:
FRED'K KOONES.
EDW. W. DONN.

41 The President of the United States of America to Thomas L. James, United States postmaster, New York, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of July, A. D. 1877, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Christopher C. Campbell, assignee in trust, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 4th day of June, in the year one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the hundred and first.

JOHN I. DAVENPORT,
Clerk.

MARCUS P. NORTON,
Complainant's Solicitor.

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of July, 1877, or the bill will be taken pro confesso against him.

J. I. D., *Clerk,*

(Endorsed:)

I hereby certify that on the 4th day of June, 1877, at the city of New York, in my district, I personally served the within writ upon the within-named Thomas L. James, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

Dated June 23, 1877.

LOUIS F. PAYN.
U. S. Marshal, S. D. N. Y.

Filed June 23, 1877.

JOHN I. DAVENPORT, *Clerk.*

42 U. S. circuit court, southern district of New York.

CHRISTOPHER C. CAMPBELL, ASSIGNEE,
against
THOMAS L. JAMES, UNITED STATES POSTMASTER, New York.

You will please to enter my appearance for the defendant, Thomas L. James, in the cause above entitled; and all papers herein are hereby demanded to be served on me, at my office, in the post-office building, New York City.

Dated New York, July 2d, 1877.

Yours, &c.,

STEWART L. WOODFORD,
U. S. Attorney, and Solicitor for Def't.

To JOHN I. DAVENPORT, Esq.,
Clerk of U. S. Circuit Court.

And to MARCUS P. NORTON,
Solicitor for Complainant.

(Endorsed) U. S. circuit court. Christopher C. Campbell, assignee, &c., v. Thomas L. James, postmaster. Notice of appearance. Filed July 3, 1877. John I. Davenport, clerk.

43 *Amended bill of complaint.—July* 17, *A. D.* 1877.

In the circuit court of the United States, second circuit, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, U. S. POSTMASTER, NEW York.

To the honorable the judges of the circuit court of the United States, within and for the southern district of New York.

Christopher C. Campbell, of East Chatham, in the town of Chatham, county of Columbia, and State of New York, and a citizen of the said State, and also a citizen of the United States of America, brings this his bill into this honorable court against Thomas L. James, United States postmaster in and for the city of New York, State, and southern district of New York aforesaid, who is a citizen of said State, and also a citizen of said United States; and thereupon your orator complains, and says, that the above-named defendant is now, and has been
44 for several years last past, postmaster for the United States of America at the city of New York, in the county of New York, State and southern district aforesaid, he having been appointed to the office of postmaster for the United States post office in the said city of New York by the President of the said United States, and duly confirmed as such by the Senate of the Congress of the said United States, and thereupon was duly commissioned by the President of the said United States as such postmaster; whereupon the said defendant entered upon the duties of the said office, and during all of the time aforesaid has exercised the functions of that office, and managed and controlled

the business and affairs of the same, as this complainant is informed, and verily believes the same to be true.

And your orator, the above-named complainant, further complains and says that heretofore, and before the 14th day of April, A. D., 1863, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, was the true, original and first inventor of a certain new and useful improvement in post-office, post-marking and canceling hand-stamp machine, or device for the post-marking of letters or other mail matter, and for the cancellation of the postage-stamp or stamps thereon, in the manner, and by the means, hereinafter more fully described and set forth, as will more fully and at large appear by his caveat duly filed in the United States Patent Office, in the years A. D. 1853 and 1854, and to which reference is hereby made for greater certainty, and that said improvement was not known or used before the invention and discovery thereof by the said Marcus P. Norton, and was not at the time of his application for the letters patent of the said United States thereon in public use or on sale with his knowledge, consent or allowance.

And your said orator further shows unto your honors that the said Marcus P. Norton so being the inventor of said improvements and invention, and being a citizen of the United States aforesaid, in due and lawful time made an application in writing to the Commissioner
45 of Patents, and to the proper department of the Government of the United States of America for letters patent, in accordance to and with the then existing laws or acts of the Congress of the said United States; and he having duly complied in all respects with the conditions and requirements of the said laws or acts of Congress, on the 14th day of April, A. D. 1863, the letters patent of the said United States of America, signed, sealed and executed in due form of law, for his said discovery, improvements and invention, were issued and delivered to him, the said Marcus P. Norton, and the same were dated so as aforesaid, and were numbered 38175 by the said Commissioner of Patents; whereby, and by means thereof there was secured to him, his heirs, executors, administrators and assigns for the full term of seventeen years from and after the said 14th day of April, A. D. 1863, the full and the exclusive right, liberty and privilege of making, using and vending to others to use and to be used, the said improvements or invention.

And your said orator further shows unto your honors, that the aforesaid named and described letters patent were duly and lawfully issued and delivered in the name of the United States of America, and were under the seal of the Patent Office of said United States of America, and they were duly signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and they were thereafter duly delivered to the said Marcus P. Norton. That the said letters patent, after reciting that the said Marcus P. Norton had invented new and useful improvements in a machine or device for post marking letters or other mail packets, and for the cancellation of the postage-stamp or stamps thereon, which he stated had not been used before his said application for letters patent thereon, save by himself and others, with his approval, in the line of lawful experiments, to test and to prove the true character, usefulness and value of his said improvements and invention, and had made oath that he was a citizen of the United States, and that he did verily believe that he was the original and first
46 inventor and discoverer of the said improvements and invention, and that the same had not, to the best of his knowledge, information and belief, been previously known or used by any other person or persons, excepting, and only for the purposes of experimenting in the

manner hereinbefore stated, and had presented a petition in writing to the Commissioner of Patents, signifying a desire of obtaining an exclusive right and property in said improvements in post-marking and postage-canceling hand stamp, and praying that the letters patent of the United States of America might be duly granted to him for that purpose, did grant to him, the said Marcus P. Norton, his heirs, administrators or assigns, for the term of seventeen years from and after the said fourteenth day of April, A. D. 1863, the full and exclusive right, liberty and privilege of making, constructing, using, and vending to others to vend, or to use, or to be used, the said improvements and invention, a description whereof is given in the words, figures and drawings contained in the schedule of specifications annexed to said letters patent, and making a part thereof, which said letters patent so granted, issued, and delivered unto the said Marcus P. Norton, your orator prays may be deemed to be and taken as a part of this bill of complaint, and to which your orator most respectfully asks the leave of this honorable court, at all times, to refer, as the same or the case shall or may require.

Your said orator most respectfully shows to this honorable court that the said Marcus P. Norton was and is the true, original and first inventor of the aforesaid named improvement and invention set forth, described and claimed in and by the said letters patent so dated and numbered; that the same were not known or used by any other person or persons before the invention or discovery thereof by the said Marcus P. Norton, and were not at the time of his said application for letters patent upon the same in public use or on sale with his knowledge, consent, or allowance previous to a term of two years prior to the said application to the Commissioners of Patents for the letters patent therefor and thereon, made in due form of law as hereinbefore set forth, other than the legitimate experimenting by the said Marcus P. Norton as hereinbefore stated.

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And your orator further shows unto this honorable court that a description and specifications in writing of the aforesaid named improvement and invention were given in the schedule annexed to the said letters patent, and the same were accompanied by certain drawings referred to in said last mentioned schedule and forming a part of said original letters patent; that the aforesaid mentioned and described letters patent were duly entered of record in the Patent Office, of the said United States as by law required.

And your orator further shows unto your honors that on or about the 20th day of April, A. D. 1863, the said Marcus P. Norton, by an assignment in writing bearing that date, but not of record in the said Patent Office until about one year thereafter, sold, assigned, and transferred in trust, unto Jacob Shavor and Albert C. Corse, of the said city of Troy, all his right, title, and interest in and to the said letters patent and invention, which assignment was recorded in the Patent Office of said United States, as by a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in this court to be produced, will fully and at large appear.

And your orator further shows unto this honorable court that the said Jacob Shavor and Albert C. Corse, at the request of the said Marcus P. Norton, surrendered the aforesaid mentioned and described original letters patent to the Commissioner of Patents, and having made application in writing therefor, and having in all things complied with the acts of Congress, and with the law in such case made and provided, did, on the 23d day of August, A. D. 1864, obtain new letters patent for the same invention, upon reformed and amended specifications and claims,

for the residue of the said term of seventeen years then unexpired, numbered 1748 of reissued letters patent, which last mentioned
48 letters patent so reissued were issued in due form of law, under the seal of the Patent Office of said United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date on the said 23d day of August, A. D. 1864, and numbered 1748, as aforesaid stated, as by the said last mentioned letters patent, or by a duly certified copy thereof ready in this court to be produced, will at large appear.

And your orator further shows unto your honors that immediately after the granting and issuing of the said reissued letters patent, dated and numbered as last aforesaid, the said Jacob Shavor and Albert C. Corse commenced a suit at law in the circuit court of the said United States, in and for the northern district of New York, second circuit, against one Edmund Hoole, a subcontractor of Fairbanks & Co., of the city of New York, who was at that time infringing upon the said letters patent so granted and reissued by manufacturing hand stamps and machines for use in the postal service of the said United States, under a contract made with the Postmaster General of said United States, or with some other person authorized by him to manufacture the said invention and improvements for use in such postal service, in violation of the rights and privileges secured in and by the said letters patent, which said suit was brought on for trial at a regular term of the said court, held at the city of Albany, State of New York, in the month of October, 1864, before a jury and the court, and upon pleadings and evidence then and there duly submitted under the rulings of said court, the said jury returned a verdict in favor of the said plaintiff, to wit, Jacob Shavor and Albert C. Corse; and thereupon the court directed said jury by special verdict to find that said defendant had intringed upon the said letters patent, as charged in the narr. or complaint in that suit; and that said letters patent were good and valid, as by an exemplified or duly authenticated copy of the pleadings and proceedings in that court in the said cause, now ready here in this honorable court to be pro-
49 duced for the purpose of showing to your honors that the aforesaid named letters patent have been declared to be good, sufficient and valid in law, by a court of competent jurisdiction, will fully and at large appear by an inspection of the said authenticated court record.

And your orator further shows that in the year 1867 said Shavor & Corse commenced a suit in the Court of Claims against the United States for the use of said invention for four years, alleging in their petition that the Postmaster-General had promised to pay them for said use; that the United States appeared and answered in said suit by their proper counsel; that proofs were taken by both parties as to the novelty, utility and use by the Post-Office Department of said invention, so patented by said Marcus P. Norton on the fourteenth day of April, A. D. 1863, and reissued as aforesaid, as well as to said alleged promise, and the said court upon due consideration found and decided in effect that said patent was valid; that said invention had been used by said department since 1863, and that it had been of great use and value to the defendants, but also found and decided that there was no promise by said Postmaster-General as alleged, and upon that ground dismissed the petition; all of which will more fully and at large appear by the record and proceedings in said case in said Court of Claims, and to which your orator asks leave of this court to refer for greater certainty.

Your orator further shows that in 1866 a petition in the name of the

said Shavor & Corse was presented to the House of Representatives of the 38th and of the 39th Congress, praying compensation for the use of said invention by the Post-Office Department of the United States; that said petition was duly referred to the Committee on Post-Offices and Post-Roads of said House of the 39th Congress, who, after due consideration of the subject, reported to said House in substance and effect that said invention, for which letters patent of date April 14th, 1863, were granted to Marcus P. Norton, was an indispensable requisite to the safe, rapid and economical operation of marking, stamping, and canceling in the postal department; and they recommended an appropriation of $50,000 by Congress to pay for said invention and the use thereof, as by said report (No. 98, House of Representatives, 39th Congress, 1st session) will more fully and at large appear, and to which report your orator begs leave for greater certainty to refer; but no action was taken on said report by said House.

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Your orator further shows that a petition, in the name of said Shavor and Corse, was presented to the Senate, in the second session of said 39th Congress, praying for compensation for the use of said invention by the Post-Office Department of the United States; that said petition was duly referred to the Committee on Post-Offices and Post-Roads of said body, who, after due consideration of the subject, reported to said Senate in substance and effect, as did the said committee of the House as aforesaid, and recommended an appropriation of $100,000 to pay for said invention and the use thereof, as by said report (No. 164, Senate, 39th Congress, 2d session) will more fully and at large appear, and to which for greater certainty your orator begs leave to refer; and your orator further shows that a bill passed said Senate at said session, appropriating said sum for said purpose, but it did not pass the House.

Your orator further shows that the Committee on Post Offices and Post-Roads in the Senate of the 41st Congress had the same subject under consideration, and reported to said Senate, in substance and effect, that the said invention, for which letters patent of date April 14th, 1863, were issued to said Marcus P. Norton, was of great importance and utility to the postal service, in which it had been used for a long time, and they further reported that it had been "conclusively" shown to them, "that by its use the government had actually saved from one-third to one half the stamping and canceling clerk hire theretofore required and employed, and that it greatly facilitates the despatch of letters for transportation in the mails, and that it greatly economizes in the time for the preparation of the mails for transportation; that it cancels in the most perfect and permanent manner the postage-stamps on letters, packets, &c., and at the same time gives upon the envelope, near the postage-stamp, a plain and intelligent postmark; and that it also contributes largely to prevent frauds upon the postal revenue, by the washing and chemical cleansing of postage-stamps that have once been used, for reuse or reissue; and that letters do not require to be handled a second time, as was the case under the old system for the performing of the post-marking and postage stamp cancellation;" and said committee recommended the passage of a joint resolution by Congress to refer the subject to the Postmaster-General for a settlement between the claimants and the government, as by said report (No. 243, Senate, 41st Congress, 2d session) will more fully and at large appear, and to which your orator, for greater certainty, begs leave to refer; and your orator further shows that a joint resolution, recommended by said committee, did pass the said Congress, but the Postmaster General, after finding that Helen M. Ingals, herein-

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after named, was then the owner of the said patent, issued April 14th, 1863, and its reissues, and that the combined stamp thereby patented had been in use by and was valuable to the postal service, declined to decide what amount the government ought to pay for the use of said invention, upon the ground that a controversy arose before him as to who should share in such compensation, which was a question, in his judgment, that "could only be properly settled by judicial authority," as will more fully and at large appear by the official letter of the Postmaster-General, dated February 25th, 1871, to the Hon. Schuyler Colfax, Vice-President of the United States and President of the Senate (Ex. Doc. No. 49, Senate, 41st Congress, 3d session), and to which, for greater certainty, your orator begs leave to refer.

Your orator further shows that in the 2d session of the 42d Congress the Committee on Post-Offices and Post-Roads of the Senate of the United States made a report to said Senate, in substance and effect, that said Marcus P. Norton was the first and original inventor of
52 the said invention, for which letters patent were issued to him of date April 14th, 1863; that it had been used by the Post-Office Department of the government, and was of great value to it, and recommended the passage of an act of Congress referring the claim, for the past and future use of said invention, to the Court of Claims, as by said report (No. 183, Senate, 42d Congress, 2d session) will more fully and at large appear, and to which your orator begs leave, for greater certainty, to refer; but no action has been taken by Congress upon said report.

And your orator further shows that said Shavor & Corse, prior to the 1st day of July, A. D. 1868, and at the request of the said Marcus P. Norton, notified the then Postmaster-General, and filed in the Post-Office Department at Washington, a communication in writing, addressed to him, in which they forbade and prohibited the use of said invention (patented to the said Marcus P. Norton, April 14th, 1863, as aforesaid) after said date, by said Postmaster-General, or postmasters, unless prior thereto said Postmaster General made some definite arrangement for the use, in the postal service, of said invention; and your orator further shows that, since said notice, no arrangement has been made for the use of said invention so demanded and required as aforesaid.

And your orator further shows that prior to the 1st day of April, A. D. 1871, the said Helen M. Ingalls, hereinafter named, the assignee and owner of the said patent and all its reissues, notified the then Postmaster General in a similar manner, that from and after the said 1st day of April, unless a just compensation was made to her for the past use of said invention as aforesaid and a contract entered into with her for the right to use it, she would invoke the interposition of the courts for relief and to enjoin postmasters using said invention from its further use; and your orator further shows that no compensation has been given or contract made or license obtained for the use of said invention by
53 postmasters or by said department, its officers or employees, as required and demanded by the said Helen M. Ingalls, the rightful and lawful owner of said letters patent, and of each and every reissue thereof.

And your orator further shows unto your honors that on or about the 23d day of February, A. D. 1864, the said Jacob Shavor and Albert C. Corse, by a deed of assignment bearing that date, sold, reassigned, and reconveyed unto the said Marcus P. Norton the aforesaid named letters patent and any and all reissues thereof, which assignment and deed of reconveyance being accompanied by the sworn statement of the said Jacob Shavor and Albert C. Corse, the said statement and affi-

davit being thereto attached and a part thereof, were each duly and lawfully entered of record in said United States Patent Office, on the 24th day of July, A. D. 1869, in Liber U, 11, page 319 of transfers of patents, as will fully and at large appear by the original deed of assignment, reconveyance, and retransfer, now in the possession of your arator, or by a duly authenticated copy of the same, now ready in this honorable court to be produced, will also fully and at large appear, which said deed of assignment and reconveyance, with said statement and affidavit thereto attached and made a part thereof, your orator prays your honors that the same may be deemed and taken as a part of this his bill of complaint.

And your orator further shows unto this honorable court, that the said Marcus P. Norton having for good and lawful cause surrendered said last-mentioned reissued letters patent to the Commissioner of Patents, and having made due application in writing therefor, as by the law made and provided, and he having in all things complied with the acts of Congress in such case provided, did, on the third day of August, A. D. 1869, obtain new letters patent for the same invention and improvements, upon reformed, corrected, and amended specifications, for the residue of the said term of seventeen years then unexpired, which last-mentioned reissued letters patent were issued to and in the name
54 of the said Marcus P. Norton, the original and first inventor of the said improvements and invention so as aforesaid stated; and the same were in due form of law, and were under the seal of the Patent Office of the said United States; and they were duly signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were dated the third day of August, A. D. 1869, and were numbered 3586 of reissue of patents, as by the said last-mentioned reissued letters patent, or a duly authenticated copy thereof, in court ready to be produced, will fully and at large appear.

And your orator further shows unto this honorable court, that on or about the 20th day of October, A. D. 1869, by an assignment and transfer in writing of that date, the said Marcus P. Norton sold, assigned, and transferred unto Helen M. Ingalls, of the city of Troy, county of Rensselaer, and State of New York, his entire right, title, and interest in and to the said letters patent and invention, and all reissues of the same; and also all and every right to compensation, and to recover by suit, or otherwise, for the use of the same, past or future, or for both, or for any violation of or infringement upon the said letters patent by any one; which deed of assignment was duly recorded in the Patent Office of said United States on the 1st day of August, A. D. 1870, in Liber B, 13, page 351, of transfers of patents, as by the said deed of assignment, or a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in this court to be produced, will fully and at large appear.

And your orator further shows unto this honorable court, that the said Helen M. Ingalls, being the true and lawful owner and holder of the said invention and letters patent, duly surrendered the same to the Commissioner of Patents for the purpose of reissuing the said letters patent in two divisions, as by law then provided; and thereupon, upon the petition of the said Helen M. Ingalls, in writing, to the Commissioner of Patents, in conformity to the law, the said Commissioner of Patents in due time allowed, and thereupon granted a re-
55 issue of the said letters patent unto the said Helen M. Ingalls, according to her said petition so made and filed by her in said Patent Office. The said reissue was granted and was issued to her in two di-

visions, under and bearing date the fourth day of October, A. D. 1870, to wit, Division A and Division B, and each bearing the same date, namely, October 4th, A. D. 1870—Division A being numbered 4143 and Division B being numbered 4144 of reissue of patents in said Patent Office, and to the specifications, drawings, and claims of each of which reference is now and hereby had for a more full, correct, and perfect description of the said improvements and invention, as well as of the letters patent upon which this bill is founded. The specifications, drawings, and claims or summary of invention in the aforesaid named and described Division A are the same, or substantially and materially the same, as those contained in the said reissued letters patent granted, issued, and delivered to the said Marcus P. Norton on the 3d day of August, A. D. 1869, and numbered 3586 of reissued patents in said Patent Office, as aforesaid stated; which said letters patent, so reissued in two divisions, in the manner and form as stated herein, were issued in due form of law, under the seal of the Patent Office of said United States, and the same were duly signed by W. T. Otto, Acting Secretary of the Interior, and were countersigned by Samuel S. Fisher, Commissioner of Patents, and bearing date as aforesaid stated, to wit, the 4th day of October, 1870, and in two divisions, as hereinbefore stated—Division A being numbered 4143, as by the said last mentioned division of the said last reissued letters patent, or a duly authenticated copy thereof, now ready in this court to be produced, will more fully and at large appear.

And your orator further shows unto your honors that on or about the 4th day of March, A. D. 1871, the said Helen M. Ingalls, by an assignment in writing of that date, conditionally assigned and transferred unto William W. Secombe, then of the city, county, and State of New
56 York, and in trust, according to the terms and conditions of a deed of trust, signed by the said William W. Secombe, and bearing date on the said 4th day of March, A. D. 1871, and by him delivered to the said Helen M. Ingalls, and a part of the said conditional assignment and transfer of the said letters patent, her right, title, and interest in and to the said Division A of the said reissued letters patent and invention, which said assignment was recorded in the Patent Office of the said United States on the 11th day of March, A. D. 1871, in Liber X, 13, page 316 of transfers of patents, as by said assignment, or a duly certified copy thereof, and the certificate of such recording thereto affixed, ready in this court to be produced, will fully appear; which deed of assignment being in trust and upon certain conditions stated in the said deed of trust so signed, executed, and delivered unto said Helen M. Ingalls by the said William W. Secombe, has long since become absolutely void and of none effect either in law or in equity; that the said William W. Secombe has not only wholly and entirely failed to keep and to maintain the conditions and obligations stated in said deed of trust and made as a part of the said deed of assignment from the said Helen M. Ingalls to him the said William W. Secombe, dated and recorded so as aforesaid, as the sole and only grounds for the said trust assignment, but your orator shows that, by deed of assignment dated July 10th, 1873, and duly recorded in the United States Patent Office, in Liber B, 17, page 430 of the transfer of patents, said W. W. Secombe, with whom joined the Secombe Manufacturing Company, assigned, transferred, and reconveyed to said Helen M. Ingalls all the right, title, interest, claims or demands which they or either of them had or had acquired under or by virtue of said assignment, in trust to said Secombe as aforesaid, and all right, title, interest, claims or demands of them or either of them to or under said patent of April 14th, 1863, and its reissues as aforesaid, as

by said deed of assignment, or a duly certified copy now ready here in this court to be produced, will more fully and at large appear.

57 And your orator further shows unto this honorable court, that on or about the second day of January, A. D. 1877, the said Helen M. Ingalls, by an assignment in writing of that date, sold, assigned and transferred in trust, unto your orator, Christopher C. Campbell, of East Chatham, in the town of Chatham, county of Columbia, and State of New York, all her right, title and interest in and to the said letters patent and invention so patented, reissued, and last reissued on the fourth day of ctober, A. D. 1870, as "Division A," and numbered 4143 of reissue patents in the said Patent Office, which deed of assignment in trust has been duly recorded in the Patent Office of said United States, as by said assignment, or a duly certified copy of the same, and the certificate of such recording thereto affixed, now ready here in this court to be produced, will fully and at large appear. Your orator further shows unto your honors, that the said deed of assignment and transfer, in trust, was and is in the following words and figures, that is to say:

Whereas letters patent of the United States of America were duly granted, issued and delivered unto Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, for and upon new and useful improvements in post-office post marking and canceling hand stamp, for post marking of letters, and for the cancellation of the postage stamps in the manner, and for the purposes, and by the means therein described and set forth; which letters patent were issued and delivered bearing date the 14th day of April, A. D. 1863, and were numbered 38175; which letters patent have been three times reissued in the manner as by law provided, to wit, on the 23d day of August, A. D. 1864, numbered 1748; also on the 3d day of August, A. D. 1869, numbered 3586; and again, and for the third and the last time, reissued on the 4th day of October, A. D. 1870, in two divisions of the same date, to wit: "Division A" and "Division B"—division A being numbered 4143, and division B being numbered 4144, of reissue of

58 patents in the said Patent Office, to the specifications and drawings of each reference is now and hereby had, for a more full and perfect description of the said invention and improvements as well as for full information of the same, and of the letters patent, herein and hereby assigned in trust, in the manner and form following in this deed of trust as herein stated and set forth;

And whereas the original letters patent dated as aforesaid, on the 14th day of April, A. D. 1863, and numbered 38175, were by the said Marcus P. Norton, on the 20th day of April, A. D. 1863, assigned and transferred, in trust, to Jacob Shavor and Albert C. Corse, of the said city of Troy, in the manner and for the purposes stated in the reassignment and retransfer to the said Marcus P. Norton, dated February 23d, 1864; and whereas, on the 23d day of February, A. D. 1864, they, the said Jacob Shavor and Albert C. Corse, reassigned and reconveyed the aforesaid named letters patent and all reissues thereof, to the said Marcus P. Norton, which assignment and deed of reconveyance being accompanied by the sworn affidavit and statement of the said Jacob Shavor, and of the said Albert C. Corse, was duly and lawfully entered of record, and was recorded in the said United States Patent Office, on the 24th day of July, A. D. 1869, in Liber U 11, page 319 of transfer of patents, as will fully and at large appear by the original deed of reassignment and retransfer now in the possession of the undersigned; and whereas the said Marcus P. Norton did, on the 20th day of Octo-

ber, A. D. 1869, by deed of assignment and transfer, and for a valuable consideration, sell, assign, and convey unto Helen M. Ingalls, of the said city of Troy, county of Rensselaer, and State of New York, his entire right, title, and interest in the invention, improvements, and letters patent, and of any and every reissue of the same, and also all and every right to compensation, and to recover by suit or otherwise for the use of the same, past or future, or for both, by the said United States, as by reference thereto will fully and at large appear. The
59 said Helen M. Ingalls being the true and lawful owner and holder of the said invention and letters patent, duly surrendered the same to the Commissioner of Patents, for the purpose of reissuing the same in two divisions; and thereupon, upon the petition of the said Helen M. Ingalls, the said Commissioner of Patents, in conformity to law, granted a reissue of the said letters patent unto the said Helen M. Ingalls, according to her said petition so made and filed by her in said Patent Office.

The said reissue was granted to her in two parts or divisions, under date of October 4, 1870, as hereinbefore stated; of which Division A is the same, or substantially the same, as the said reissued letters patent granted to the said Marcus P. Norton on the 3d day of August, A. D. 1869, and numbered 3586, as aforesaid stated. The said deed of assignment to the said Helen M. Ingalls was duly entered of record, and was recorded in said Patent Office on the 1st day of August, A. D. 1870, in Liber B 13, page 351, of transfers of patents, as will appear by reference to the original deed of assignment and conveyance now in the possession of the undersigned Helen M. Ingalls; and

Whereas, on or about the 4th day of March, A. D. 1871, the said Helen M. Ingalls, by a certain deed of assignment, and upon the terms and conditions stated therein as a part thereof, did, in trust, assign and convey to William W. Secombe, then of the city, county, and State of New York, her right and title to the said invention and letters patent; which was recorded in said Patent Office on the 11th day of March, A. D. 1871, in Liber X 13, page 316, of transfers of patents, and which deed of assignment "in trust" has long since become void and of none effect, because and for the reason that the said William W. Secombe has not only wholly and entirely failed to keep and carry out the conditions therein named as the sole and only grounds for that "trust," but has repeatedly refused so to do. The consideration wherein said deed of trust was executed and delivered so as aforesaid, and named
60 therein, were not and have not been kept and faithfully observed by the said William W. Secombe, in the manner as in the said deed of trust was and is required of him in and thereby; but, on the other hand, the same were and have been utterly neglected and refused on the part and behalf of him, the said William W. Secombe; whereupon the said invention and letters patent, and each and every right, title and interest became reinvested in and the sole and exclusive property of the said Helen M. Ingalls, the same as though no assignment "in trust" had been made to the said William W. Secombe in the manner as aforesaid;

And whereas it has been deemed advisable that Christopher C. Campbell, of East Chatham, county of Columbia, and State of New York, should become fully vested with, and should have vested in him in trust, all the right, title, and interest which I now have or ever have had in, to, or for the said invention and letters patent, and of each of the several reissues thereof; also of any and every claim or claims for past use of the said invention in the postal service of the said United

States from the date of the said letters patent, to wit, the 14th day of April, A. D. 1863;

The right, title, and ownership of the said invention and letters patent is, in trust, vested in the said Christopher C. Campbell, upon the conditions that he shall have the sole management of said trust, and be at the expense of the same, until a fair, just, and reasonable settlement shall be had with the United States aforesaid for such use of said invention in the postal service of said United States by the Post-Office Department, for which the said Christopher C. Campbell shall have and shall receive one-third of such sum as may hereafter be determined upon by the Court of Claims of said United States, in payment for the past or for the future use of said invention in the said postal service; and the said Helen M. Ingalls shall have and shall receive two-thirds of such sum as may hereafter be determined upon by the said Court of Claims, in payment for the past or for the future use
61 of the said invention in said postal service; and the said Court of Claims, in the making and entering of any judgment against said United States for the use of said invention, improvements, and letters patent in such postal service, is now and hereby authorized and *and* requested to make and enter such judgment as follows, to wit: one-third of the whole sum or amount to the said Christopher C. Campbell, and two-thirds of the whole sum or amount to the said Helen M. Ingalls, and thereby to require each of said named persons to sign and acknowledge satisfaction of such judgment, or to receipt therefor when the same is paid by the Treasurer of the said United States, in the manner provided by law, which payment shall be at the same time, and in the presence of each, who thereupon shall sign a receipt or make satisfaction for such judgment on receipt of payment, or by their legal representatives, as by law may be provided; and the said Court of Claims shall have full power to make such an order or decree in the premises as hereinbefore stated, so that one-third of the recovery or judgment determined and fixed by said court as by law may be provided shall be paid to the said Christopher C. Campbell, and two-thirds thereof shall be paid to the said Helen M. Ingalls, directly from the Treasury of said United States, and in no other manner shall payment be made for such use by the said United States of the said invention and letters patent.

Now, therefore, this deed of assignment and transfer, in trust, witnesseth, that for and in consideration of the sum of one dollar to me in hand paid, the receipt whereof is now and hereby acknowledged, and in the further and other valuable consideration hereinbefore and herein stated as the main conditions upon which this instrument is now and hereby made and executed, in trust, I, the said Helen M. Ingalls, have, in trust, so as aforesaid, sold, assigned, and transferred, and I do in like manner hereby sell, assign, and transfer, in trust, unto the said Christopher C. Campbell, all the right, title, and interest which I now
62 have or ever had, in, to, or for the said invention and letters patent, and the several reissues thereof, which is, as aforesaid stated, the entire invention, improvements, and letters patent, named, dated, and numbered so as aforesaid; and in like manner, in trust, and upon the same terms and conditions. I also sell, assign, and convey unto him, the said Christopher C. Campbell, all the right, interest, and claim for and to the past use of the said invention and improvements under the said letters patent, or any reissue thereof obtained by me from the said Marcus P. Norton, by the said deed of assignment, dated the 20th day of October, A. D. 1869, and now of record in the manner

so as aforesaid stated and set forth, intending herein and hereby to sell' assign, and convey, in trust, unto the said Christopher C. Campbell, in the manner herein provided and set forth, all my right, title, and interest, or claim against said United States, for the past or future use of the invention and letters patent in the postal service of said United States by the Post Office Department; and also, in like manner, the entire invention, improvements, and letters patent, and all and every reissue of the same since the 14th day of April, A. D. 1863. The same and each and every thereof to be held in trust, in the manner and for the benefit of each of the persons herein specified and set forth, and on no other grounds, and for no other use or purpose.

In testimony whereof I have, on this second day of January, A. D. 1877, hereto set my hand and seal.

HELEN M. INGALLS. [SEAL.]

Sealed and delivered in presence of—
JOHN W. SMITH.

STATE OF NEW YORK,
Columbia County, ss:

On this second day of January, A. D. 1877, before me, the subscriber, personally appeared Helen M. Ingalls, to me known to be the per-
63 son described in and who executed the within instrument, and acknowledged that she executed the same.

JOHN W. SMITH,
Justice of the Peace in and for Columbia County, N. Y.

And now your orator hereby prays this honorable court that the aforesaid named letters patent, dated the 14th day of April, A. D. 1863, numbered 38175; also the reissued letters patent, dated the 23d day of August, A. D. 1864, numbered 1748 of reissue of letters patent; also the reissued letters patent dated the 3d day of August, A. D. 1869, numbered 3586; also the reissued letters patent reissued in two divisions, to wit: "division A" and "division B," dated the 14th day of October, A. D. 1870; "division A" being numbered 4143, and the same or substantially the same as the said reissued letters patent dated the 3d day of August, A. D. 1869, and numbered 3586, as hereinafter stated and set forth, together with the several schedules or specifications annexed thereto so as aforesaid stated, and also the said deed of assignment in trust so made and entered of record in said Patent Office as required by law, and last above described and set forth in detail and at large, may each and every thereof be deemed and taken as a part of this bill of complaint, and to the original of which, or a duly authenticated copy thereof, and of each of the same now in your orator's possession and ready to be produced in this court, your orator craves the leave of your honors to refer to the same at all times whenever it becomes necessary so to do.

And your orator further shows unto this honorable court, that he, the said Christopher C. Campbell, has, ever since the date of the said deed of assignment last above described and set forth in detail and at large, been and now is entitled to all the rights, interests, and privileges thereby secured unto him in the manner set forth in the said deed of assignment in trust, so at large and in detail specified in this your
64 orator's bill, and to all and every of the rights, interests, and privileges, secured in and by the said letters patent, dated the 14th day of April, A. D. 1863, numbered 38175, and also each and every reissue of the same, each being dated and numbered so as aforesaid,

and containing the said improvements and invention hereinbefore described and specified; and your orator now is and ever since the date of the said deed of assignment in trust, has been justly entitled to the exclusive right, liberty, and privilege to manufacture, to vend and to use the said improvements and invention particularly set forth, described in and claimed by the several claims stated in the said letters patent, within the United States aforesaid.

And your orator further shows unto this honorable court that said improvements and invention so as aforesaid patented is of very great utility and value, and that the same has been and now is being extensively introduced into public use; and your orator would, but for the unlawful and wrongful acts of the said defendant Thomas L. James, United States postmaster in and for the city of New York, State and southern district aforesaid, and of others acting in concert with him, the said defendant, have made large gains and profits, and would have derived many valuable advantages from the sale and use of the said improvements, invention, and letters patent; and your orator would, but for the wrongful and unlawful acts and doings of the said defendant Thomas L. James, postmaster at said city of New York, for the Government of the United States of America, as hereinbefore stated, and of others in confederacy with him, the said defendant, now be enabled to manufacture and to vend for use in the public and postal service of the said United States the said improvements and invention to which your orator in law and in equity is entitled to the full and exclusive right and title and ownership so as aforesaid stated and set forth, with great profit, benefit, and advantage to him, the said Christopher C. Campbell, complainant and assignee in trust as hereinbefore stated, but that by such wrongful and unlawful acts and doings of the said defendant the said
65 complainant is now hindered and prevented from so doing, to his great injury and damage substantially as herein set forth.

And your orator further shows unto your honors, that the said improvements, invention, with the said letters patent thereon so granted and reissued, are of great value in and to the post-office of the said United States, in and for the said city of New York, in the State of New York and southern district aforesaid, to wit, of the value of thirty thousand dollars per year in that post office, as your orator is informed, and he verily believes the same to be true; and that your orator is now the sole and exclusive owner of the said invention and letters patent, and of each and every reissue thereof in the manner and form herein stated and set forth; and also of all the rights and privileges granted and secured, or intended to be granted or secured therein and thereby, within the said United States of America, as by the said deed of assignment in trust is stated and in detail and at large set forth.

Yet the said defendant, well knowing the premises and the rights and privileges secured so as aforesaid, but contriving to wrong your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto him from the said invention, improvements, and letters patent, did, at the city of New York, in the State and southern district aforesaid, and on or about the first day of January, A. D. 1872, and on divers other days and times since then, and continuously therefrom, and until this present time, and during all the time intervening, as your orator is informed and verily believes the same to be true, without the license or consent of your orator, and in violation of the said exclusive rights and privileges so secured to your orator, and in violation of and in infringement upon the said letters patent—"division A"—dated the 4th day of October, A. D. 1870, and numbered 4113 of

reissued patents, wrongfully and unlawfully caused to be manufactured, sold, and used, and did put the same into general use in the postal service of the said United States, in the post-office of the said United
66 States in and for the said city of New York, in the post-marking of letters and other mail matter, and in the cancellation of postage stamps thereon in the manner, and by the means, and by the device specified and described in the specifications, drawings, and embraced in and covered by the first, second, third, and fourth claims of the said reissued letters patent, so dated and numbered as last aforesaid, a copy of which is hereto annexed and made a part of this bill of complaint for the purpose of showing unto this honorable court the machine, device, invention, and improvements used and now in use by the said defendant in the postal service of said United States, in the post-office of said United States in and for the said city of New York, for the post-marking of letters and other mail packages, and for the cancellation of postage stamps thereon in the manner and for the purposes substantially set forth, described, and claimed in the said "division A," dated October 4th, 1870, and numbered 4143.

And your orator further shows unto your honors that the machines or devices for the post-marking of letters as well as other mail matter, and for the cancellation of postage stamps thereon at one and the same operation thereof, which the said defendant has caused to be manufactured, sold, and has used and caused others in his employ to use and to be used in the United States post-office in and for said city of New York, State and southern district aforesaid, contrary to the statute in such case made and provided, as hereinbefore stated and charged as having been used at the said United States post-office in said city of New York, and which the said defendant and others under his instructions and authority is and are now using at that place without rightful authority and in violation of law, embrace in their construction and in the mode of their operation, and in the results attained thereby, the same, or substantially the same, features, improvements, and invention as those which are described in the aforesaid described reissued letters patent, dated the 4th day of October, A. D. 1870—"division A"—
67 numbered 4143 of reissued letters patent by the said Commissioner of Patents, and therein and thereby claimed in and by the several claims thereof, and secured to your orator in the manner hereinbefore stated, and the same was and are an infringement of and upon the said letters patent so mentioned, numbered, and dated, and are in violation of the exclusive rights and privileges thereunder and thereby secured.

And your orator further shows unto your honors that after the granting of the said letters patent so as aforesaid, and before and since the making of the deed of assignment of the same in trust, in the manner as hereinbefore stated, and during the term of time of the said reissued letters patent from the date thereof, and at divers times and on divers days, and before the commencement of this suit, hitherto, to wit, at the said city of New York, and in the said post-office of the said United States in and for the said city of New York, the said defendant, Thomas L. James, unlawfully and wrongfully, and without the consent and permission, or license, and against the will of your orator, the complainant, Christopher C. Campbell, did purchase, or caused to be purchased and used, and did use, and did put in practice the said machines, devices, improvements, and invention for the post-marking of letters or other mail matter, and for the cancellation of postage-stamps thereon, substantially as specified and described in the specifications, drawings,

and claims of the said last-mentioned reissued letters patent of the date of October 4th, 1870, "Division A," and numbered 4143, all and every of which was and is in violation of, and in infringement upon the said exclusive rights and privileges so secured to your orator, the complainant herein, by the said letters patent so reissued, dated, numbered, and assigned in trust in the manner aforesaid; and the same was and is contrary to the form, force, and effect of the statutes of the said United States in such case made and provided by the Congress of the United States in Senate and House of Representatives assembled.

68 Whereby, and by the means of which grievances, your orator, Christopher C. Campbell, has been greatly injured and deprived of large gains, profits, and advantages which he might and otherwise would have derived from said improvements and said invention and letters patent thereon, reissued, dated and numbered as last aforesaid, to wit, at the post-office of the United States of America in and for the city of New York, county and State aforesaid, southern district of New York, and within the jurisdiction of this honorable court, and has sustained by such several and continued acts of unjust and deliberate infringement, by the said defendant, Thomas L. James, postmaster of said United States, actual damages to the sum and amount of thirty thousand dollars and upwards, and more than that sum and amount for and during each and every year of the use of the said improvements and invention and infringements upon the said letters patent by the said defendant.

And your orator further shows unto this honorable court that by the means of the several facts and premises, and by the force and provisions of the laws or statutes of said United States hereinbefore mentioned, an action or suit in equity has accrued to him, your said orator and complainant, Christopher C. Campbell, and against the said defendant, Thomas L. James, to recover in this court by and through this bill of complaint, the said actual damages and such additional sum or amount not exceeding in the whole sum three times the amount of all such actual damages, as this honorable court may be pleased to order, adjudge, and determine under and as provided by sections 55 and 59 of the act of the Congress of the said United States, entitled "An act to revise, consolidate, and amend the statutes relating to patents and copyrights," approved on the 8th day of July, A. D. 1870.

And forasmuch as your orator is utterly remediless at the common law, and can have no relief except in this court, in or upon the premises herein stated and set forth:

To the end, therefore, that the said defendant, Thomas L.
69 James, United States postmaster in and for the United States post-office at the said city of New York, may, if he can, show why you said orator should not have the relief herein demanded, and hereby prayed for, and upon his corporal oath, and according to the best and uttermost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated, set forth, and charged, as fully and as particularly as if interrogated as to each and every of such matters; and that said defendant may be compelled to account for and to pay to your orator the profits acquired, and also the damages suffered by your orator from and by reason of the aforesaid infringements and unlawful acts of said defendant—

May it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal, and by the order and

authority of this honorable court, in due form of law, commanding, enjoining, and restraining the said defendant, his servants, agents, attorneys, and workmen, and each and every of them, and all other persons under the command or the control of the said defendant, from directly or indirectly making, using, or vending to others to be used, or in any manner counterfeiting or imitating the said invention, or any part or portion thereof, or from using or furnishing others to use or to be used, any post-office post-marking and canceling hand-stamp, or other machine or device embracing the improvements, or the invention, or any part, or any portion thereof, or anything substantially and materially the same, invented, patented, and assigned as aforesaid stated and set forth; and that such injunction be made by your honors perpetual in its character and operation;

And to grant unto your orator such other or further relief as shall be agreeable to equity, and as this honorable court shall deem meet and sufficient, and specially, that your honors, upon the entering of your decree for an infringement as above prayed for, may also proceed to assess, or cause to be assessed, under your direction, in addition
70 to the profits and gains to be accounted for by the defendant aforesaid, the damages your orator has sustained by reason of such infringements; and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the unlawful acts, and the unjust infringements by the said defendant at the times and at the place hereinbefore set forth, and as provided by the "patent act" of July 8, A. D. 1870, and hereinbefore referred to by the title thereof, and especially sections 55 and 59 of the said patent law.

And your orator, Christopher C. Campbell, prays your honors that the said defendant, Thomas L. James, United States postmaster at the said city of New York, may, by the order of this honorable court, be decreed and required to pay to your orator all the costs and expenses of this suit, because of the unjust and unlawful acts of infringement upon and violation of the said letters patent, in the manner and during the time hereinbefore stated; and that damages may be recovered herein in the manner aforesaid; and that the preliminary injunction, upon due notice to the said defendant, as well as a perpetual injunction at the final hearing of this cause, may each be granted and issued, as and in the manner herein prayed; and that all other relief asked for by this bill may be fully decreed and ordered by your honors.

May it please your honors to grant to your orator, Christopher C. Campbell, a provisional or preliminary injunction, issuing out of and under the seal of this honorable court, restraining the defendant, Thomas L. James, his attorneys, solicitors, clerks, servants, workmen, and agents to the same purport, tenor, and effect hereinbefore prayed for, in regard to a perpetual injunction.

May it also please your honors to grant to your orator, Christopher C. Campbell, a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court, directed to the said defendant, Thomas L. James, United States postmaster at the said post-
71 office, in the said city of New York, commanding him to be and to appear in this court, and then and there to make answer unto this bill of complaint, and to perform and to abide by such order and decree herein as to this court may seem meet, and to be required by the law, by the principles of equity and of good conscience.

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lay be issued therefor:
ese are, therefore, to grant to the said Helen M. Ingalls, her execu-

And your orator, as in duty bound, will every pray, &c.
Dated this 17th day of July, A. D. 1877.

CHRISTOPHER C. CAMPBELL,
Complainant and Assignees in trust.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.
GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

72 UNITED STATES OF AMERICA,
State and Southern District of New York, ss:

Christopher C. Campbell, the complainant named in the foregoing amended bill of complaint as orator, personally appeared before me, the undersigned, a United States commissioner, and he, the said Campbell, being by me duly sworn, doth depose and say, that he has read the foregoing amended bill of complaint, in equity, signed by him, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on belief or on information derived from others, and as to those matters he believes it to be true.

CHRISTOPHER C. CAMPBELL,
Complainant and Assignee in trust.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.
GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

Sworn to before me, this 17th day of July, 1877.

JOHN A. SHIELDS,
U. S. Commissioner Southern District of New York.

(Here follows diagram marked page 73.)

74 No. 4143. Reissue.

The United States of America to all to whom these letters patent shall come:

Whereas Marcus P. Norton of Troy, N. Y., assignor to Helen M. Ingalls, of same place, has alleged that he has invented a new and useful improvement in post-office post-marking and canceling hand-stamps, (for which letters patent were issued to him, dated April 14, 1863, the same surrendered, and new letters issued to him dated August 23, 1864; which second letters were surrendered, and new letters issued to him dated August 3, 1869; which last letters having been surrendered, as well as letters-patent for improvement in hand-stamps issued to Helen M. Ingalls, as assignee of said Marcus P. Norton, dated August 23, 1870, the said two letters patent last named have been canceled, and new letters ordered to issue to said assignee on two separate amended specifications,) and has made oath that he is a citizen of the United States, that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not to his knowledge and belief been previously known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to the said Helen M. Ingalls, her execu-

tors, administrators, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is hereby given in the annexed schedule, and made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

75 Given under my hand at the city of Washington, this fourth day of October, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

W. T. OTTO,
Acting Sec. of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[L. S.] SAM'L S. FISHER,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Marcus P. Norton, of Troy, New York, assignor to Helen M. Ingalls, of same place.

Letters-patent Nos. 38175, dated April 14, 1863; reissue No. 1748, dated August 23, 1864; reissue No. 3586, dated August 3, 1869; reissue No. 4143, dated October 4, 1870. And also letters-patent No. 106716, dated Aug. 23, 1870.

DIVISION A.

Improvement in post-office post-marking and canceling hand-stamps.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer, and State of New York, have invented new and useful improvements in "post-marking letters," "packets," &c., and in the "canceling" of the "postage stamps" thereon, in the manner, and by the means substantially as hereinafter described and set forth; that letters-patent of the United 76 States were duly issued thereon, under and bearing date April 14, 1863, which were assigned and transferred under a certain agreement, and by virtue of a certain instrument in writing, bearing date the 20th day of April, 1863, and recorded in the United States Patent-Office on the 8th day of March, 1864, in liber C⁷, page 458 of transfers of patents, to Jacob Shavor and Albert C. Corse, of said city of Troy, county and State, and who, on or about the 23d day of February, A. D. 1864, duly reassigned and retransferred the said invention, improvements and letters patent to the said Marcus P. Norton, inventor and assignee aforesaid, by a certain instrument in writing duly executed, and bearing date on the said 23d day of February, 1864, and which assignment and transfer from Jacob Shavor and Albert C. Corse was duly recorded in the said United States Patent-Office on the 24th day of

July, 1869, in liber U^{11}, page 319 of transfers of patents; on or about the 23d day of October, A. D. 1869, I, the said Marcus P. Norton, by deed of assignment in writing, did lawfully assign and transfer unto Helen M. Ingalls, of the city of Troy, State of New York, the said invention and letters patent, dated and reissued as hereinbefore stated and set forth, which deed of assignment was duly recorded in the United States Patent-Office on the 1st day of August, 1870, in Liber B^{13}, page 351 of transfers of patents, and who is now the lawful owner thereof under and by virtue of the said sale, assignment and transfer so made, executed and delivered and recorded as before stated.

Now, therefore, I, the said Marcus P. Norton, do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being had hereinafter to the accompanying drawings and to the letters of reference marked thereon, which drawings so marked and lettered hereby make a part of these my specifications of and concerning my said invention and improvements herein contained and set forth.

Like letters refer to and represent like and corresponding parts of my said invention.

77 Figure 1 represents a side elevation of the postage-stamp canceling and post-marking device hereinafter described and set forth for canceling postage stamps, with any suitable ink contained upon such instrument, at the same time, blow, and operation of the making of the post-mark on the letter, envelope, or packet, one side of and from such postage stamp or frank so canceled.

Figure 2 represents a vertical section taken on a line through the center of the various parts of the post-marking and postage-canceling device or instrument herein contained, described, and set forth.

Figure 3 represents a face view of the device, showing the post-marking stamp ready for use, and the postage-canceling die or device made of wood, used endwise, or of cork, rubber, or other suitable material therein inserted in the manner substantially as shown, and more at large described hereinafter.

Figure 4 shows a device for the purpose of canceling postage stamps or letter franks, used to represent value, by the use and power of any suitable ink by the means of wood, cork, or any elastic material for the type or die which may be used for that purpose separate and alone or in combination with any suitably-constructed post-marking stamp or device, substantially as shown at Fig. 3 of the said drawings.

Figure 5 represents a vertical section of a post-marking and postage-stamp canceling device or die combined and constructed entirely of iron, steel, or other metal, and more fully described hereinafter.

Figure 6 is a plan or face view of Fig. 5, showing the postage-stamp canceling device or die made of iron, steel, or other suitable metal or material.

Figure 7 represents the wrench used for securing the dating-type in a proper place within the post-marking device, having the name of the town or post-office where used engraved thereon in relief letters.

Figure 8 represents the tool or instrument used for removing the cork, wood, or rubber die or type used for canceling postage-
78 stamps from the tube or surrounding case where held or contained, so as to repair or replace the same with a new one when worn out or unfit for use.

The nature of my said invention and improvements herein contained and described consists in the employment and combination of a device or die used for the more complete and perfect cancellation of postage-

stamps and letter-franks, by means of soft wood, used endwise, or of cork, rubber, or other suitable material, whereby such stamp or frank is effaced and canceled, in and by indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of a postage-stamp canceling device or die, constructed of wood, cork, rubber, or any suitable material, with any suitably arranged and constructed post-marking stamp or device, so as to cancel, efface, or destroy the postage-stamp or letter-frank with indelible or any suitable ink at the same time, blow, or operation of the stamp or instrument, by which the post-mark is given or made upon the letter, envelope, or packet, substantially as herein described or set forth.

It also consists of the post-marking of letters, envelopes, or packets, and in the cancellation of the postage stamp or stamps thereon with, in, or by any suitable ink, or similar material, by means of some soft wood, used endwise against the postage-stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material, so combined with the post-marking stamp or instrument as to cancel, efface, or destroy the *the* postage-stamp or stamps at one and the same blow or operation of the entire instrument, thus constructed for that purpose, whereby to prevent a second or reuse of such postage stamp or stamps.

To enable others skilled in the art to which my said invention and improvements relate to make and use the same, I will here proceed to describe the construction and operation thereof, which are substantially as follows; that is to say:

79 I construct the post-marking device or stamp D of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device and die or type.

E, Fig. 3, is the mortise or recess, of suitable dimensions to receive the type for the month, day of the month, and for the year, and called or known as the dating-type, around which is the name of the town or post-office where used, in relief letters, and upon the lower face of such post-marking stamp or device.

I construct the postage canceling stamp or device G (for the purpose of canceling, in a more perfect and thorough manner, the postage-stamps on letters, envelopes, or packets), of wood, used endwise upon the postage-stamp, or of cork, rubber, or of any suitable or elastic material, and insert the same in the tube or recess F, which is that part of the canceling device marked C of the accompanying drawings, and which is connected to and combined with the said cross-piece B, as herein described.

I prefer to have the diameter of the cancelling device and die or type F, Figs. 2, 3, and 4, about the same as the width of the postage-stamp to be cancelled or destroyed by means of the same.

The said canceling-die or type G may be of any length required, and so made as to correspond with the tube or recess F, and closely to fit the same, and it may be made of wood, cork, rubber, or of any elastic material as aforesaid.

The face of this device may contain a plan or form for canceling the postage-stamp in, with, or by ink, like unto that shown at Fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

The said device, die, or type G will project somewhat below the face of the post-marking device D, if deemed best so to do, and it may be removed out of the said tube or recess F by means of a pin or bolt, sub-

stantially like that shown at Fig. 8, the lower end of which operates in and through the aperature *a*, Figs. 2 and 4, for the purpose of repairs, or to replace it by a new one, when desired.

80 A is the operating handle, firmly secured to the cross-bar B by any suitable mechanical means, and it will be made of wood, &c.

The said postage-stamp canceling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and combined with the said device C, with recess or tube F therein as aforesaid, will receive and contain, on the face or configuration thereof, the ink aforesaid, in quantities sufficient to permanently cancel, efface, or destroy the postage-stamp whereon the same is used while post-marking letters, packets, &c., in such manner as to prevent the said postage-stamp being cleansed of the said canceling ink by any chemical or other process; for the said canceling-ink, so put upon the postage-stamp by means of said cork, die, or type, would be so effectual that any attempt or effort to remove it therefrom would entirely destroy, or nearly so, the aforesaid postage-stamp, and thus and thereby render the same incapable for or of a second or other use without immediate detection.

The said cork, rubber, or other suitable elastic material, used as aforesaid, will render the said post-marking and postage stamp canceling die or type of a more easy, and consequently rapid use, because of there being a yielding of the said canceling die, or type G, when the blow is given upon the letter, envelope, or packet and postage-stamp as aforesaid; the operator will not tire as much by means of a constant, continuous, and rapid use of the same; and it will also somewhat aid the operator in raising the entire instrument or apparatus from the paper or packet and postage stamp, when the impression thereon and the cancellation of such postage-stamp shall have been given by the operator, in the manner substantially as aforesaid.

The said canceling type or die can be easily repaired, or replaced by a new one, whenever desired, and at very little expense; and such canceling die or type G may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small

81 bolt. In such case there would not be any tube or pipe surrounding said canceling die or type G. The operation and effect produced would, in such case of construction, be the same.

The said postage-stamp canceling device, die, or type G may be of any desired distance from the aforesaid post-marking or dating device or stamp D, or it may be securely fastened to the immediate side of the said post-marking and dating part or stamp or device D, by any convenient and suitable mechanical means.

The said canceling die, type, or device G I prefer to use made of cork, as it will hold a much greater quantity of canceling-ink upon and in the lower face thereof, and when it comes in contact with the printed surface of the postage-stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with the said canceling ink, whereby such postage stamp, so operated upon and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be reused, or used a second time in fraud upon the postal revenue, without immediate detection of the same.

Soft wood used endwise will answer nearly the same purpose. Still, long and continued use, after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the canceling die or type used upon postage-stamps as aforesaid.

The said tube or cylinder C, Figs. 2, 3, and 4, may be constructed in any suitable manner or by any convenient means, and thereafter fastened to the under side of the cross-bar B in or by any mechanical means, which will answer the required purpose. It may also be of any form or shape deemed best.

I also construct my said postage-stamp canceling device, die, or type of cast-iron, steel, or other suitable metal, substantially as shown at G′, Figs. 5 and 6, and which may be secured to the said cross-bar or piece B in like manner as the said tube or cylinder C, Figs. 2 and 4, and which is done either by screw and nut where the same unites with the
82 said cross-bar, or it may there be firmly fastened by means of suitably constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece B, or otherwise attached thereto.

The said post-marking and dating device D is also secured to the under side of said cross-bar or piece B, and at or near the end thereof, opposite that where said tube or cylinder C or canceling die, type, or device G, is securely fastened, as aforesaid, in like manner and by substantially the same means as used for such fastening of said canceling device to said cross bar upon the under side of the same as aforesaid.

The aforesaid metal canceling device, die, or type G′, figs. 5 and 6, may also be fastened or secured to the immediate side of the said post-marking device by any good and sufficient means, substantially as hereinbefore described and set forth, in reference to the said device C, or tube, or cylinder, constructed to receive and contain the said type or die G, figs. 2, 3, and 4.

Such metallic device, die, or type, may also have, upon its lower face or lower surface, any suitable configuration deemed best to use for the purpose of canceling the postage-stamp in, with, or by any suitable ink at the same time, blow, and operation of the instrument or apparatus, as hereinbefore stated and set forth.

In any and every case the post-marking of the letter, envelope, or packet, and the effacing or cancellation of the postage-stamp or letter-frank thereon representing value, are done at the same time, and by the same blow or operation of the said several devices and parts, constructed and combined in the manner and by the means substantially as herein described and set forth.

Both the post-marking and cancellation of the said postage-stamp are done with indelible or other and suitable ink used for such cancellation or effacing of the postage-stamp, and that, too, without any injury to the letter, envelope, or packet, or to the contents thereof, as would be the case were the said postage stamp cancelled by being cut in several parts and places by means of cutters or knives constructed for
83 that express use and purpose, as is the case by the cutters or knives contained and set forth in letters patent granted to me on the 9th day of August, A. D. 1859, also on the 16th day of December, A. D. 1862, the first of which contains no guard or guards to said knives or cutters, while the second contains such guard or guards, for the purpose of preventing such cutters or knives from cutting too much or too deep in and upon said postage-stamps.

The said instrument and devices herein set forth and described will not, under any circumstances, cut either the letter, envelope, or postage-stamp thereon, in any way or manner, but perform the cancellation required to be done, in, with, and by, ink only, as aforesaid, no cutting device whatever being used. But the said cork device, die, or type will, when it comes in contact with the printed or enameled like surface of

the postage-stamp, somewhat mar, bruise, or break the same, by means of the blow given by the instrument, whereby to prepare the same to be filled by or impregnated with any suitable ink used for such cancellation, substantially as aforesaid.

In no case could a fraud be committed by a second or reuse of the government postage-stamp or letter-frank representing value without being discovered.

This arrangement and combination of devices will greatly hasten or facilitate the making up of the mails for transportation. It will also economize in labor, and reduce the labor in post-marking letters and in the canceling of the postage-stamps thereon, to about, if not entirely, one-half of the number of workmen, laborers, or clerks absolutely necessary when and where this combined instrument is not used in the manner aforesaid.

It therefore saves at least one-half of the labor required in the post-marking of letters, envelopes, or packets, and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the postage-stamps more effectual or permanent, so as to prevent a second or reuse of such postage-stamps by any means whatever, which is very important in the successful management of the post-offices in this country,
84 whereby and by means of which large sums of money are annually saved this government; and frauds upon the postal revenue, by the second or reuse of postage-stamps, are also prevented by the use of my invention and improvements herein contained, described and set forth.

By the use of said invention the letters to be mailed and prepared for transportation, by means of post-marking the same, and in canceling the postage-stamps thereon, as aforesaid, need not be handled over but once, thus and thereby economizing in time and in labor.

The cross bar or piece B, Figs. 1, 2, 3, and 5, may be of any suitable width or thickness, or of any metal which will answer the required purpose. It may also be of any length deemed best to use in order to get the said post marking device and the said postage canceling device, die, or type suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened or attached in the manner substantially as aforesaid.

The type whereby to give the date are arranged in the said mortise E, as shown in Figs. 3 and 6, and are there held in their proper place by means of a set-screw, substantially as shown in Figs. 2, 3, and 6.

The cork or other material used for the canceling device, die, or type, will be pressed into the said tube or pipe at recess F, cylinder C, Fig. 2, and the same is there firmly held, substantially as shown at G, Fig. 4.

The device or configuration for the cancellation of the postage stamp, in the manner substantially as aforesaid, may be seen at C and G, Fig. 3, where cork is used; but when iron, steel, or other suitable metal is used, the device or configuration may be seen at G′, Fig. 6.

The invention and improvements contained in and covered by the several claims hereto annexed or below given is and are not contained in the letters patent granted on my application, in due form, on "the 9th day of August, 1859," nor is, nor are the same to be found in my said letters patent granted to me "December 16, 1862;" but the said invention and improvements are contained in my caveat duly
85 filed in the United States Patent Office, in the year 1853, containing, also, other improvements.

Having thus described my original invention and improvements in

"post marking" and "postage-canceling" devices, combined and arranged for the purpose aforesaid—

What I claim, and desire to secure by letters patent of the United States of America, is:

1. The postage-stamp canceling device, cylinder, or tube C, containing a die or type, G, made of cork, wood, or other suitable material, or any equivalent for said cylinder or tube C, or for the said canceling die or type G, whereby to efface, cancel, or destroy the postage stamp with indelible or other ink, in the manner and for the purposes substantially as herein described and set forth.

2. The canceling device, cylinder, or tube C, with cork or wood, or any substantial equivalent thereof, forming the die or type G therein, in combination with the cross-bar or piece B, and with the post-marking device D, substantially as and for the purposes herein described and set forth.

3. The post-marking of letters, envelopes, and packets, and the cancellation of the postage-stamps thereon with ink at one and the same blow or operation of the instrument in the manner and by the means substantially as herein described and set forth.

4. The employment and combination of a post-marking device with a postage-stamp canceling device, both being operated by one and the same handle, for the post marking of letters, envelopes, or packets, and for the cancellation of the postage-stamps thereon with indelible or other ink, in the manner substantially as herein described and set forth.

In testimony whereof I have on this 14th day of September, 1870, hereunto set my hand, in the presence of two witnesses, to wit:

MARCUS P. NORTON.

Witnesses:
FRED'K KOONES.
EDW. W. DONN.

86 *The answer of Thomas L. James, defendant, to the bill of complaint of Christopher C. Campbell, assignee in trust, complainant.*

Circuit court of the United States, for the southern district of New York, in the second circuit, in equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN Trust,
against
THOMAS L. JAMES, UNITED STATES POSTMASTER New York.

This defendant now and all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or to so much, and such parts thereof, as this defendant is advised is or are material or necessary for him to make answer thereto, respectfully says:

That defendant admits that he is a citizen of the State of New York, and of the United States; that on April 1st, 1873, he was appointed postmaster at the city of New York; that he was confirmed by the Senate, and duly commissioned by the President of the United States; that on the day aforesaid he entered upon the performance of the
87 duteis of said office, andsince said day has, under the direction

of the Post-Office Department of the United States, managed and controlled the business and affairs of the same.

That he has no knowledge or information—except from said bill—that the complainant herein is a citizen of the United States, and of the State of New York, and therefore he leaves complainant to make such proof thereof as he may be advised.

And further answering, defendant admits, that on the 14th day of April, 1863, letters patent of the United States, bearing date on that day, and numbered 38175, were issued to one Marcus P. Norton; and that said letters patent purported to secure to said Norton, his heirs, executors, administrators and assigns, for the full term of seventeen years from the said 14th day of April, 1863, the full and exclusive right, liberty and privilege of making, using, and vending to others to use and to be used, certain alleged improvements therein described; but says that he has no knowledge or information—except from said bill—whether the said patent was duly granted, issued and recorded pursuant to law, and therefore defendant leaves complainant to make such proof thereof as he may be advised; and defendant denies, upon the grounds hereinafter stated, that said letters-patent were regularly and lawfully issued, or secured any rights whatever to said Norton, or any other person; and defendant says that he has no knowledge or information—except from said bill—that on or about the 20th day of April, 1863, said Norton did by an assignment in writing, bearing that date, sell, assign, and transfer in trust to Jacob Shavor and Albert C. Corse of the city of Troy, and State of New York, all his right, title and interest in and to the said letters-patent and invention; or that such alleged assignment was duly recorded in the Patent-Office of the United States; and therefore defendant leaves complainant to make such proof thereof as he may be advised; defendant says that on the contrary, he has been informed and believes, that on or about the 14th of April, 1863, said Norton
88 assigned absolutely, and not in trust, all his right, title, and interest, in and to the said alleged letters patent of 14th of April, 1863, No. 38175, to said Shavor and to said Corse.

Defendant admits that said Shavor and Corse on or about the 23d day of August, 1864, for purposes of reissue, surrendered the said alleged letters-patent to the Commissioner of Patents, but defendant says that he has no knowledge or information—except from said bill—that such surrender was at the request of said Norton, and therefore leaves complainant to make such proof thereof as he may be advised.

Defendant admits that on the 23d day of August, 1864, new letters-patent, purporting to be for the same invention, upon what purported to be reformed and amended specifications and claims, for the residue of the said term of seventeen years then unexpired, and numbered 1748 of reissued letters-patent, were issued and granted to said Shavor and said Corse; and defendant says that he has no knowledge or information—except from said bill—whether said reissued letters-patent were duly granted, issued, and recorded, pursuant to law, and therefore he leaves complainant to make such proof thereof as he may be advised. But defendant denies that the specifications in the patent dated April 14th, 1863, surrendered by said Shavor and Corse, were defective or insufficient through any error arising from inadvertency, accident, or mistake; and defendant says that said letters-patent were not so surrendered for the purpose of correcting any such error, and that the reissue based on such surrender was, in a substantial part thereof, for entirely distinct and different alleged inventions or improvements, and was therefore in every respect invalid, inoperative, and void.

Defendant further says that he has no knowledge whether on or about the 23d day of February, 1864, the said Shavor and the said Corse did, by a deed of assignment bearing that date, sell, assign, and reconvey unto said Norton the said patent, and any and all reissues thereof, and therefore he leaves complainant to make such proof thereof
89 as he may be advised. But defendant says that on the contrary he has been informed and believes that the said Shavor and the said Corse did not sell, reassign, and reconvey the said patent, and any and all reissues thereof, to the said Norton on the 23d day of February, 1864, or at any other time; and defendant on information and belief charges the fact to be that the paper writing—if any such there be—which purports to be such sale, reassignment, and reconveyance, as alleged, was obtained by fraud and misrepresentation; and that any such paper writing that may be produced, and alleged to be executed by said Shavor and Corse, was made by said Shavor and said Corse, or by one of them—if it was made by them at all—through mistake, fraud, misrepresentation by or on behalf of said Norton, accident, and misunderstanding of its purport, terms, and legal effect; and therefore any such paper has and had no validity, and could not and did not operate to pass in whole or in part the title to the said letters-patent, or any of its reissues. And defendant admits that a paper writing purporting to be dated February 23d, 1864, and to be a deed of reassignment and reconveyance of said letters-patent and its reissues, and purporting to be executed by said Shavor and by said Corse, and accompanied by what purported to be a sworn statement purporting to have been made by said Shavor and said Corse, was entered of record in the Patent Office on the 24th of July, 1869, in Liber U 11, page 319, of transfers of patents; but defendant denies that any such paper writing was duly executed, so as to entitle the same to be recorded, or to entitle said paper to any of the advantages whatever of such record; and defendant hereby demands an inspection of said alleged original deed of assignment, reconveyance, and retransfer, alleged in said bill to be in the possession of said complainant.

And further answering, defendant admits that on the 3d of August, 1869, new letters patent upon alleged reformed, corrected, and amended specifications, purporting to be for the same alleged invention and improvement aforesaid, for the residue of the said term of seven-
90 teen years, were issued to said Norton, he, the said Norton, having ostensibly—although not in fact, as defeendant is informed and believes—surrendered to the Commissioner of Patents the reissued letters patent so aforesaid issued to said Shavor and said Corse; and that said reissued letters-patent alleged in said bill of complaint to have been issued to said Norton were dated August 3d, 1869, and were numbered 3586 of reissued patents; and defendant, on information and belief, alleges and charges the fact to be, that the said alleged reissue, dated August 3d, 1869, was not regularly, properly, or lawfully issued, but was issued unlawfully, irregularly, fraudulently, and under a misapprehension of fact, and that said reissue was and is null and void, and of no validity whatever; and defendant denies that the specifications in the letters-patent purported to be surrendered as alleged in said bill were defective or insufficient through any error arising from inadvertency, accident or mistake; and defendant avers that said letters patent purporting to be surrendered were not surrendered for the purpose of correcting any such error, and that said reissue dated August 3d, 1869, was obtained by fraud on the part of him obtaining it, and was in a substantial part for entirely distinct and different alleged in-

ventions or improvements, and was therefore in every respect invalid, inoperative, and void.

And, further answering, defendant says that he is informed and believes that said Norton was not at any time vested with the title, or rights, or interests of any kind, legal and equitable, therein, to the letters patent reissued as aforesaid in 1864 to Shavor and Corse, and therefore said Norton was not capable in law of making a valid surrender of the same, and did not surrender the same to the Commissioner of Patents, and therefore for this, and divers other good and sufficient grounds in law and equity, which defendant reserves to himself the right to establish, the said reissued letters-patent, alleged to have been granted to said Norton on August 3d, 1869, and numbered 3586, had no virtue or efficacy in law to convey to or to vest in, and did not convey
91 to or vest in said Norton any right, title, interest or privilege of any kind, nature or description whatsoever.

And further answering, defendant says that he has no knowledge or information—except from said bill—whether on or about the 20th day of October, 1869, or at any other time, said Norton did by a deed of assignment or transfer in writing, of that date, sell, assign and transfer to Helen M. Ingalls, of the city of Troy and State of New York, the said letters patent and all reissued of the same, together with all his rights, interests and privileges which had theretofore accrued to him, the said Norton, under said letters-patent or its reissues; and therefore defendant leaves complainant to make such proof thereof as he may be advised. And defendant says that he is informed and believes that at or about the time of the alleged assignment last aforesaid said Norton had no right or title in or to the said letters-patent or any of its reissues, and that therefore the alleged assignment to said Ingalls, if such there was, could not have had any virtue or efficacy in law to pass, and did not convey any right, title, or interest of any nature or description whatsoever in or to said letters patent or its reissues to said Ingalls.

And, further answering, defendant admits that on or about October 4th, 1870, letters-patent were issued to said Ingalls purporting to be a reissue of the letters-patent aforesaid and its reissues, in two divisions; division *a* being numbered 4143, and dated October 4th, 1870, and division *b* being dated October 4th, 1870, and numbered 4144, and purporting to be issued to said Ingalls on a surrender by her, said Ingalls, to the Commissioner of Patents of the reissued letters patent of August 3d, 1869. And defendant says that he has no knowledge or information—except from said bill—that said reissued letters patent denominated division *a*, and numbered 4143, were duly and pursuant to law issued and granted to said Ingalls, nor whether said reissued letters patent had virtue and efficacy in law to pass any right, title, or interest of any kind or description what-
92 soever to said Ingalls, and therefore leaves complainant to make such proof of the allegations in that behalf in said bill contained as he may be advised; and defendant reserves to himself the right to establish the contrary thereof. And on information and belief defendant denies that said Ingalls had any power or capacity, legal or equitable, to surrender the said alleged reissue of August 3d, 1869; and that a valid surrender thereof was made, and that the Commissioner of Patents had any power or jurisdiction to reissue as alleged on the 4th day day of October, 1870, the said alleged reissued letters patent of August 3d, 1869, on amended specifications, and that any valid reissues were made on the said 4th day of October, 1870; and defendant on

information and belief charges and alleges the fact to be that the said alleged reissue dated October 4th, 1870, was not regularly, properly or lawfully issued, but was issued irregularly, improperly and unlawfully, and under a misapprehension of fact, and that said reissue was and is null and void, and of no validity whatever; and defendant denies that the specification in the letters patent purported to be surrendered as alleged were defective or insufficient through any error arising from inadvertency, accident or mistake; and defendant avers that said letters-patent purported to be surrendered were not surrendered for the purpose of correcting any such error, and that said reissue dated October 4th, 1870, was obtained by fraud on the part of him or her obtaining it, and was in a substantial part for entirely differerent and distinct alleged inventions and discoveries, and was therefore in every respect invalid, inoperative and void.

And further answering, defendant says that he has no knowledge—except from said bill—whether said Ingalls did on or about the 4th of March, 1871, make a conditional assignment in trust to W. W. Secombe, as alleged in said bill at the 51st and immediately following folios thereof, and therefore defendant leaves complainant to make such proof thereof as he may be advised; but defendant alleges that such assignment,
93 if executed, as alleged by complainant, did convey the legal title to the letters-patent purported to be assigned absolutely and without condition to said W. W. Secombe, individually; and defendant says that he has no knowledge or information—except from said bill—whether at the time of the alleged assignment to Secombe he, the said Secombe, executed to said Ingalls a deed of trust as alleged in said bill at the 51st and 52d folios thereof; and defendant therefore leaves complainant to make such proof thereof as he may be advised; and defendant hereby demands an inspection of said alleged deed of trust. And defendant says that he has no knowledge or information—except from said bill—that said alleged conditional assignment to said Secombe has become void and of no effect in law and in equity; or that said Secombe wholly failed to keep and maintain the conditions and obligations alleged in said bill to have constituted a part of said alleged assignment by said Ingalls to said Secombe, and therefore defendant leaves complainant to make such proof of the allegations in that behalf as he may be advised.

And defendant further says that he has no knowledge—except from said bill—that said Secombe did, by deed of assignment, on or about the 10th day of July, 1873, assign, transfer, and reconvey to said Ingalls all the rights and interests which in said bill are alleged to have been vested in said Secombe by the alleged assignment to said Secombe from said Ingalls; or that on the 10th of July aforesaid said Secombe assigned, transferred, and reconveyed all his right, title, interest, claims or demands to or under said letters-patent of the 14th of April, 1863, and its reissues; or that said Secombe, being joined with the Secombe Manufacturing Company, so as aforesaid transferred, assigned and reconveyed; and therefore defendant leaves complainant to make such proof thereof as he may be advised.

And defendant on information and belief avers, and charges the fact to be, that the alleged assignment by said Secombe, joined with the Secombe Manufacturing Company, set out at the 54th and 55th
94 folios of said bill, was executed by said Secombe, if executed at all by him, as president of the Secombe Manufacturing Company, and not individually, and that it could not and did not operate, and could not have had nor did have virtue and efficacy in law to divest

said Secombe of any right or title whatever which was prior thereto vested in him individually.

And defendant further says that he has no knowledge or information—except from said bill—that said Ingalls on or about the 2d day of January, 1877, by an assignment in writing, sold, assigned and transferred, in trust, unto Christopher C. Campbell, the complainant herein, all her right, title and interest in and to said alleged reissued letters-patent denominated division *a*, numbered 4143, and dated the 4th day of October, 1870; or that the said alleged assignment to said Campbell was in the words and figures or recorded as set forth in said bill; and therefore defendant leaves complainant to make such proof thereof as he may be advised. And defendant expressly alleges, on information and belief, that said Ingalls did not on the 2d day of January, 1877, have any right, title, or interest in or to the alleged letters-patent of April 14th, 1863, or to any valid reissue thereof, and therefore said complainant was not and is not vested with any right, title or interest in or to said alleged letters patent, or to any valid reissue thereof; and therefore complainant is not entitled to maintain this action.

And, further answering, defendant on information and belief avers that by the said alleged assignment by said Ingalls to said Campbell no right or title to the said subject matter of said alleged original letters patent, or reissue thereof, passed to said Campbell; and that the only right or title vested in said Campbell by said alleged assignment—if any right or title did vest in said Campbell by any such instrument, which defendant on information and belief denies—was a right or title to a chose in action or claim against the United States for past alleged infringements of said alleged letters patent and its reissues, or for the use of the alleged
95 patented invention, and a right to make an arrangement or agreement with the United States, binding upon said Ingalls, with reference to a future use by said United States of the alleged patented invention; wherefore again defendant alleges that complainant has no right or title to maintain his bill of complaint against this defendant.

And said defendant says that he is informed and believes, and therefore charges the fact to be, that on the same day, to wit, on or about the 23d day of October, 1869, on or about which day it is alleged that said Norton assigned and conveyed to said Ingalls the said reissue of August 3d, 1869, said Norton executed an assignment and conveyance of a third interest in and to the alleged reissue of August 3d, 1869, and of his alleged claims based on the alleged patent of April 14th, 1863, and reissues to one Charles Eddy, as trustee for said Eddy, Albert C. Corse, and Jacob Shavor, and that the above said Ingalls could not and did not make a valid surrender of said alleged reissued letters patent of August 3d, 1869, and that the said alleged reissue of October 4th, 1870, is invalid and inoperative; and that by said alleged assignment to said Eddy, as trustee as aforesaid, the said Eddy became a co-tenant in law in and to whatever rights or interest created by or arising under said patent of April 14th, 1863—if any rights or interests were so created, or so arose, which on information and belief defendant denies—were vested in said Norton at the time of the alleged assignment by said Norton to said Ingalls; and said Eddy should consequently be made a party to this controversy, and defendant prays that he, said Eddy, as trustee aforesaid, may be made a party herein prior to the final hearing and determination of this cause.

And further answering with reference to the case of Shavor and Corse vs. Hoole, in which it is alleged at the 21st, 22d and 23d folios of said bill that the validity of the patent of April 14th, 1863, was established,

defendant on information and belief says that the defendant in
96 said case made default, and no evidence on his behalf was presented to the judge and jury; that the decision in said case was obtained by fraud and collusion, and that therefore the proceedings in said action are of no value, relevancy, materiality or validity whatever concerning any matter in this cause.

And as to the allegations in said bill of complaint contained at or about the 24th, 25th and 26th folios thereof, defendant on information and belief denies that the Court of Claims, in the claim made by Shavor and Corse against the United States, decided that the said alleged patent of April 14th, 1863, was valid; but defendant alleges that said court dismissed the petition of said Shavor and Corse upon its merits; and that it was not necessary for said court to pass upon nor did said court pass judicially upon the validity, novelty and utility of said patent; and defendant avers further that the novelty, validity and utility, and alleged infringement of said or any patent was not fully or fairly litigated in said cause.

And defendant further says that he is informed and believes that if said complainant has any interest or right or title in or to the alleged reissued letters patent No. 4143, and dated October 4th, 1870, and denominated division *a*—which defendant on information and belief denies—such right, title or interest is not a sole and exclusive right, title or interest; and that there are other parties—whom defendant is not within the limited time allowed for this answer able to designate with greater particularity, but defendant prays that he be permitted so to do at some future time during the progress of this cause, and by amended answer and other appropriate proceeding—who have an equally good title, right or interest with said complainant in or to said reissued letters patent No. 4143, and who in equity and good conscience should be parties to this controversy; and defendant prays that they may be made parties before a final hearing and determination upon the question of the right of complainant to maintain this cause against defendant.

97 And, further answering, defendant alleges on information and belief that each and all of the said alleged reissues of the said alleged letters patent of April 14th, 1863, so as alleged to have been granted to said Norton, is and are, even if the said letters patent No. 38175, of April 14th, 1863, are valid—which on information and belief defendant denies—defective, insufficient, null and void, because, among other reasons, they contain claims for material new matter, and upon the several other grounds hereinbefore set forth, and for divers other reasons which defendant proposes to establish in this cause.

And, further answering, defendant on information and belief alleges that said Norton is not and was not the original and first inventor and discoverer of the alleged discovery, contrivance and combination described in said letters patent No. 38175, of April 14th, 1863, or of any material and substantial portion thereof; but on the contrary thereof defendant says that the alleged contrivance and device set forth in the letters patent of April 14th, 1863, was not novel or patentable, and is substantially described and anticipated in the following letters patent, dated and numbered respectively as indicated:

1. Patent to T. J. W. Robertson, dated September 22d, 1857, No. 18249.
2. Patent issued in England to Pearson Hall, September 15th, 1857, and dated March 25th, 1857, and No. 832.
3. Patent to M. P. Norton, December 16th, 1862, No. 37175.

4. Patent to F. G. Ransford and Peter Low, August 9th, 1859, No. 25036.

5. Patent to M. P. Norton and Charles Eddy & Co., January 14, 1862, No. 34184; and that the said alleged contrivance and device was known to and used by or with the knowledge of the persons following, at the places indicated, prior to the alleged invention and discovery thereof by said Norton:

John A. Dix, of New York City, at New York City.
98 C. C. Wheeler (of place unknown), at Cleveland, Ohio.
James M. Burgess, of Janesville, Wis., at Janesville, Wis.
Isaac V. Fowler, at New York City.
Ezra Miller, of New York City, at Janesville, Wis.
William B. Taylor, at New York City.
James Harper, of New York City, at New York City.
Abram Wakeman, at New York City.
John R. Hoole, of New York City, at New York City.
Henry McCollon (of place unknown), at Owego, Tioga Co., N. Y.
James Kelly, at New York City.
Isaac McGay, of New York City, at New York City.
Robert Rogers, of New York City, at New York City.
Thomas H. Corbett, of New York City, at New York City.
Abraham C. Beardsley, of New York City, at New York City.
William A. Clement, of New York City, at New York City.
Charles Smith, of New York City, at New York City.
Munson Clarke, of New York City, at New York City.
John A. A. Post, of New York City, at New York City.
James Gaylor, of New York City, at New York City.
James Riley, of New York City, at New York City.
Eugene G. Doane, of New York City, at New York City.
Alfred Ryer, of New York City, at New York City.
John Gallagher, of New York City, at New York City.
Charles Forrester, of New York City, at New York City.
Frank Evans, of New York City, at New York City.
Joseph Dunton, of New York City, at New York City.
John W. Brady, of New York City, at New York City.
Thomas Theban, of New York City, at New York City.
Michael Carberry, of New York City, at New York City.
99 Joseph J. Button, of New York City, at New York City.
Anthony Yeomans, of New York City, at New York City.
Charles Forrester, jr., of New York City, at New York City.
Andrew K. Hyde, of New York City, at New York City.
Orin Collin, of New York City, at New York City.
John Powers, of Buffalo, at Buffalo, N. Y.
Israel T. Hatch, of Buffalo, at Buffalo, N. Y.
Henry Smith, of Buffalo, at Buffalo, N. Y.

And defendant further says that he believes that there are other persons who were acquainted with and used, or have knowledge of the use, of said device and contrivance prior to the alleged discovery thereof by said Norton, and more than two years before said Norton's application for the letters patent of April 14th, 1863; and with reference to these persons defendant begs leave to make such further proof to this court as he may be able to make before the final determination of this cause, without prejudice because of his present inability to denominate and describe said persons.

And defendant alleges that he has hitherto been unable, within the limited time allowed for the preparation of this answer, to indicate the

proofs with greater particularity; and, therefore, defendant prays leave of the court to amend and to supplement this his answer in respect to the want of novelty of the contrivances alleged in the bill of complaint to have been patented or infringed, when the investigations now being made in defendant's behalf shall have been concluded.

And further answering, with reference to the caveat referred to in the said bill at the 6th folio thereof, as duly filed in the Patent Office in 1853. and 1854, defendant alleges, on information and belief, that the alleged caveat of 1853 is that on which the patent of August 9th, 1859, to F. G. Ransford and P. Low is based, and that no caveat was written or filed by said Norton in 1854.

100 And defendant, further answering, says that he is informed and believes that the subject-matters of the said alleged patent of April 14th, 1863, were publicly known and publicly used in this country more than two years before said Norton made an application for the patent of April 14th, 1863; and said Norton, if in truth he was the original and first inventor of said contrivance and device, had abandoned the same to the public prior to his application for a patent therefor, and the same was publicly manufactured, used, and sold prior thereto, with said Norton's consent and allowance; and that the said contrivance and device was so publicly used more than two years before said Norton's application, by or with the knowledge of the persons hereinbefore indicated as having known and used said contrivance or device before the alleged invention thereof by said Norton, and at the places severally indicated.

And, further answering, defendant says that he is informed and believes that said Norton surreptitiously and unjustly obtained the letters patent of April 14th, 1863, for that which was in fact contrived and devised by divers other persons, and amongst them said John A. Dix, or by some one in his employ, by said John A. A. Post and said John Powers, who were using reasonable diligence in adapting and perfecting the same.

And defendant further alleges on information and belief that if there be any part of the subject-matter of the alleged invention which purports to be described in the specification and drawing of the said letters patent of April 14th, 1863, of which said Norton was in fact the first inventor and discoverer, which, on information and belief, defendant denies, then such part was not of any utility or value and defendant has not infringed the same; and defendant denies that he is now using or has ever used any machine or device for the postmarking of letters and the cancellation of the postage-stamps thereon which is an infringement upon or violation of any right secured, if any there be, to the said Norton by the said letters patent of April 14th, 1863, or to
101 him or his assignees, by any of the reissues of said letters patent.

And defendant respectfully insists that in and by said bill he is charged and made a defendant solely as United States postmaster in and for the city of New York, and in his official capacity, and not otherwise or individually, and that by the law of the land said officer is not answerable in his said official capacity to a suit in this court.

And defendant respectfully shows to the court that the several acts set forth in said bill and therein alleged to constitute an infringement of said plaintiff's alleged patented rights appear on the face of said bill to have been performed by said defendant in the regular course of his duty as an executive officer of the Government of the United States and that he is not liable to suit for actions done in that capacity.

And, further answering, defendant says that he has never used any instrument or device for the postmarking of letters and the cancellation

of the stamps thereon, either directly or by subordinates, for his own private advantage or purposes, and that any and all postmarking and cancelling devices which have ever been used by him were so used as an officer and agent of the United States in his office of postmaster at the city of New York; and defendant alleges that all such use by him was with the consent, approbation, and approval and under the direction of the Postmaster-General of the United States; and that therefore he, defendant, is not liable to suit for such use or to any judgment, order or decree of this court for his action in the premises.

And defendant further says, on information and belief, that the devices and contrivances which have been used at the post-offices in the city of New York for the postmarking of letters and the cancellation of the postage-stamps thereon since about the year 1860 were so used with the knowledge, consent, license, approbation, and allowance of said Norton, and of his alleged assignees, and that from the time that
102 defendant became postmaster of the city of New York down to the time when this suit was brought no objection to the continuance of such use in the post-office at the city of New York was ever brought to the knowledge or notice of defendant, and that therefore there has never been as to defendant a revocation of the license aforesaid, and defendant alleges that until this suit was brought he has never received any notification from or on behalf of complainant or any of his alleged assignors, or on the part of Norton, or of any one claiming by, through, or under him in respect to the use by defendant of such contrivances as have been used by the clerks in the New York post-office for the postmarking and cancelling of stamps.

And defendant avers that the allegations from folio 27 to folio 39 inclusive are irrelevant and immaterial to said bill of complaint, and defendant prays that the same may be stricken out of said bill; and as to all the allegations in the said bill of complaint contained not hereinbefore mentioned, defendant leaves the complainant to make such proof thereof as he may be advised.

And defendant says that he is advised that by reason of his defences, and particularly by reason of the defence that complainant has no title whereon to base his said bill of complaint, he is not bound to make other or further answer to said bill of complaint; and that as to all the matters and things by him alleged, he is ready and willing to maintain and prove the same as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

STEWART L. WOODFORD,
United States Attorney, Solicitor for Defendant.

H. E. TREMAIN,
Of Counsel.

103 SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this third day of December, 1877, personally appeared before me, a United States commissioner, Thomas L. James, who, being by me duly sworn, says that he has read the foregoing answer, and that the allegations therein contained are true of his own knowledge, except the allegations therein stated on information and belief, and that as to those he believes them to be true.

THOMAS L. JAMES.

Subscribed and sworn to before me this 3d day of December, 1877.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

104 *Replication.*

In the circuit court of the United States, southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT AND assignee in trust,
versus
THOMAS L. JAMES, DEFENDANT, AND UNITED States postmaster at the city of New York.

The replication of Christopher C. Campbell, complainant and assignee in trust, as stated in the title of this cause, to the answer of Thomas L. James, United States postmaster of the city of New York, and defendant, as stated in the title of this cause.

This repliant, saving and reserving to himself now and at all times hereafter all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain and prove his bill of complaint, and the several matters, and each and every thereof therein contained to be true, certain and sufficient in the law; and that the said answer of the said defendant Thomas L. James, United States postmaster at the city of New York, in the district aforesaid, is uncertain, untrue and insufficient to be replied unto by this repliant; that any other
105 matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, to maintain, and to prove as this honorable court shall direct, and humbly prays, as in and by his said bill of complaint he has already prayed.

Dated this 4th day of December, A. D. 1877.

CHRISTOPHER C. CAMPBELL,
Complainant and Assignee in Trust.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.
GEORGE N. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

106 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN TRUST,
vs.
THOMAS L. JAMES, UNITED STATES POSTMASTER at New York.

The amended answer of Thomas L. James, defendant, to the bill of complaint of Christopher C. Campbell, assignee in trust, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer thereto, respectfully says:

That defendant admits that he is a citizen of the State of New York, and of the United States; that on April 1st, 1873, he was appointed postmaster of the city of New York: that he was confirmed by the Senate and duly commissioned by the President of the United States; that on the day aforesaid he entered upon the performance of the duties of said office, and since said day has, under the direction of the Post-Office Department of the United States, managed and controlled the business and affairs of the same.

107 That he has no knowledge or information, except from said bill, that the complainant herein is a citizen of the United States, and of the State of New York, and therefore he leaves complainant to make such proof thereof as he may be advised.

And, further answering, defendant admits that on the 14th day of April, 1863, letters patent of the United States, bearing date on that day, and numbered 38175, were issued to one Marcus P. Norton; and that said letters patent purported to secure to said Norton, his heirs, executors, administrators and assigns, for the full term of seventeen years from the said 14th day of April, 1863, the full and exclusive right, liberty and privilege of making, using, and vending to others to use and to be used, certain alleged improvements therein described; but says that he has no knowledge or information, except from said bill, whether the said patent was duly granted, issued and recorded pursuant to law, and therefore defendant leaves complainant to make such proof thereof as he may be advised; and defendant denies, upon the grounds hereinafter stated, that said letters patent were regularly and lawfully issued, or secured any rights whatever to said Norton or any other person; and defendant says that he has no knowledge or information, except from said bill, that on or about the 20th day of April, 1863, said Norton did by an assignment in writing, bearing that date, sell, assign and transfer in trust to Jacob Shavor and Albert C. Corse, of the city of Troy, and State of New York, all his right, title and interest in and to the said letters patent and invention; or that such alleged assignment was duly recorded in the Patent Office of the United States, and therefore defendant leaves complainant to make such proof thereof as he may be advised; defendant says that on the contrary he has been informed and believes that on or about the 14th of April, 1863, said Norton assigned absolutely, and not in trust, all his right, title and interest in and to the said alleged letters patent of 14th April, 1863, No. 38175 to said Shavor and said Corse.

108 Defendant admits that said Shavor and Corse, on or about the 23d day of August, 1864, for purposes of reissue, surrendered the said alleged letters patent to the Commissioner of Patents, but defendant says that he has no knowledge or information, except from said bill, that such surrender was at the request of said Norton, and therefore leaves complainant to make such proof thereof as he may be advised.

Defendant admits that on the 23d day of August, 1864, new letters patent purporting to be for the same invention, upon what purported to be reformed and amended specifications and claims, for the residue of the said term of seventeen years then unexpired, and numbered 1748 of reissued letters patent, were issued and granted to said Shavor and said Corse; and defendant says that he has no knowledge or information, except from said bill, whether said reissued letters patent were duly granted, issued, and recorded pursuant to law, and therefore he leaves complainant to make such proof thereof as he may be advised.

But defendant denies that the specifications in the patent dated April

14th, 1863, surrendered by said Shavor and Corse, were defective or insufficient through any error arising from inadvertency, accident, or mistake; and defendant says that said letters patent were not so surrendered for the purpose of correcting any such error, and that the reissue based on such surrender was in a substantial part thereof for entirely distinct and different alleged inventions or improvements, and was, therefore, in every respect invalid, inoperative, and void.

Defendant further says that he had no knowledge whether on or about the 23d day of February, 1864, the said Shavor and the said Corse did, by a deed of assignment bearing that date, sell, assign, and reconvey unto said Norton the said patent, and any and all reissues thereof, and therefore he leaves complainant to make such proof thereof as he may be advised; but defendant says that, on the contrary, he
109 has been informed and believes that the said Shavor and the said Corse did not sell, reassign, and reconvey the said patent and any and all reissues thereof to the said Norton on the 23d day of February, 1864, or at any other time; and defendant, on information and belief, charges the fact to be that the paper writing—if any such there be—which purports to be such sale, reassignment, and reconveyance, as alleged, was obtained by fraud and misrepresentation, and that any such paper writing that may be produced, and alleged to be executed by said Shavor and Corse, was made by said Shavor and said Corse, or by one of them—if it was made by them at all—through mistake, fraud, misrepresentation by or on behalf of said Norton, accident, and misunderstanding of its purport, terms, nd legal effect, and therefore any such paper has and had no validity, and could not and did not operate to pass in whole or in part the title to the said letters patent or any of its reissues. And defendant admits that a paper writing, purporting to be dated February 23d, 1864, and to be a deed of reassignment and reconveyance of said letters patent and its reissues, and purporting to be executed by said Shavor and by said Corse, and accompanied by what purported to be a sworn statement, purporting to have been made by said Shavor and said Corse, was entered of record in the Patent Office on the 24th of July, 1869, in Liber U 11, page 319, of transfers of patents; but defendant denies that any such paper writing was duly executed, so as to entitle the same to be recorded, or to entitle said paper to any of the advantages whatever of such record; and defendant hereby demands an inspection of said alleged original deed of assignment, reconveyance, and retransfer, alleged in said bill to be in the possession of said complainant.

And, further answering, defendant admits that on the third of August, 1869, new letters patent upon alleged reformed, corrected, and amended specifications, purported to be for the same alleged invention
110 and improvement aforesaid, for the residue of the said term of seventeen years, were issued to said Norton, he, the said Norton, having ostensibly, although not in fact, as defendant is informed and believes, surrendered to the Commissioner of Patents the reissued letters patent so aforesaid issued to said Shavor and said Corse, and that said reissued letters patent alleged in said bill of complaint to have been issued to said Norton were dated August 3d, 1869, and were numbered 3586 of reissued patents. And defendant, on information and belief, alleges and charges the fact to be that the said alleged reissue, dated August 3d, 1869, was not regularly, properly, or lawfully issued, but was issued unlawfully, irregularly, fraudulently, and under a misapprehension of fact, and that said reissue was and is null and void, and of no validity whatever; and defendant denies that the specifications in

the letters patent purported to be surrendered, as alleged in said bill, were defective or insufficient through any error arising from inadvertency, accident, or mistake; and defendant avers that said letters patent purporting to be surrendered were not surrendered for the purpose of correcting any such error, and that said reissue, dated August 3d, 1869, was obtained by fraud on the part of him obtaining it, and was, in a substantial part, for entirely distinct and different alleged inventions or improvements, and was therefore, in every respect, invalid, inoperative and void.

And, further answering, defendant says that he is informed and believes that said Norton was not at any time vested with the title or rights or interests of any kind, legal or equitable, therein, to the letters patent reissued as aforesaid, in 1864, to Shavor and Corse, and therefore said Norton was not capable in law of making a valid surrender of the same, and did not surrender the same to the Commissioner of Patents; and therefore for this and divers other good and sufficient grounds in law and equity, which defendant reserves to himself the right
111 to establish, the said reissued letters patent, alleged to have been granted to said Norton on August 3d, 1869, and numbered 3586, had no virtue or efficacy in law to convey to or vest in and did not convey to or vest in said Norton any right, title, interest, or privilege of any kind, nature or description whatsoever.

And, further answering, defendant says that he has no knowledge or information, except from said bill, whether on or about the 20th day of October, 1869, or at any other time, said Norton did, by deed of assignment or transfer in writing, of that date, sell, assign, and transfer to Helen M. Ingalls, of the city of Troy, and State of New York, the said letters patent and all reissues of the same, together with all his rights, interests, and privileges which had heretofore accrued to him, the said Norton, under said letters patent or its reissues; and therefore defendant leaves complainant to make such proof thereof as he may be advised; and defendant says that he is informed and believes that, at or about the time of the alleged assignment last aforesaid, said Norton had no right or title in or to the said letters patent or any of its reissues, and that therefore the alleged assignment to said Ingalls, if such there was, could not have had any virtue or efficacy in law to pass and did not convey any right, title, or interest, of any nature or description whatever, in or to said letters patent or its reissues to said Ingalls.

And, further answering, defendant admits that on or about October 4th, 1870, letters patent were issued to said Ingalls, purporting to be a reissue of the letters patent aforesaid and its reissues, in two divisions; division A being numbered 4143, and dated October 4th, 1870; and division B being dated October 4th, 1870, and numbered 4144, and purporting to be issued to said Ingalls on a surrender by her, said Ingalls, to the Commissioner of Patents, of the reissued letters patent of August 3d, 1869; and defendant says that he has no knowledge or
112 information, except from said bill, that said reissued letters patent denominated division A, and numbered 4143, were duly and pur- to law issued and granted to said Ingalls, nor whether said reissued letters patent had virtue and efficacy in law to pass any right, title, or interest of any kind or description whatsoever to said Ingalls, and, therefore, leaves complainant to make such proof or allegations in that behalf in said bill contained as he may be advised, and defendant reserves to himself the right to establish the contrary thereof; and on information and belief defendant denies that said Ingalls had any power or capacity, legal or equitable, to surrender the said alleged reissue of August 3d, 1869, and

that a valid surrender thereof was made, and that the Commissioner of Patents had any power or jurisdiction to reissue, as alleged, on the 4th day of October, 1870, the said alleged reissued letters patent of August 3d, 1869, on amended specifications, and that any valid reissue was made on the said 4th day of October, 1870; and defendant on information and belief charges and alleges the fact to be that the said alleged reissue, dated October 4th, 1870, was not regularly, properly, or lawfully issued, but was issued irregularly, improperly, and unlawfully, and under a misapprehension of fact, and that said reissue was and is null and void, and of no validity whatever; and defendant denies that the specification in the letters patent purported to be surrendered, as alleged, were defective or insufficient through any error arising from inadvertency, accident, or mistake; and defendant avers that said letters patent purported to be surrendered were not surrendered for the purpose of correcting any such error, and that said reissue, dated October 4th, 1870, was obtained by fraud on the part of him or her obtaining it, and was in a substantial part for entirely different and distinct alleged inventions and discoveries, and was therefore in every respect invalid, inoperative, and void.

113 And, further answering, defendant says that he has no knowledge, except from said bill, whether said Ingalls did, on or about the 4th of March, 1871, make a conditional assignment in trust to W. W. Secombe, as alleged in said bill at the 51st and immediately following folios thereof; and, therefore, defendant leaves complainant to make such proof thereof as he may be advised; but defendant alleges that such assignment, if executed, as alleged by complainant, did convey the legal title to the letters patent purported to be assigned absolutely and without condition to said W. W. Secombe individually; and defendant says that he has no knowledge or information, except from said bill, whether at the time of the alleged assignment to Secombe, he, the said Secombe, executed to said Ingalls a deed of trust, as alleged in said bill, at the 51st and 52d folios thereof; and defendant therefore leaves complainant to make such proof thereof as he may be advised; and defendant hereby demands an inspection of said alleged deed of trust, and defendant says that he has no knowledge or information, except from said bill, that said alleged conditional assignment to said Secombe has become void and of no effect in law and in equity; or that said Secombe wholly failed to keep and maintain the conditions and obligations alleged in said bill to have constituted a part of said alleged assignment by said Ingalls to said Secombe; and therefore defendant leaves complianant to make such proof of the allegations in that behalf as he may be advised.

And defendant further says, that he has no knowledge, except from said bill, that said Secombe did by deed of assignment, on or about the 10th day of July, 1873, assign, transfer, and reconvey to said Ingalls all the rights and interests which in said bill are alleged to have been vested in said Secombe by the alleged assignment to said Secombe from said Ingalls; or that, on the 10th of July aforesaid, said Secombe assigned, transferred, and reconveyed all his right, title, interest, claims, or demands to or under said letters patent of the 14th of April,

114 1863, and its reissues; or that said Secombe, being joined with the Secombe Manufacturing Company, so, as aforesaid, transferred, assigned, and reconveyed; and therefore defendant leaves complainant to make such proof thereof as he may be advised.

And defendant on information and belief avers, and charges the fact to be, that the alleged assignment by said Secombe, joined with the Se-

combe Manufacturing Company, set out at the 54th and 55th folios of said bill, was executed by said Secombe, if executed at all by him, as president of the Secombe Manufacturing Company, and not individually, and that it could not and did not operate, and could not have had, nor did have virtue and efficacy in law to divest said Secombe of any right or title whatever which was prior thereto vested in him individually.

And defendant further says, that he has no knowledge or information, except from said bill, that said Ingalls, on or about the 2d day of January, 1877, by assignment in writing, sold, assigned, and transferred, in trust, unto Christopher C. Campbell, the complainant herein, all her right, title, and interest in and to said alleged reissued letters patent, denominated division A, numbered 4143, and dated the 4th day of October, 1870; or that the said alleged assignment to said Campbell was in the words and figures, or recorded, as set forth in said bill; and therefore defendant leaves complainant to make such proof thereof as he may be advised, and defendant expressly alleges, on information and belief, that said Ingalls did not, on the 2d day of January, 1877, have any right, title, or interest in or to the alleged letters patent of April 14th, 1863, or to any valid issue thereof, and therefore said complainant was not, and is not, vested with any right, title, or interest in or to said alleged letters patent, or to any valid issue thereof; and therefore complainant is not entitled to maintain this action.

And further answering, defendant, on information and belief,
115 avers that by the said alleged assignment by said Ingalls to said Campbell no right or title to the said subject matter of said alleged original letters patent, or any reissue thereof, passed to said Campbell; and that the only right or title vested in said Campbell, by said alleged assignment—if any right or title did vest in said Campbell by any such instrument, which defendant, on information and belief, denies—was a right or title to choses in action, or claim against the United States, for past alleged infringments of said alleged letters patent and its reissues, or for the use of the alleged patented invention, and a right to make an arrangement or agreement with the United States, binding upon said Ingalls, with reference to a future use by said United States of alleged patented invention; wherefore, again defendant alleges that complainant has no right or title to maintain his bill of complaint against this defendant.

And said defendant says that he is informed and believes, and therefore charges the fact to be, that on the same day, to wit: on or about the 23d day of October, 1869, on or about which day it is alleged that said Norton assigned and conveyed to said Ingalls the said reissue of August 3d, 1869, said Norton executed an assignment and conveyance of a third interest in and to the alleged reissue of August 3d, 1869, and of his alleged claims based on the alleged patent of April 14th, 1863, and reissues, to one Charles Eddy, as trustee for said Eddy, Albert C. Corse, and Jacob Shavor, and that therefore said Ingalls could not and did not make a valid surrender of said alleged reissued letters patent of August 3d, 1869, and that the said alleged reissue of October 4th, 1870, is invalid and inoperative; and that by said alleged assignment to said Eddy, as trustee as aforesaid, the said Eddy became a co-tenant in law in and to whatever rights or interests, created by or arising under said patent of April 14th, 1863—if any rights or interests were so created, or so
arose, which, on information and belief, defendant denies—were
116 vested in the said Norton at the time of the alleged assignment by said Norton to said Ingalls; and said Eddy should consequently be made a party to this controversy, and defendant prays that he, said

Eddy, as trustee afore said, may be made a party herein prior to the final hearing and determination of this cause.

And further answering, with reference to the case of Shavor and Corse v. Hoole, in which it is alleged at the 21st, 22d, and 23d folios of said bill that the validity of the patent of April 14th, 1863, was established, defendant, on information and belief, says that the defendant in said case made default, and no evidence on his behalf was presented to the judge and jury; that the decision in said case was obtained by fraud and collusion, and that therefore the proceedings in said action are of no value, relevance, materiality, or validity whatever concerning any matter in this case.

And as to the allegations in said bill of complaint contained at or about the 24th, 25th, and 26th folios thereof, defendant, on information and belief, denies that the court of claims in the claim made by Shavor & Corse against the United States, decided that the said alledged patent of April 14th, 1863, was valid; but defendant alleges that said court dismissed the petition of said Shavor & Corse upon its merits; and that it was not necessary for said court to pass upon, nor did said court pass judicially upon the validity, novelty, and utility of said patent; and defendant avers further that the novelty, validity, and utility, and alleged infringement of said or any patent was not fully or fairly litigated in said cause.

And defendant further says, that he is informed and believes that if said complainant has any interest or right or title in or to the alleged reissued letters patent, No. 4143, and dated October 4th, 1870, and denominated division A—which defendant, on information and belief, denies—such right, title, or interest is not a sole and exclusive right,
117 title, or interest, and that there are other parties whom dedefendant is not, within the limited time allowed for this answer, able to designate with greater particularity; but defendant prays that he be permitted so to do at some future time during the progress of this cause, and by amended answer or other appropriate proceeding, who have an equally good title, right, or interest with said complainant, in or to said reissued letters patent, No. 4143, and who, in equity and good conscience, should be parties to this controversy; and defendant prays that they may be made parties before a final hearing and determination upon the question of the right of complainant to maintain this cause against defendant.

And further answering, defendant alleges, on information and belief, that each and all of the said alleged reissues of the said alleged letters patent of April 14th, 1863, so as alleged to have been granted to said Norton, is and are, even if the said letters patent, No. 38175, of April 14th, 1863, are valid—which on information and belief defendant denies—defective, insufficient, null and void, because among other reasons, they contain claims for material, new matter, and upon the several other grounds hereinbefore set forth, and for divers other reasons, which defendant proposes to establish in this cause.

And further answering, defendant, on information and belief, alleges that said Norton is not, and was not, the original and first inventer and discoverer of the alleged discovery, contrivance, and combination described in said letters patent, No. 38175, of April 14th, 1863, or of any material and substantial portion thereof; but on the contrary thereof defendant says that the alleged contrivance and device set forth in the letters patent of April 14th, 1863, was not novel or patentable, and is substantially described and anticipated in the following letters patent, dated and numbered respectively as indicated:

1. Patent to T. J. W. Robertson, dated September 22d, 1857, No. 18249.

118 2. Patent issued in England to Pearson Hall, September 15th, 1857, and dated March 25th, 1857, and No. 832.

3. Patent to M. P. Norton, December 16th, 1862, No. 37175.

4. Patent to F. G. Ransford and Peter Low, August 9th, 1859, No. 25036.

5. Patent to M. P. Norton and Charles Eddy & Co., January 14th, 1862, No. 34184.

6. Patent to B. Chambers, September 23d, 1851, and numbered 8384.

7. Patent to S. P. Ruggles, August 21st, 1855, and numbered 13470.

8. Patent to Emery N. Moore, January 16th, 1849, and numbered 6036.

9. Patent to Ezra Miller, March 22d, 1859, and numbered 23307.

10. English patent, issued in 1839, and numbered 8316, to David Morrison, of Finsbury, Middlesex County.

11. English patent, issued in 1857, and numbered 2563, to George Thomas Robinson, of Leamington Priors, Warwick County.

And that the said alleged contrivance and device was known to and used by or with the knowledge of the persons following, at the places indicated, prior to the alleged invention and discovery thereof by said Norton:

John A. Dix, of New York City, at New York City; C. C. Wheeler, of Cleveland, Ohio, at Cleveland, Ohio; James M. Burgess, of Janesville, Wis., at Janesville, Wis.; Isaac V. Fowler, at New York City; Ezra Miller, of New York City, at Janesville, Wis.; William
119 Taylor, at New York City; James Harper, of New York City, at New York City; Abram Wakeman, at New York City; John R. Hoole, of New York City, at New York City; Henry McCollon, of , at Oswego, Tioga Co., N. Y.; James Kelley, at New York City; Isaac McGay, of New York City, at New York City; Robert Rogers, of New York City, at New York City; Thomas H. Corbett, of New York City, at New York; Abraham C. Beardsley, of New York City, at New York City; William A. Clement, of New York City, at New York City; Charles Smith, of New York City, at New York City; Munson Clarke, of New York City, at New York City; John A. A. Post, of New York City, at New York City; James Gaylor, of New York City, at New York City; James Riley, of New York City, at New York City; Eugene G. Duane, of New York City, at New York City; Alfred Ryer, of New York City, at New York City; John Gallagher, of New York City, at New York City; Charles Forrester, of New York City, at New York City; Frank Evans, of New York City, at New York City; Joseph Dunton, of New York City, at New York City; John W. Brady, of New York City, at New York City; Thomas Theban, of New York City, at New York City; Michael Carberry, of New York City, at New York City; Joseph J. Button, of New York City, at New York City; Anthony Yeomans, of New York City, at New York City; Charles Forrester, jr., of New York City, at New York City; Amasa K. Hide, of New York City, at New York City; Orin Collin, of New York City, at New York City; John Powers, of Buffalo, at Buffalo, N. Y.; Israel T. Hatch, of Buffalo, at Buffalo, N. Y.; Henry Smith, of Buffalo, at Buffalo, N. Y.; E. Rogers, of North Adams, Mass., at the post-office in North Adams, Mass.; S. N. Anthony, of Geneva, New York, at the post-office in Geneva, N. Y.; Rebecca Wetherbee, of North Adams, Mass., at North Adams, Mass.

And defendant further says that he believes that there are other

120 persons who were acquainted with and used, or have knowledge of the use of said device and contrivance prior to the alleged discovery thereof by said Norton, and more than two years before said Norton's application for the letters patent of April 14th, 1863; and with reference to these persons, defendant begs leave to make such further proof to this court as he may be able to make before the final determination of this cause without prejudice, because of his present inability to denominate and describe said persons.

And defendant alleges that he has hitherto been unable within the limited time allowed for the preparation of this answer, to indicate the proofs with greater particularity; and therefore defendant prays leave of the court to amend and to supplement this his answer, in respect to the want of novelty of the contrivances alleged in the bill of complaint to have been patented or infringed, when the investigations now being made in defendant's behalf shall have been concluded.

And further answering, with reference to the caveat referred to in said bill at the 6th folio thereof, as duly filed in the Patent Office in 1853 and 1854, defendant alleges on information and belief, that the alleged caveat of 1853 is that on which the patent of August 9th, 1859, to F. G. Ransford and P. Leow is based, and that no caveat was written or filed by said Norton in 1854.

And defendant, further answering, says that he is informed and believes that the subject matters of the said alleged patent of April 14th, 1863, were publicly known and publicly used in this country more than two years before said Norton made an application for the patent of April 14th, 1863; and said Norton, if in truth he was the original and first inventor of said contrivance and device, had abandoned the same to the public prior to his application for a patent therefor, and the same was publicly manufactured, used, and sold prior thereto, with said Norton's consent and allowance; and that the said contrivance
121 and device was so publicly used more than two years before said Norton's application, by or with the knowledge of the persons hereinbefore indicated as having known and used said contrivance or device before the alleged invention thereof by said Norton and at the places severally indicated.

And further answering defendant says, that he is informed and believes that said Norton surreptitiously and unjustly obtained the letters patent of April 14th, 1863, for that which was in fact contrived and devised by divers other persons, and amongst them said John A. Dix, or by some one in his employ; by said John A. A. Post, and said John Powers, who were using reasonable diligence in adapting and perfecting the same.

And defendant further alleges on information and belief, that if there be any part of the subject matter of the alleged invention which purports to be described in the specification and drawings of the said letters patent of April 14th, 1863, of which said Norton was in fact the first inventor and discoverer—which on information and belief defendant denies—then such part was not of any utility or value, and defendant has not infringed the same; and defendant denies that he is now using, or has ever used any machine or device for the post marking of letters, and the cancellation of the postage stamps thereon, which is an infringement upon, or violation of any right secured, if any there be, to the said Norton by the said letters patent of April 14th, 1863, or to him or to his assignees by any of the reissues of said letters patent.

And defendant respectfully insists that in and by said bill he is charged and made a defendant solely as United States postmaster in

and for the city of New York, and in his official capacity, and not otherwise or individually, and that by the law of the land said officer is not answerable in his said official capacity to a suit in this court.

And defendant respectfully shows to the court that the several
122 acts set forth in said bill and therein alleged to constitute an infringement of said plaintiff's alleged patented rights, appear on the face of said bill to have been performed by said defendant in the regular course of his duty as an executive officer of the government of the United States, and that he is not liable to suit for actions done in that capacity.

And further answering defendant says, that he has never used any instrument or device for the postmarking of letters and the cancellation of the stamps thereon, either directly or by subordinates, for his own private advantage or purposes, and that any and all postmarking and cancelling devices which have ever been used by him, were so used as an officer and agent of the United States in his office of postmaster at the city of New York; and defendant alleges that all such use by him was with the consent, approbation and approval, and under the direction of the Postmaster-General of the United States; and that therefore he, defendant, is not liable to suit for such use, or to any judgment, order or decree of this court for his action in the premises.

And defendant further says, on information and belief, that the devices and contrivances which have been used at the post office in the city of New York for the postmarking of letters and the cancellation of the postage stamps thereon since about the year 1860, were so used with the knowledge, consent, license, approbation and allowance of said Norton, and of his alleged assignees; and that from the time that defendant became postmaster at the city of New York, down to the time when this suit was brought, no objection to the continuance of such use in the post-office at the city of New York was ever brought to the knowledge or notice of defendant, and that therefore there has never been, as to defendant, a revocation of the license aforesaid; and defendant alleges that until this suit was brought he has never received any notification
from or on behalf of complainant or any of his alleged assignors,
123 or on the part of Norton, or of any one claiming by, through, or under him, in respect to the use by defendant of such contrivances as have been used by the clerks in the New York post office for the post marking and cancelling of stamps.

And defendant avers that the allegations from folio 27 to folio 39 inclusive are irrelevant and immaterial to the said bill of complaint, and defendant prays that the same may be stricken out of said bill, and as to all the allegations in the said bill of complaint contained, not hereinbefore mentioned, defendant leaves the complainant to make such proof thereof as he may be advised.

And defendant says, that he is advised that by reason of his defenses, and particularly by reason of the defense that complainant has no title whereon to base his said bill of complaint, he is not bound to make other or further answer to said bill of complaint; and that as to all the matters and things by him alleged he is ready and willing to maintain and prove the same as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

STEWART L. WOODFORD,
United States Attorney, and Solicitor for Defendant.

STEWART L. WOODFORD,
Of Counsel.

124 SOUTHERN DISTRICT OF NEW YORK, *ss*:

On this twenty-third day of January, 1878, personally appeared before me, a United States commissioner, Thomas L. James, who being by me duly sworn, says that he has read the foregoing answer, and that the allegations therein contained are true of his own knowledge, except the allegations therein stated on information and belief, and that as to those he believes them to be true.

THOMAS L. JAMES.

Subscribed and sworn to before me this 23d day of January, A. D. 1878.

J. M. DEUEL,
U. S. Com. S. D. of N. Y.

125 In the circuit court of the United States of America, second circuit, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
vs.
THOMAS L. JAMES, DEFENDANT, AND UNITED States postmaster at the city of New York.

The replication of Christopher C. Campbell, complainant and assignee in trust in this cause to the amended answer of Thomas L. James, defendant, and United States postmaster at the city of New York, which amendments were sworn to by defendant on the 23d day of January, A. D. 1878, before J. M. Deuel, a United States commissioner, and filed in this court on this 24th day of January, A. D. 1878, by defendant's solicitor.

This replicant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said amendments to the said defendant's original answer, or amended answer so sworn to and filed in this cause, for replication thereunto, says, that he will aver, maintain, and prove his bill of complaint in this
126 cause to be true, certain, and sufficient in the law to be answered unto, and that the said amendments or amended answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this replicant without this, that any other matter or thing whatsoever in the said amendments or amended answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replicant avers, and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

Dated this 25th day of January, A. D. 1878.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

(Endorsed:) In the circuit court of the United States of America, second circuit, southern district of New York. In equity. Christopher C. Campbell, complainant and assignee in trust, vs. Thomas L. James, defendant and United States postmaster at the city of New York. Com-

plainant's replication to the amendments of defendant's original answer, or amended answer. Filed in this cause Jan. 24th, A. D. 1878. Marcus P. Norton, solicitor for complainant, Troy, N. Y. George H. Williams, of counsel for complainant, Washington, D. C. United States circuit court. Filed January 25th, 1878. John I. Davenport, clerk.

127 PLAINTIFF'S TESTIMONY.

128 In the circuit court of the United States of America, southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES, DEFENDANT AND UNITED States postmaster at the city of New York.

To the defendant, and to Stewart L. Woodford, United States attorney, solicitor for defendant, New York City:

GENTLEMEN: You and each of you will please to take notice, and due notice is now and hereby given to you and each of you, that on Saturday, the 8th day of December, A. D. 1877, at half-past ten o'clock, forenoon of that day, I shall commence the taking of the evidence and proofs on the part of, and in the behalf of the above-named complainant in this cause, and I shall continue the examination from day to day until the same shall have been completed.

You will further take due notice that the said evidence and proofs in this cause so to be taken on the part and behalf of the said complainant, will be so taken by and before John A. Shields, one of the standing examiners of this court, at his office in the new post-office and court-
129 house building of said United States, in the city of New York, and room No. 40 of said building, the same to commence on said 8th day of December, A. D. 1877, at 10.30 o'clock in the forenoon of that day, as aforesaid stated.

You will also take due notice that the said evidence and proofs so to be taken will be taken under and in pursuance to and with the 67th equity rule of this court and all amendments thereof. You will also please to take due notice that all evidence and proofs so taken will be duly filed in the office of the clerk of this court, and the same being so filed will be used at and upon the final hearing of this cause.

Dated this 5th day of December, A. D. 1877.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

Examiner's order.

An application having been made to the undersigned, one of the standing examiners of this court, by the complainant's solicitor, to take evidence and proofs in the aforesaid entitled cause, in pursuance to the above and foregoing notice of time and place for the taking of the testimony on the part and behalf of said complainant, as stated in said notice bearing date this 5th day of December, A. D. 1877:

It it now and hereby ordered that the examination of witnesses and the taking of documentary proofs, and the filing of exhibits, or other

evidence according to said notice, take place before me at the time and place designated in the said notice. You are requested to be present to attend the same for and on the part of said defendant, if you shall deem it best so to do.

Dated Dec. 5, 1877.

JOHN A. SHIELDS,
Examiner, etc.

130 *Subpœna duces tecum.*

The President of the United States of America to Thomas L. James, United States postmaster at the city of New York, greeting:

We command you that, all business and excuses being laid aside, you appear and attend before John A. Shields, one of the standing examiners of the circuit court of the United States of America in and for the southern district of New York, second circuit, on the tenth day of December, A. D. 1877, at 12 o'clock noon, to testify and give evidence in a certain action now pending undetermined in the circuit court of the United States for the southern district of New York, in equity, and between Christopher C. Campbell, complainant and assignee in trust, and Thomas L. James, defendant and United States postmaster at the city of New York, on the part of the complainant, and that you bring with you and produce at the time and place aforesaid certain letter-press books used by John A. Dix, postmaster at the said city of New York during the years A. D. 1860 and 1861; also certain other letter-press books used by Abram Wakeman, postmaster at said city of New York during the years A. D. 1862 and 1863, containing letters of correspondence with the Post-Office Department at the city of Washington, D. C.; also one original post-marking and postage-canceling hand-stamp of each and every form or kind used in the New York City post-office since and during the time you have been postmaster at said post-office, if now there and now in your custody, and all other deeds, evidences, and writings which you have in your custody or power concerning the premises. And for a failure to attend you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit two hundred and fifty dollars in addition thereto.

Witness Hon. Morrison R. Waite, Chief Justice of the United States, at the city of New York, the eighth day of December, 1877.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

131 Circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Testimony taken before John A. Shields, examiner, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended.

SATURDAY, *December* 8, 1877.

Present, Marcus P. Norton, esq., and George H. Williams, esq., counsel for complainant, and Samuel B. Clarke, esq., on the part of the defendant.

On motion of complainant's solicitor, it is ordered that the testimony of complainant's witnesses be taken down by question and answer.

Adjourned to December 10th, 1877, at 12 m.

NEW YORK, *December* 10*th*, 1877, 12 m.

Pursuant to adjournment.

Present, counsel as before.

THOMAS L. JAMES, Esq., a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

132 A. Thomas L. James; I am 46 years of age; I reside at 125 East 60th street, New York City, and I am postmaster at the city of New York.

Q. 2. Have you, in obedience to the subpœna served upon you, brought one original post-marking and postage-cancelling hand-stamp of each and every form or kind used in the New York City post-office since you have been postmaster?

A. I have not brought one of each kind.

Q. 3. Have you brought any; and, if so, what ones?

A. I have; those used in stamping, post-marking, cancelling city and distribution matters.

Q. 4. How many of them are there?

A. Two.

Q. 5. Will you produce them?

A. I will and do.

(Complainant files the two stamps produced, marked respectively Complainant's Exhibits A and B.—J. A. S., Ex'r.)

Cross-examined:

X Q. 6. Look at Exhibit A and state whether to your knowledge that stamp or stamps of the same pattern have been used in the post-office at any time.

A. To my knowledge, they have.

X Q. 7. At what time?

A. From the 1st April, 1873, to some time in the last of 1874.

X Q. 8. You say that stamps of the same pattern have been used; by saying pattern, do you mean identically the same?

A. I do.

Redirect:

R. D. Q. 9. Are you the defendant in this case?

A. I am, as postmaster.

THOMAS L. JAMES.

Subscribed and sworn to before me, this December 10th, 1877.

JOHN A. SHIELDS,
Examiner, &c.

133 ANTHONY YEOMAN, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Anthony Yeoman; I am 45 years of age; I reside at 112 Sullivan street; and I am general superintendent of the third division, New York City post-office.

Q. 2. How long have you been engaged in the New York City post-office?

A. About 24 years.

Q. 3. Have you been connected in any way with the business of stamping letters in said post-office during said time; and, if so, in what way and how long?

A. I was a stamper 4 or 5 years, and the remaining portion of the time I have been connected with stamping letters one way or another up to the present time.

Q. 4. State the different official positions that you have occupied in connection with the stamping division.

A. First, I was a stamper; next, I made up mails on the table where the letters were mailed with these cancelled stamps; the next, I had charge of bagging what was called the Great South Mail at that time, which contained the letters; the next I was appointed assistant superintendent of that department; then I was made superintendent; then the letter department and the newspaper department were combined together and I was made general superintendent of the division which I now occupy.

Q. 5. Look upon Complainant's Exhibit A and state if you know whether that or similar stamps have been used in the New York City post-office since Mr. James became postmaster; and, if so, for what purpose, and how long?

(Objected to on the ground that the question is too broad, since it should be limited to the time since the alleged assignment by Helen M. Ingalls to the complainant herein, and since what stamp was used prior to that assignment is immaterial and irrelevant matter for this issue.)

134 A. I do know; it was for the purposes to put the post-mark on the letter and cancel the stamp at one blow. It was used up to January, 1876.

Q. 6. Observe the recess in the post-marking part of the stamp and state if, when it is used, there is anything in it, and if so, what.

A. There is type placed in it for months, days, and hours.

Q. 7. While this form of the stamp was in use, state of what materials the cancelling part of the stamp was made.

(Objected to on the ground of immateriality.)

A. During the time stated there there were two different materials used. First there was the common cork, and the next was rubber used for corks for bottles.

Q. 8. State what you mean by saying rubber used for corks for bottles.

A. I mean articles that were made for bottle-stoppers, of rubber.

Q. 9. State if all, or if not all, how much of the post-marking and stamp-cancelling was done by means of this kind of stamp while it was in use as above stated.

(Objected to as irrelevant.)

A. I should judge about half.

Q. 10. How was the other half marked and stamps cancelled?

(Same objection.)

A. They were cancelled with a plain cork; some with rubber, and some with cork and no postmarks at all.

Q. 11. State if any of the letters stamped in the New York post-office during said time were stamped and marked otherwise than by this kind of a stamp. I do not mean circulars, but ordinary letters.

(Same objection.)

A. No; they were not.

135 Q. 12. Were the letters marked and the postage-stamp can-

celled during the time referred to by means of this kind of a stamp—referring to Exhibit A?

(Same objection.)

A. They were during that time, until January, 1876, about.

Q. 13. Look upon Complainant's Exhibit B and state what you know about the use of that in the New York City post-office since Mr. James has been postmaster, and for what purpose.

(Same objection.)

A. It was used, and for the same purpose that the other was used.

Q. 14. State about what time its use was commenced in the New York post-office.

(Same objection.)

A. About January, 1876.

Q. 15. What post-marking and stamp-cancelling instrument is now used in the New York City post-office?

A. One substantially the same as Exhibit B.

Cross-examined:

X Q. 16. In speaking of Exhibit A you said that all letters were post-marked and the stamps thereon cancelled were post-marked and cancelled by that sort of instrument. Do you mean that foreign letters were so cancelled and post-marked?

A. No; I don't mean foreign letters.

X Q. 17. Your remarks were confined then to the division in which domestic letters only were dealt with?

A. Yes, sir.

X Q. 18. Look at Exhibit B and state for what reason that sort of instrument was substituted for what had been used before.

A. It gives a better impression; the type is placed in the back, instead of the old way of putting in the front, and held in with a finger screw.

136 X Q. 19. Point out the principal differences as they occur to you between the sort of instrument which Exhibit B represents and the sort of instrument that was used before.

(Objected to because the witness is not called, nor does he appear to be an expert as to patents and patented inventions.)

A. In the first place the type are made with a shoulder, on being screwed into a cup, comes perfectly flush, and must fetch the type level with the rest portion of the stamp.

X Q. 20. You mean, do you, so that the types by which the dates are made come flush with the type by which the name of the place (New York in this exhibit) is post-marked?

A. I do.

X Q. 21. Do you know where this stamp, Exh. B, or that sort of a stamp was first made; was it not first made in England?

(Objected to, unless the witness can state of his personal knowledge, and also because it is leading.)

A. To the best of my knowledge and belief it was first made in England; not this same stamp, but similar ones.

Redirect:

X Q. 22. Do you make your last answer upon what you have heard, or do you know of your personal knowledge where stamps like Exh. B were first made?

A. I know that there was a stamp brought from England by an employee of the New York post-office, and copied or manufactured from it by a party in New York.

X Q. 23. Do you know that that employee brought that stamp from England otherwise than by his telling you so?

137 A. I do not, with the exception that it was corroborated by another employee who came over from England at the same time.

X Q. 24. When was the stamp referred to in the above question and answer brought into the New York post-office?

A. I can't tell you the dates.

X Q. 25. Was it brought within the last five years, and since Mr. James was postmaster?

A. Yes, sir.

ANTHONY YEOMAN.

Subscribed and sworn to before me this December 10th, 1877.

JOHN A. SHIELDS,
Examiner, &c.

DWIGHT A. LAWRENCE, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Dwight A. Lawrence. I am 34 years of age. I reside at 127 West 20th street. I am superintendent of foreign department, New York City post-office.

Q. 2. How long have you been connected with that department?

A. Since the fall of 1876, I think.

Q. 3. Are you acquainted with the business of post-marking and postage-stamp cancelling of foreign letters in the New York City post-office, and if so, how long?

A. I have had a general knowledge ever since I have been in the office; a positive knowledge since having charge of the department.

Q. 4. Do you know what post-marking and stamp-cancelling instrument has been used for letters in that department since Mr. James has been postmaster?

A. Only for the past year and a quarter I have positive knowledge.

Q. 5. What sort of a stamp has been used there since you had positive knowledge?

138 (Objected to on the ground that the inquiry should be confined to the time since the alleged assignment by Ingalls to complainant.)

A. The department has used instruments like complainant's Exhibits A and B, with the exception, in Exhibit B, the grooves on the cancelling portion of the stamp run in directions opposite to what they do in Exhibit B, and we do not use the hour type like they do in the distribution.

DWIGHT A. LAWRENCE.

Subscribed and sworn to before me this 11th day of December, 1877.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Tuesday, December 11th, 1877, at 12 o'clock m.

NEW YORK, *December 11th*, 1877—12 o'clock m.

Pursuant to adjournment.

Present, counsel as before.

Complainant offers in evidence and files as his Exhibit C a certified

copy of the caveat of Marcus P. Norton, and referred to and described at folios 6 and 7, on page 2 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit C.—J. A. S., ex'r.

(Objected to on the distinct and separate grounds:

1st. That the certificate which is to the effect "that the annexed is a true copy from the files of this office" is not a form of certificate authorized by law.

2d. Because the stamp and the ribbon bear apparent marks of having been disturbed, and the disturbance is not explained.

139 3d. Because the document contains a paper, to wit, the paper at the end thereof, just before the contents, which is signed by Marcus P. Norton, and dated Tinmouth, Vermont, August 7, 1854, which paper is not countersigned or endorsed as having been filed or recorded at any time in the Patent Office. And

4th. The paper referred to under the 3d ground of objection above is specially objected to for the reason stated, and also because the dates of said paper being compared with the date of filing the caveat of 1853, preceding it in the document, shows that said paper is not and was not a part of said caveat of 1853, and because it purports to be an amendment or addition to said caveat of 1853, and because no authority in law is or was given to the Commissioner of Patents, or to any officer connected with the Patent Office, to receive and file or record an amendment or addition to a caveat, and because

Lastly and separately, it does not appear when said paper was written or filed, if, in fact, it was filed.)

Complainant offers in evidence and files a certified copy of the original patent, issued to Marcus P. Norton, dated April 14, 1863, No. 38175, and referred to in folios 7, 8, and 9, and on pages 2 and 3 of complainant's amended bill of complaint, marked Complainant's Exhibit D.—J. A. S., ex'r.

(Objected to upon the ground that the original patent itself is a muniment of complainant's title and presumably under his control, and it should be produced or its absence explained before any copy is admissible.)

Complainant offers in evidence and files a certified copy of the assignment by Marcus P. Norton to Jacob Shavor and Albert C. Corse,

140 dated the 20th day of April, 1863, and referred to in folios 17 and 18, on page 5 of complainant's amended bill of complaint, and marked Complainant's Exhibit E.—J. A. S., ex'r.

(Objected to on the ground above stated as the objection to Exhibit D, and also separately because the original should not only be produced, but its execution and validity proved before a copy is admissible in evidence, and also separately because it is irrelevant to the allegation in the bill, which calls for an assignment in trust.)

Complainant offers in evidence and files a certified copy of the reissue of letters patent, granted Shavor and Corse, dated August 23, 1864, No. 1748, and referred to in folios 18, 19, and 20, on pages 5 and 6 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit F.—J. A. S., ex'r.

(Objected to on the ground stated as the objection to Exhibit D.)

Complainant offers in evidence and files a certified copy of an affidavit and assignment, signed by Jacob Shavor and Albert C. Corse, to Marcus P. Norton, and dated February 23, 1864, and referred to at folios 40, 41, and 42, on page 11 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit G.—J. A. S., ex'r.

(Objected to on the ground stated as the objection to Exhibit D, and

also separately because the original should not only be produced, but its execution and validity proved before a copy is admissible in evidence, and also separately because there is no authority in law for the filing or recording an affidavit such as said Exhibit G pur-
141 ports to be a copy of, and also separately because it is not proved or acknowledged in such form as to entitle it to be filed or recorded in the Patent Office as an assignment; and also separately because it does not appear by whom such alleged assignment and affidavit were filed, or that the persons by whom they were filed were duly authorized to file the same.)

Complainant offers in evidence and files a certified copy of the reissue letters patent to Marcus P. Norton, dated August 3, 1869, No. 3586, and referred to at folios 42, 43, and 44, on pages 11 and 12 of complainant's amended bill of complaint, and marked Complainant's Exhibit H.—J. A. S., ex'r.

(Objected to on the ground stated as the objection to Exhibit D.)

Complainant offers in evidence and files a certified copy of an assignment by Marcus P. Norton to Helen M. Ingalls, dated on or about October 23, 1869, and referred to at folios 45, 46, on page 12 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit I.—J. A. S., ex'r.

(Objected to on the separate grounds stated as the objections to Exhibit D, and to Exhibit E with the exception of the last objection to Exhibit E, and also separately because it is irrelevant to the allegation in the bill, which calls for an assignment on October 20, 1869, while this assignment purports to be an assignment made on October 23d.)

Complainant offers in evidence and files a certified copy of the reissue of letters patent granted Helen M. Ingalls, dated October 4, 1870,
142 No. 4143, Division A, and referred to at folios 47, 48, 49, 50, and 51, on pages 12 and 13 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit K.—J. A. S., ex'r.

(Objected to on the ground stated as the objection to Exhibit D.)

Complainant offers in evidence and files a certified copy of an assignment by Helen M. Ingalls to William W. Secombe, dated March 4, 1871, and referred to at folios 51, 52, 53, 54, and 55, on pages 13 and 14 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit L.—J. A. S., ex'r.

(Objected to on the separate ground stated as the objection to Exhibit D and to Exhibit E, except the last objection to Exhibit E, and also separately because the alleged assignment does not appear to have been so acknowledged and proved as to entitle it to be filed or recorded as an assignment.)

Complainant offers in evidence and files the reissue of letters patent granted Secombe Manufacturing Company, dated October 4, 1870, No. 4144, division B, and referred to at folios 48, 49, 50, and 51, on page 13 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit M.—J. A. S., ex'r.

Complainant offers in evidence and files a certified copy of an assignment by the Secombe Manufacturing Company, and W. W. Secombe to Helen M. Ingalls, dated July 10, 1873, and referred to at folios 54 and 55, page 14 of complainant's amended bill of complaint, and marked Complainant's Exhibit N.—J. A. S., ex'r.

143 (Objected to on the separate grounds stated as the objections to Exhibit D, and to Exhibit E, except the last objection to Exhibit E, and also because said Exhibit N, purporting to be an assignment by W. W. Secombe, president of the Secombe Manufacturing

Company, is irrelevant to the allegation in the bill, which calls for an absolute assignment to said Secombe.)

Complainant offers in evidence the copy of the assignment by Helen M. Ingalls to Christopher C. Campbell, the complainant in this case, dated January 2d, 1877, recorded March 23, 1877, which is set out verbatim in complainant's amended bill of complaint at folios 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80, on pages 15, 16, 17, 18, 19, 20, and 21 of said amended bill of complaint.

Defendant's counsel consents to treat the copy offered as though it was certified as the other copies of assignments heretofore offered are certified, and objects to its admission in evidence on the ground stated as the objection to the admission of Exhibit D, and of Exhibit E, except the last objection to Exhibit E.

Complainant offers in evidence and files report of the Committee on Post-Office and Post-Roads of the House of Representatives, No. 98, 1st session of the 39th Congress, referred to in folios 26, 27, and 28, on pages 7 and 8 of complainant's bill of complaint, marked Complainant's Exhibit O.—J. A. S., ex'r.

(Objected to on the ground that it is immaterial, and on the separate ground that the authenticity and genuineness of said Exhibit O is not proved.)

Complainant offers in evidence and files report of the Committee on Post-Offices and Post-Roads of the Senate of the United
144 States, No. 164, 2d session of the 39th Congress, referred to in folios 29 and 30, on page 8 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit P.—J. A. S., ex'r.

(Objected to on the grounds stated as the objection to the admission of the objection to Exhibit O.)

Complainant offers in evidence and files report of the Committee on Post-Offices and Post-Roads of the Senate of the United States, No. 243, 2d session 41st Congress, referred to at folios 31, 32, and 34, on pages 8 and 9 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit Q.—J. A. S., ex'r.

(Same objection as to Exhibit O.)

Complainant offers and files copy of the joint resolution of Congress approved July 14, 1870, and referred to at folios 33, 34, and 35, on page 9 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit R.—J. A. S., ex'r.

(The same objection as last above stated.)

Complainant offers in evidence and files Executive Document No. 49, 3d session, 41st Congress, letter of the Postmaster-General, referred to at folios 34 and 35, on page 9 of complainant's amended bill of complaint, and the same is marked Complainant's Exhibit S.—J. A. S., ex'r.

(Same objection.)

Complainant offers in evidence and files report of the Committee of Post-Offices and Post-Roads of the Senate of the United States, No. 186, 2d session of the 42d Congress, and referred to at folios
145 35 and 36, on pages 9 and 10 of the complainant's amended bill of complaint, and marked Complainant's Exhibit T.—J. A. S., ex'r.

(The same objection.)

Adjourned to Wednesday, Dec. 12th, 1877, at 2 p. m.

NEW YORK, *December 12th*, 1877—2 o'clock p. m.

Pursuant to adjournment.

Present, counsel as before.

ANTHONY YEOMAN recalled:

Q. 26. Look upon Complainant's Exhibit No. 1, and state if you know what it is.

A. It is an impression taken under my supervision of a stamp similar to Complainant's Exhibit A.

Q. 27. Look upon complainant's Exhibit No. 2, and state what that is, if you know.

A. It is an impression of a stamp taken under my supervision similar to Exhibit B.

Q. 28. Look upon Exhibit No. 3 and state, if you know, what that is.

A. It is an impression of a stamp used in the foreign department of the New York City post-office, taken by myself.

Q. 29. You stated that the cancelling part of stamps like Exhibit No. 1 was made of cork and rubber; state how the cork was fastened on to the bar, when cork was used.

A. The same as the rubber on Exhibit A.

Q. 30. State under whose direction and authority the business of the New York City post office, including the business of stamping, is conducted.

A. Thomas L. James.

146 Q. 31. State about how many clerks in the New York City post-office are engaged in or connected with the business of stamping foreign and domestic letters.

A. I should judge about forty; not including the stations in the city.

Q. 32. State how many stations there are in the city.

A. About nineteen.

Q. 33. State if letters are post marked and stamps cancelled in the same way that they are in the city post-office.

A. They are; sometimes they send some down to the general post-office without being cancelled. That is when they are short of help.

Cross examined:

X Q. 34. Look at Exhibit No. 1. I notice that the impression is rather indistinct; what is the reason of that?

A. The impression was made from an old and worn out stamp.

X Q. 35. Look at the impression, Exhibit No. 3. I notice that the impression is somewhat blurred; what is the reason of that?

A. I did that myself, not being an expert stamper. To-day I acknowledge that my men can do it better.

(Witness withdraws the old impression of the foreign stamp and produces a new impression, which is marked Complainant's Exhibit No. 3.)

X Q. 36. I understand you to say that the business of the New York City post-office, including the business of stamping, is done under the direction and authority of Mr. James; you mean, do you not, that the business is done by Mr. James as postmaster, and as deputy of the Postmaster-General of the United States, who has general supervision and direction of the business of the office, and that the special business of stamping letters in the office is done under your own direction?

(Objected to as immaterial.)

A. Yes.

147 Redirect:

R. D. Q. 37. Are you not subject to the directions of Mr. James, the defendant, in the performance of your official duties?

A. I am.

Recross:

R. X Q. 38. Is not Mr. James subject to the direction of the Postmaster-General in the performance of his official duties?

(Objected to as immaterial.)

A. He is.

ANTHONY YEOMAN.

Subscribed and sworn to before me, this 12th day of December, 1877.

JOHN A. SHIELDS,
Examiner, &c.

SAMUEL P. KITTLE, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Samuel P. Kittle. I am 52 years of age. I reside in New York City, and I am a manufacturer and dealer in spring mattresses, bedding, &c.

Q. 2. State if you have been engaged more or less in any other business than that above specified; and, if so, what?

A. My life since boyhood has been given to mechanical pursuits, practically and theoretically. I have been frequently called upon during the last past 25 years to examine mechanical constructions and printed descriptions of machines and mechanical devices, and to read American and foreign patents and to examine machinery in motion and at rest, to inform myself as regards mechanical combinations, modifications, similarities and differences of different constructions more
148 or less alike, for the purpose of giving an intelligent opinion to parties interested, or for the guidance of the court.

Q. 3. Have you ever before been a witness in a case involving the validity or infringement of patented inventions; if so, in what capacity were you called, and have you so testified few or many times?

A. I have been frequently called as a mechanical expert in the United States courts in different districts, to give my views as a mechanical expert where questions of similarity or difference existed, to determine the question of infringement of patents. I have also been called for the same purpose in cases in interference in the Patent Office. I think I have also given my testimony in regard to the Norton patent for cancelling and stamping before the Court of Claims, if I mistake not.

Q. 4. Do you consider yourself qualified as an expert to express an opinion as to whether or not a machine or an instrument is, or is not, within the description and claims of a patent?

A. I certainly think I am qualified to give an opinion of the kind referred to in the question, and should be surprised at this late day if it had no weight.

Q. 5. State if you have read the patent—a certified copy of letters patent—granted Helen M. Ingalls, dated October 4, 1870, No. 4143, marked as Exhibit K, in this case, a copy of which is attached to the bill of complaint.

A. I have.

Q. 6. Take and examine Complainant's Exhibit A, and state whether or not it is a device or instrument embraced within the description and claims of said letters patent, marked Complainant's Exhibit K.

(Objected to as irrelevant and immaterial.)

A. I think it is.

Q. 7. Take and examine Complainant's Exhibit B, and state whether or not that is within the description and claims of said letters pat-
149 ent, marked Complainant's Exhibit K, and give the reasons for your opinion.

A. I think it is described in the patent referred to, and covered in the claims thereof. The invention set out in the patent Exhibit K is very clearly illustrated in the drawing, and the description is more than usually full in the words of the specification, and the specification of claim very clear. The Exhibit B seems to me to be fully specified in the 4th or last claim. I think the illustrations, figures 5 and 6, answer very well as descriptions of this invention in view of the fact. I do not mean to be understood, however, as stating that the instrument Exhibit B is absolutely delineated in the figures referred to of the drawings of Exhibit K. However, figure 5 of Exhibit K, which is a vertical section cutting the instruments through the centre, together with the part or screw pin which is to secure the handle, clearly shows a top plate, B, which carries the handle and a solid die, G, which is screwed on to such top plate B. The fact that the top plate in Exhibit B is thicker than the top plate illustrated in figure five, Exhibit K, can certainly be regarded as nothing more than a mechanical difference, nor can the fact that the die G is screwed into said plate B, and is separate in its lower extremity from the type receiving date thimble or die, be regarded as anything more than a colorable or a mechanical change in view of the words of the claim 4 of the patent Exhibit K, which I quote: "The employment and combination of a post-marking device with a postage-stamp cancelling device, both being operated by one and the same handle, for the post-marking of letters, envelopes, or packets, and for the cancellation of the postage stamp thereon with indellible or other ink, in the manner substantially as herein described and set forth," and for the further reason of the words of the specification which I find in the printed record of this case at page 40, describing the said invention in the words of the patent Exhibit K, in the last paragraph on the said page I quote,

"I also construct my said postage-stamp cancelling device, die,
150 or type, of cast iron, steel, or other suitable metal, substantially as shown at G′, figures 5 and 6, and which may be secured to the said cross-bar or piece B in like manner as said tube or cylinder C, figures 2 and 4, and which is done either by screw and nut where the same unites with the said cross-bar, or may there be firmly fastened by means of suitably constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece B, or otherwise attached thereto."

The fact that the cancelling face and the date die, with the exception of the removal of the letters or figures, are in one piece on their face with Exhibit B, I do not regard as a material or substantial alteration or change in the construction of the instrument described in Exhibit K; neither do I think that the employment of the circular plate with a thread on the inner surface correspond to the screw part of the dies, Exhibit B, instead of the two screws illustrated in figure 5, patent Exhibit K, as anything more than a mechanical change, for really when these parts are in place and screwed up to the plate which carries the handle, it becomes one solid instrument, and the division is mainly in the depth of the line between the cancelling die and the post-office date die, so that in Exhibit B I find the combination of the parts in the 4th specification of claim, for the purposes, and in the manner therein sub-

stantially set forth, operating the same way and producing the same result.

Q. 8. Referring to the description contained in folio 161, on page 41, of the amended bill, state if that includes an instrument of a circular form or of a form dispensing with the cross-bar.

A. It seems to indicate that the two parts are to be made together; it may be circular, or there may be two partly cylindrical parts substantially solid and as one; in either case the bar B would not be requisite, the handle-pin might immediately run off from these dies.

Adjourned to Thursday, December 13, at 1 p. m.

151 NEW YORK, *December 13th*, 1877—1 o'clock p. m.

Pursuant to adjournment.

Present, counsel as before.

Examination of SAMUEL P. KITTLE continued:

Q. 9. Please to read claim No. 3, in Exhibit K, and state the difference between that claim and claim No. 4, and whether or not Complainant's Exhibit A and B are within said claim No. 3, and the reasons for your opinion.

(Objected to, so far as regards Exhibit A, on the ground of irrelevancy and immateriality.)

A. Claim No. 3 reads as follows. I quote: "The post marking of letters, envelopes, and packets, and the cancellation of the postage stamps thereon with ink, at one and the same blow or operation of the instrument, in the manner and by the means substantially as herein described and set forth." The claim quoted is for the operation of the combined post-marking and postage-stamp cancelling contrivance or device, as set forth and illustrated in the specifications of the patent Exhibit K, in actual use, having been inked and impressed upon an envelope, packet, or other mail matter for the purpose of giving the post-office mark or imprint, and at the same time cancelling the postage stamp in such a manner as to prevent the second use of the stamp, having imparted any ink to the postage-stamp and the letter, envelope, or packet which would successfully accomplish that end, and the same being accomplished by the application of the face or faces of the die in such relations to each other and so combined in the handle for operating both, as that by a single blow or application the post-office address is imprinted and the postage stamp is cancelled in the manner described, that is to say, in brief, having an instrument consisting of a handle to hold it by, and a cancelling die adapted to receive and impart
152 ink, and also a die with letters to imprint the post-office mark and date, adapted to receive and impart ink, so combined with each other as to be capable of operating together, and, being operated together, the accomplishment of the print with the post-office mark and the cancelling of the postage stamp at one and the same time, in the hand of the operator.

The 4th claim of the patent Complainant's Exhibit K, reads as follows. I quote: "The employment and combination of the post-marking device with a postage-stamp cancelling device, both being operated by one and the same handle, for the post-marking of letters, envelopes, or packets, and for the cancellation of the postage stamps thereon with indelible or other ink." It seems to me clear that while the claim No. 3 is for the mode of operation or the process of cancelling and printing as before described, the 4th claim is as clearly for a combination of the

parts and elements of the device, contrivance or thing by which the work is done, and without which it could not be done. The device or thing, Exhibit A, is such a construction as is referred to employed in accomplishing the work specified in claim No. 3, Complainant's Exhibit K. Complainant's Exhibit A had not the type giving the date in the post-office die, but has the place or space for it, and the means of securing the same property, for the purpose of receiving the ink and imparting the date. The cancelling die is of rubber, and pretty thoroughly used up by past service. This cancelling die is secured to the cross-bar by an ordinary screw through the bar into it, while the post-office die seems to be soldered (I should think) to the cross-bar by which they are connected to and with each other and through which the handle is connected to them. The fact that this India rubber stamp cancelling die is not enclosed in a thimble or ring, or is not made of wood used endwise, or any of the other materials spoken of in the exhibit Complainant's Exhibit K, is of no consequence, more than mechanical change or modification indeed the construction of the instrument is substantially the same as de-
153 scribed and illustrated in the Complainant's Patent Exhibit K, and the purpose, and the mode of operation, and the results are all the same as that set out in the claim of specification No. 3, while the modification and deficiencies which I have referred to are not material, as the type could be easily placed in the printing die, and the defective cancelling die could be easily substituted for a new one, as is plainly directed, in the words of the patent, Complainant's Exhibit K, from which I quote, see printed record page 39 of the amended bill, last paragraph. "The said cancelling type or die can be easily repaired, or replaced by a new one, whenever desired, and at very little expense, and such cancelling die or type G may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt; in such case there would not be any tube or pipe surrounding said cancelling die or type G; the operation and effect produced would in such case of construction be the same." As to the complainant's Exhibit B, and its operation for the purposes and in the manner specified in the 3d claim of the patent Complainant's Exhibit K, I would state that the two die pieces specified in the patent referred to are here made of one piece of metal and which is so cut away as to leave the impressing or acting faces so that they will produce substantially the same appearance as would the die illustrated and described in the patent, Complainant's Exhibit K, and it strongly resembles the illustration in said patent figure 3, the acting faces of the combined dies, Complainant's Exhibit B, are screwed on to a circular plate, which supports the handle, and the type in the post-office marking die are inserted from the back, and secured by the dies being screwed down under the circular handle plate or bar. I say circular plate or bar, because this is a modified construction in some respects of the Norton invention, the circular cup-like plate with a thread on the inner periphery or ledge would accomplish the same purpose were its opposite sides cut away to a considerable extent; or the same result might be accomplished were the metal forming the dies made with an upward projecting rim, and the
154 plate had a thread on the outside and the die on the inside; all these changes are merely mechanical, and are common with constructors, therefore I give them little or no importance; they certainly do not constitute substantially alterations or differences. To be sure it does not seem proper to call a circular plate a bar, nevertheless when it performs the office of a bar, for a given purpose, it becomes a mechanical equivalent for the same. Looking at the Exhibit B, in the

above light and in the light of the illustration, specification, and described modifications in the Patent Exhibit K, I am decidedly of the opinion that said exhibit in its use and operation, and in the hand of the operator is substantially the same in its purpose, in its combination, its operation, and in its results of operation; in other words it is intended for the same thing, it is the same thing, it operates in the same way, and may be used by the same hand and must produce the same result, and is clearly within the 3d claim specification.

Q. 10. State whether or not the description in Exhibit K of the postage-stamp cancelling device mentions rubber as one of the materials out of which that device can be made.

A. Certainly it does.

Q. 11. Take and examine complainant's exhibit marked U, and state whether or not it is an instrument or device within the specifications and claims of Complainant's Exhibit K.

A. It is clearly; see figures 1 and 2.

(Complainant's counsel now offers the same as Exhibit U, and it is marked Complainant's Exhibit U.—J. A. S., ex'r.)

Q. 12. Take and examine Complainant's Exhibit V, and state whether or not it is within the specifications and claims of Complainant's Exhibit K, and state briefly the difference between Exhibits U and V, if there be any.

A. I think it is within the said specifications and claims, and the difference between U and V is found substantially in the difference as
155 illustrated in the drawing of said patent, to wit: Exhibit is such a modification of U as is found illustrated in Figures 5 and 6 of the drawings, Complainant's Exhibit K; that is to say, the cancelling die is of metal, instead of cork, rubber or wood. The figure 6 represents the face view of figure 5, and differs from the face view of Complainant's Exhibit V in that the bars run across in an illeptical form instead of round or in a circle; of course such differences are merely colorable.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit V.—J. A. S., ex'r.)

Q. 13. Look upon Exhibit W, and state whether or not it is within the specifications and claims of Exhibit K, and briefly the difference, if any, between it and Exhibit U.

A. It is clearly within the specifications and claims referred to. The difference between the Exhibit U and W is wholly formal or mechanical, and not material or substantial, and exists in the form of the bar B, and the depth of the die or the distance of removal of the acting faces, form the bar B; the bar B is an elongated bar in Exhibit U, and a circular plate in Exhibit W; they are both the connecting device between the acting face and the operating handle, and between the two operating faces; I mean the cancelling die and the post-office or dating faces. In the Exhibit W, India rubber is used, while in Exhibit U, cork is used for the postage-stamp cancelling, print, or face. The face view of Exhibit W will be found fairly illustrated in figure 3 of the drawings of Complainant's Exhibit K; however, the circular form has reference there to the handle.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit W.—J. A. S., ex'r.)

Cross-examined:

X Q. 14. In your answer to the last question of Judge Williams,
156 you say that the circular form in figure 3 of Comp'ainant's Ex-

hibit K has reference there to the handle; please explain what ou mean by that.

A. I mean the circular line nearly enclosing the two faces indicates the diameter of the bulb or knob of the handle, but might easily be received as a suggestion for a circular plate instead of a bar.

X Q. 15. You do not see, do you, any indication or hint in the figures and drawings of Complainant's Exhibit K of a cross-bar in a circular or elliptical form?

A. Why, yes; the bar B, all the way through, comes near being an elliptical form, if it was slightly widened; and if it was widened further it would become circular.

X Q. 16. Do you mean by that answer that the figures suggest to your mind a cross-bar in a circular form?

A. The figures of themselves, I think, are suggestive of circular, elliptic, or any convenient form. The cross bars in the different figures are not alike, and therefore the suggestion is that they may be modified, if there is any suggestion necessary; I do not think these variations in form of a cross-bar, as indicated in the face views, figures 6 and 3, for instance, wherein the case of figure 6, the end of the bar B on which the die G is secured, is evidently smaller than the opposite end on which the type or die D is secured, which is not the case in figure 3; the drawings evidently were not made with the above variation for the purpose of special suggesting any definite and fixed line of modification or form.

X Q. 17. If you were going to construct a model according to any figures in the drawings annexed to Exhibit K, exactly according to the pattern of any one of those figures, would you make the cross-bar of such model in a circular form?

A. No.

X Q. 18. Would you make it in an elliptical form?

A. No; I would make it exactly as the lines represent, if I was going to make an exact form.

X Q. 19. What do the lines represent in each figure?

A. A flat bar with a downward projecting rim, in figures 1 and
157 2; the face or under side of a bar, circular ends, slightly narrowed centre, in 3 and 6; 5 is a vertical section of the bar in other parts very similar in form to that seen in figure 2; I would state, however, that in figure 5 there seems to be a sunken circular portion in which there is a screw thread running round on the inner periphery of such sunken portion at each end of the bar, on the under side of same, which I do not find in figure 2.

X Q. 20. What does that difference indicate that you refer to between figures 2 and 5?

A. A modification of construction that would become desirable in case of using solid or metal dies. I think if there is any importance as there seems to be, connected with these slight modifications in the mind of the counsel, it may be due that I should say that I regard the form or shape of any part or parts of little or no consequence, so long as that form or shape is not subversive of the purpose, or of the combination, or the operation, or the result, but any form or size of any of the parts that in any way contribute to the economy or convenience of producing the same combination, application and result is admissible, and I may say desirable, or even the adding of beauty of finish or elegance thereby would be admissible and probably desirable.

X Q. 21. You have used the term die frequently in your testimony; precisely what meaning do you attach to it?

A. I mean the thing that is connected to the cross bar, and that im-

parts the imprint of post-office and date and cancellation, whether it be in one or two distinct instruments, but generally I have meant the combined instrument having the last named pieces, and excluding the handle and cross bar; the die or dies being attached or secured to such cross bar; the die proper being the thing that bears the type or configuration in or on its face, even including the lettering in part or whole, for the purpose of giving the post-office mark and the cancelling mark, that is to say, the thing that speaks on the postage stamp, and on the
158 envelope, and informs the mind where the envelope is from, and of the fact that the stamp has been used.

X Q. 22. Look at Complainant's Exhibit U; point out and state what is the die or dies on that instrument?

A. The two projections of cylindrical form secured to the connecting plate B, and on the opposite side from the handle.

X Q. 23. The post marker in Exhibit U (by post marker I mean the cylinder attached to the cross bar, by aid of which it is intended to post-mark the envelope) consists of two parts, the cylinder itself, and something attached within the lower part of it by a screw, does it not, and which of those two parts which plainly may be easily separated, is the die?

A. Yes, to the first part of the question; the die may be said to consist of more than two parts; in this case there is an outer rim and inner rim of broader face, adapted for engraving letters but not having any on; the type within the inner rim and the cavity for the type, and the set screw for the type, and the handle for the same, and, &c., &c.; it is like asking me what parts of my specks I mean when I speak of my specks; there are several parts.

X Q. 24. You mean, do you, that the post marker in Exhibit U, as a whole type, outer and inner rims, set screw, thread, and all the cylinder attached to the cross bar, is a die?

A. Yes, and I mean further even than that; if it is desirable to add the additional purpose or means of cancellation on one side of the above thing, that you have described and connected therewith in a $\frac{1}{16}$ of an inch of the acting face, or less or more, so long as it is operative and convenient, it is still a die for all the practical purposes and intent of the die or device about which I am giving testimony; and further, the substitution of forms different, or even means largely somewhat different, so long as the practical ends and purposes and combinations are retained, will make no difference, and yet I do not wish to be
159 understood to say that a screw may be a die, or that a screw is necessary for a die; a die may have or be without a screw, may have an inside or an outside rim or neither; may be a circular or square or any other shape; may have type to connect with it, or as a part of it; may have engraved letters, or neither, but some configuration of form or device instead of letters.

X Q. 25. Look at Exhibit U, and state what is the die in the case of the cancelling cylinder?

A. It's the acting face or thing secured to the cross bar, and standing opposite what you term the post marker.

X Q. 26. That is composed of two parts, is it not?

A. Yes.

X Q. 27. What are they?

A. Yes, three parts, the thimble or cylinder, the head or circular inside base that secures to cross bar, and the acting face of cork; I speak of these as constituting the device or thing in this construction, when combined with the bar and post marker as a die or double die, if you

please; I have got it as one; the fact of the acting faces or the essential parts being removed to greater or less distance from the lower side of the bar B, on which they are mounted, being of no special consequence, so long as they are conveniently so attached and are operative.

X Q. 28. You said that the cancelling cylinder consists of three parts; the head, by which the cylinder is attached to the cross bar; the cylinder itself, and the acting face of cork; do these altogether, in your opinion, constitute a die?

A. Yes, or a die may be constituted of all the parts; in this case those parts would be probably included in the construction there shown.

Adjourned to Friday, December 14th, 1877, at 11 o'clock a. m.

160 NEW YORK, *December* 14, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 29. You say, then, do you, that the cancelling die in Exhibit U consists of all that is connected to the cross-bar, at the end of the cross-bar opposite the post marker?

A. Yes, with this explanation, the cancelling die or stamp, irrespective of the post marker, is the part or face which is caused to imprint or saturate with ink the postage stamp, and the same is necessarily to be connected or attached to the cross-bar and post marker in order to come within the claims specifications 3 and 4, as set forth in the patent, Complainant's Exhibit K, and as I have stated before, I repeat, that I may be distinctly understood, that I do not regard the specific relation of the elementary parts referred to, nor their size, as of special importance, and while I say in answer to the question, that the die or stamp consists of the parts named, I distinctly disclaim saying or intending to say that these parts are the only parts or the exact parts necessarily constituting the cancelling stamp or device. As I understand, the specifications and modifications describing the invention set out in the patent Complainant's Exhibit K.

X Q. 30. Have you used the term die in your testimony, always precisely the same signification attached to it?

A. Possibly not.

X Q. 31. Give as many different meanings to the term as you remember to have used?

A. I don't remember using that term with any other meaning than to express or point out one or the other, or both of the imprinting or ink imparting faces under and connected to the cross-bar, carrying the handle of the instrument, thing or device or combination of parts,
161 constituting the cancelling face and post marker, as a mechanical construction.

X Q. 32. Do you mean that you have sometimes used the term as synonymous with the canceller, at other times as synonymous with the post marker, and still other times as synonymous with the canceller and post marker as one instrument connected by the cross-bar?

A. Not exactly. I mean that I may have used the term in describing separately either of the parts, the post marker or the cancelling die or stamp, in describing them separately, and that I certainly had used that term to represent the combined faces, and I now state, that however I may have used the term die, I do not think I have given a confused idea with regard to what meaning I attach to it, and if I have I wish distinctly to be understood now as meaning by the term die the same that

I would mean by the term stamp, cancelling-stamp or post-office marker, when speaking of it or them as the thing covered by and embraced in either the 3d or 4th claim of the specifications of the patent, Complainant's Exhibit K. That is to say, the die as I would have it understood is the thing that is carried by means of the handle having the cross-bar underneath or its equivalent, to which are secured the post office marker, and the postage-stamp cancelling face, the same being combined for the purpose of receiving ink, which when stamped or struck upon an envelope and postage-stamp will so impregnate the postage-stamp as to effectually inform the holder or user of its having been used once, and that the same impression, stamp, or blow will impart the information of the post-office and the date when and where such cancellation or stamping was made.

X Q. 33. In your answer to the last question you state that you "certainly have used that term to represent the combined faces." What do you mean by that?

A. The same as I would mean if I were to speak of the various bars on one part of the die forming the combined configuration, or the various letters in the post-office mark being combined to give the
162 post-office. That is to say, the different portions put together make the acting face or the thing. I mean by combined, put into juxtaposition or proper relation to be acted upon, and to act upon, in a convenient, practical and efficient manner, for the purposes intended, and for producing the result, to wit: At one blow, stamp, or impression, by the aid of a handle connecting to them through the medium of a cross bar, printing the post-office mark and somewhat effacing the postage stamp on the envelope, so as to prevent the second use of the stamp, and at the same time inform of the location and date and office where the cancellation was performed in ink.

X Q. 34. Bearing that explanation in mind, please state whether the term die in the sense of a representation of the combined faces (I take the words underscored from your answer to Q. 32d) is applicable to Exhibit U?

A. Yes.

X Q. 35. Considering Exhibit U as made up of the four elements handles, cross bar, canceller, and post-marker, how many of these elements, and which do you take to make up the die, using the term die in the sense referred to in the last question?

A. The acting face or faces of the canceller and post marker, with sufficient metal or other suitable material to afford the requisite practical resistance and strength, laying back or above the acting face or faces, and securing thereby the same to the cross-bar.

X Q. 36. Can you answer Q. 35 using only the elements therein specified? if you can, do so.

A. I think I have answered the question in that way, by excluding the handle and cross bar in my answer. I do not see how I could be more explicit and definite. I am ready to answer any question.

X Q. 37. Do you mean that the die in the sense inquired about consists only of post-marker and canceller, using the terms post-ma'ker and canceller as two of the elements specified in Q. 35?

A. I mean that the post-marker and canceller as an element or the element when having the qualifications that I stated in my last two
163 answers, constitutes the die. Now, if you wish me to speak of the instrument Complainant's Exhibit U, having only the post-marker connected with the handle as before stated, then the acting face of it, having the relation to the other parts (the handle and the inter-

mediate portion), would be the die. Or, if you exclude the post-marker and use only the canceller, then, its acting face being provided, as before stated, would be the die. Now, if you prefer, I have no objection to your considering either acting face, having the qualifications before stated, as separate dies, or a combination of dies, but I think it proper and right to call the entire face of the marker, the canceller, a die, when they have the construction I have referred to before repeatedly, and the fact of the elongated cylindrical projections from the cross bar, carrying this face or these faces, I regard as of no importance, for it is manifest that they may be increased or diminished very largely without any material difference of result, and certainly without anything more than a mechanical modification, fully set out and shown, and justified in the specifications of the patent, Compl't's Exh. K; and furthermore the said patent distinctly states a modification and illustrates the same, that justifies this view, and moreover the marker and canceller under the specification may be made in one piece or two pieces soldered together; I quote from the amended bill, 39th page, last paragraph: "The said cancelling type or die can be easily repaired by a new one, whenever desired, and at very little expense; and such cancelling die or type, G, may extend upward to the cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt. In such case there would not be any tube or pipe surrounding said cancelling die or type, G. The oper'tion and effect produced would in such case of construction be the same"; and on the 40th page, first paragraph, I quote: "The said postage-stamp cancelling device, die, or type, G, may be of any desired distance from the aforesaid post-marking or dating device, or stamp, D, or it may be securely fastened to the immediate side
164 of the said post-marking and dating part or stamp, or device D, by any convenient and suitable mechanical means." The said cancelling die, type, or device, G, I prefer to use made of cork, as it would hold a much greater quantity of cancelling ink upon and in the lower face thereof, and when it comes in contact with the printed surface of the postage-stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with said cancelling ink, whereby such postage-stamp so operated upon," and, &c., &c. I further quote the last paragraph on the 40th page as above: "I also construct my said postage-stamp cancelling device, die, or type, of cast-iron, steel, or any suitable metal substantially as shown at G, Figs. 5 and 6, and which may be secured to the cross-bar or piece, B, in like manner as the said tube, or cylinder, C, Figs. 2 and 4, and which is done either by screw and nut, where the same unite with the said cross-bar, or it may there be firmly fastened by means of suitably constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece, B, or otherwise attached thereto," and &c., &c. In explanation of my view in regard to the part or parts inquired about, I still further quote from the same specification of complainant's patent, as found on the 42d page of the amended bill, commencing at the 2d paragraph: "The cross-bar to piece B, Figs. 1, 2. 3, and 5, may be of any suitable width or thickness, or any material which will answer the required purpose. It may also be of any length deemed best to use, in order to get the said post-marking device, and the said postage cancelling device, die, or type, suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened or attached in the manner substantially as aforesaid." Now, I understand that the inventor intended to and did clearly instruct the public to make his invention in any of the ways suggested

or described as regards the face or die, or stamping part, which, to the manufacturers or users should seem preferable, and he did not
165 intend to confine himself exclusively or at all to the particular form or forms illustrated in his drawings, but to inform the maker or user instead that they could have the instrument in any form, or any size or shape in the separate parts, and that if they did combine or use or vend an instrument with a handle, having a cross-bar on the lower side, of which was secured a die combining a post-ma'ker and postage-stamp canceller that was his invention; and that that part below the cross-bar, carrying the acting surfaces and performing the work was the die, stamp, or the acting part for receiving and imparting ink to the envelope packet and postage-stamp, for the purpose of giving post-office and date and cancelling the postage-stamp effectually at one blow, stroke, or operation, the cancelling face always to be struck upon the postage-stamp for the purpose of cancellation.

X Q. 38. Can you not answer my questions without going so much at large into side matters?

A. The fact is it seemed to me that I had not made myself distinctly understood, and my anxiety to make my meaning and understanding clear led me into the quotations and explanations I have given. I did not, and do not suppose, that I was going into side matters any further than was necessary, as the post-marker and stamp-canceller are side matters, side by side, fixed together, and secured together on the under side to the bar B. I will try to answer any question in as few words as possible and make myself understood.

(Counsel for defendant objects to the answer to the question 37 as being irresponsive to the question.)

X Q. 39. It seems to me that question 37 can be answered by yes or no; accordingly, I put it to you again (Question 37 read).

A. Yes; in view of my understanding, as above shown.

X Q. 40. Can you not answer question 37 without any limitation?

A. Yes.

X Q. 41. Please do so. (Question 37 read.)

A. No.

166 X Q. 42. What other elements besides post marker and canceller do you take to make up the die, using the term die in the sense specified in question 34, and using the term elements in the sense specified in question 35?

A. I do not consider the combined faces as two elements, but as one element, and I think I have fully explained that; I refer to the die with its face as an element of the invention, and given my reasons for that. Counsel seems to insist on a separation of the face into separate parts, which I do not regard as the correct way of looking upon it, for it is manifest that the die and the face of the die, treated as a whole, for the purpose of imparting certain and definite results which are post mark and cancellation postage stamp. Now, if it was thought desirable by the counsel to divide these faces, not into two elements, but parts, calling each configuration an element, each type, each line, or bar, he might do so, and I might be called upon to answer whether this or that or the other modification or change was a new one or different element, when it is clear enough that the face or die of the instrument is one, and any modification does not alter or change it, so long as any post-office mark, or date, and any configuration of postage stamps cancellation is the thing, and the die or the face of it is one element of the combination, properly speaking.

X Q. 43. Without any reference to the sense in which you prefer to

use the word "element," I ask you whether you cannot regard Exhibit U, looking at it as one solid thing, as made up of the following elements, to wit: 1st. Handle, or all that part of Exhibit U which is above the plane of the upper surface of the cross-bar, as Exhibit U, rests upright upon the table. 2d. Canceller, or that portion of Exhibit U which is designed solely for the cancellation of the postage stamp, and which is beneath the plane of the lower surface of the cross-bar in Exhibit U, as Exhibit U stands upright on the table. 3d. Post marker, or that portion of Exhibit U which is designed solely for the postmarking of the envelope, and which is beneath the plane of the lower surface of the cross-bar in Exhibit U, stands upright on the table. 4th. Cross-
167 bar, or all the rest of the matter, or substance, or substances of which Exhibit U is composed.

A. Yes.

X Q. 44. Regarding Ex. U as made up of the four elements specified in the preceding question, how many of these elements and which do you take to make up the die in Ex. U, using the term die in the sense specified in Q. 34? (Q. 34 read.)

A. All that is connected to the under side of the cross-bar.

X Q. 45. Do you mean that if the die in the sense inquired about consists only of the post marker and canceller?

A. Yes.

X Q. 46. When Q. 37 was asked you, did you understand in your answer that the four elements specified in Q. 37 were used in the same sense severally as you understood them in your answer to Q. 45? (Q's 37 and 45 read.)

A. I think so.

X Q. 47. Have you any doubt of it?

A. I don't realize any difference of understanding, only that I was called upon, two or three q's back, to state whether I could not regard the post marker as one element, the cancellar as another element, and the bar as another, and the handle as another, or substantially that question to which I answered yes, and in view of that I answered the subsequent question, and I confess I am unable to see any difference in my opinion regarding the different elements.

X Q. 48. I am afraid that you did not understand Q. 46; I now ask it again. Where Q. 37 was asked you, did you understand in your answer that the four elements specified copied in Q. 37 were used in Q. 37 in the same sense severally as you understood them in your answer to Q. 45, to be used in Q. 45? (Q's 37 and 45 read.)

A. Yes.

X Q. 49. You have no doubt of it?

168 A. No; and I gave the explanation there that my understanding may be fully imparted, and now call attention to it again in this connection.

X Q. 50. Is what you refer to your answer to Q. 37?

A. Yes.

X Q. 51. Does your answer to 37 give you any doubt of the correctness of your answer to Q. 48?

A. No; I have not read the two questions and answers in connection, and I don't care to. The answer to question 37 is fully correct, I think. In regard to giving me any doubt to the correctness of my answer to the 48th question, I am not aware of its having that special effect on my mind, and perhaps I did not fully understand question 48. If there is any inconsistency in the two answers, I will thank the counsel to question me in regard to such inconsistencies, or point them out to me.

X Q. 52. My question does not relate to whether you fully understood question 48, but to whether, with your understanding of it, the elements there specified were there used in the same sense in which you understood them to be used in question 37. With that explanation, I ask you again whether your answer to question 37 raises any doubt in your mind as to whether your answer to question 48 is correct?

A. I confess to have been influenced by an earnest desire during the last few questions and answers, including the one now referred to, to let my mind run in the same line of viewing, or regarding the elements of the invention or parts being inquired about, that the counsel's mind seemed to be running in, and to put my answers in such words, as far as consistent with truth and fairness, as would conform them to his apparently restricted view or views, which seemed to be somewhat different from my own in regard to the limitations of the elements and the combination in question, and now I wish again to repeat that I am not aware of any doubt about the correctness of the answer referred to question 48, and if there is any inconsistency between that and my answer to question 37, my answer to question 37 is my correct answer.

Adjourned to Saturday, Dec. 15, 1877, at 11 a. m.

169 NEW YORK, *Dec. 15th*, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 52*. In your answer to Q. 41, you virtually said that you did not mean that the die in the sense of the representation of the combined faces did consist only of post marker and canceller. In your answer to Q. 45 you stated that you meant that the die in the sense inquired about did consist only of the post marker and canceller. How do you reconcile these two answers?

A. The question first referred to in the present question inquires if the post marker and canceller were two elements, and I said no, because I had treated them in my answers as one element; with this understanding, I think any want of consistency between the answers will be reconciled. And in another answer, I remember having stated that I could treat them as two elements if desired, and repeat that now. It is only a question of choice of manner of speaking of the face or acting part with sufficient metal or strength lying back of the acting face which is secured to the cross-bar of the instrument.

X Q. 53. Did not you state, in your answer to Q. 48, that you understood in your answer to Q. 37 that the four elements specified in Q. 37 were used in Q. 37 in the same sense severally as you understood them in your answer to Q. 45, to be used in Q. 45, the precise definition of those in the sense in which I wished you to use them, having been stated in Q. 43?

A. I confess that the calling of the Q's by numbers, and referring back to them in the same manner counsel seems to persist in referring to them, tends somewhat to confuse my recollection of just what view I was taking at the time of answering in brief or categorically, and with a desire to treat the post marker and the postage-stamp canceller in language acceptable to the counsel, and whatever apparant discrepancy, if any, there ex-
170 ists either in the record of my answers or the counsel's mind in *the* these confusing questions, I do not think there can possibly be any misunderstanding of what my judgment and view is in regard to the parts, or elements, or combination of the device in question, as specified

in Complainant's Patent Exhibit K; and I now request the counsel, if he desires to get my view in regard to any part or portion, or combination of parts or portions without mixing together a number of my previous answers to his questions, about which we have this morning found that he and myself were more or less confused, at least so far as the numbers were concerned, and I wish to put on the record this further fact that I have not any doubt about my clear and correct understanding of what this invention is, according to the specification, and at the same time I am satisfied the counsel may be able by referring to a half dozen questions and answers, more or less, by number, to frame questions that may confuse me.

X Q. 54. Do you mean that you have been confused by the references to questions by their numbers?

A. I mean that we were both in error, to say the least, both in questions and in the answers, supposing that we were referring to a different question than what the number indicates.

X Q. 55. You refer, do you not, to certain changes made in the numbers stated in the questions and answers of yesterday's testimony, which changes were made this morning before you began to testify?

A. Yes.

X Q. 56. Did you not then agree that when, for instance, the No. 35 was changed to the No. 37, that you had, with me, supposed that it was really Q. 37, and not Q. 35, which was referred to?

A. Yes, and that is the reason why I don't like this kind of reference, finding that we both made a mistake we may again.

X Q. 57. Was it not rather dark in the room yesterday after-
171 noon when the questions in which corrections as to numbers have been made, so that a mistake as to a number might easily be made?

A. No; it was not so bright as it is this morning; but there was light enough to see very well all the while.

X Q. 58. It was towards evening, was it not, late in the afternoon, when most of the questions in which corrections have been made were asked?

A. Yes; it was in the evening, some of the last of them, but we had good gas light.

X Q. 59. From a chandelier some ten feet from the table, was it?

A. Yes; the light falling immediately across the counsel's right shoulder, who sat much nearer the light than the examiner or myself, and the window at the counsel's left, with glass four or five feet by fourteen or fifteen feet, I should think.

X Q. 60. Though there was a mistake as to numbers, there was no mistake, was there, as to the questions and answers that were really meant?

A. I didn't think there was at the time. I don't think there is now. Still, having made a mistrke once in that particular, I see a liability to err; therefore, I am not positive.

X Q. 61. You have taken all the time that you desire to answer all the questions that have been put to you, have you not?

A. Yes; but have not always qualified my answers as fully as I should have done had not the counsel seemed specially anxious to have categorical answers in several cases.

X Q. 62. Have not preceding questions and answers been read to you whenever you asked them to be read?

A. I think so; particularly when I required it.

X Q. 63. Do you not remember that I frequently suggested that you had better refer back to the questions and answers?

A. You have several times.

X Q. 64. Do you wish to add anything to your answer to Q. 52? (Q. 52 and answer read.)

172 A. If there is any apparent or real discrepancy, I would refer to my answer to the 37th interrogatory as expressing my views most fully.

X Q. 65. Is that all that you wish to add?

A. I think so.

X Q. 66. Look at Exhibit U, and state whether the die, in the sense of the representation of the combined faces, consists only of post-marker and canceller, using those terms in the senses that I have indicated.

A. The die in Exhibit U is the combined faces attached to the cross-bar. I mean the post-marker and canceller as an element combined with each other and secured to the underside of the cross-bar.

X Q. 67. Is the cross-bar a part of the die, using the term die in the sense of the representation of the combined faces, and the term cross-bar in the sense indicated in Q. 43?

(Q. 43 read).

A. No.

X Q. 68. Do you mean that the thing which connects the post-marker and canceller—which combines them—is not a part of the die, using that term as a representation of the combined faces.

A. It may be or may not be; we have spoken of it all the way through as a cross-bar and separate element, so it is spoken of in the patent—Complainant's Exhibit K. It is the piece or part, or element, carrying or sustaining the die, stamp, or acting faces, and also the handle. If the canceller and post-marker were made in one piece, or soldered together as suggested in the specification of the patent as found in the amended bill, page 41, second paragraph, it would not then require a cross-bar for the purposes of combination, as suggested in the question I quote, "The aforesaid metal cancelling device, die, or type G′, Figure 5 and 6, may also be fastened or secured to the immediate side of the said post-marking device by any good and sufficient means," &c.

(Counsel for defendant objects to all of the last answer except the first 4 or 5 words, "It may or may not be," as irresponsive, and re-
173 quests the witness to endeavor to thoroughly understand each question as it is asked, and to confine his answer strictly to that question, in order not to encumber the record with irresponsive matter, or with personal explanations, which, if necessary, can be brought out at the proper time by questions from complainant's counsel.)

X Q. 69. Look at Complainant's Exhibit B, and state what the die is in that exhibit, using the term die in the sense of a representation of the combined faces.

A. The part bearing or containing the face or faces, to wit, the post-marker and the postage-stamp canceller, which is connected by screw, by its projection and screw, to the circular bar or plate, which bar or plate has a downward projecting rim, with thread on the inner periphery of said rim, adapted so as to connect the combined faces to the bar or plate, by means of the threads, for securing the same together.

X Q. 70. You mean, do you, that the die is the lower part of Exhibit B, which screws into the cup, and which has the mark 40 on one side?

A. Yes, as one piece.

X Q. 71. How does the die in Exhibit U differ from the die in Exhibit B?

A. Simply in extent or distance of removal of the acting face or faces from the cross-bar and manner of connecting the same; the two cylindrical projections downward, from the bar or plate, have considerable length, and each is secured separately to the under side of the bar; the post-marker by a screw, and the postage-stamp canceller through the medium of a barrel or cylinder, with head and rivet, and possibly some solder; while in Exhibit B the die bearing or having the acting faces, is by a projection on the opposite side of the face, and of a circular form, which has a screw or thread, which connects with the bar by means of a downward projecting rim on the under side of the bar or plate of circular form, and having a thread on the inner periphery of the projection or rim, adapted to the projection on the back of
174 the acting faces of the die, and in the size and configuration of the acting faces, and also in the material of which the postage-stamp canceller is composed.

X Q. 72. Suppose the die in Exhibit B, and the die in Exhibit U, to be separated from the cross bar, you will have then two pieces in your hand in the case of Exhibit U, and only one in the case of Exhibit B; is this difference between the two dies substantial or material?

A. I think not, in view of the limitations of the specifications of the patent in suit, complainant's Exhibit K; certainly not as the modifications clearly indicate, as may be seen in my last quotation from the patent.

X Q. 73. You mean, do you not, that the die in Exhibit U is, as a whole and in its parts, the mechanical equivalent of the die in Exhibit B, considered as a whole and in its parts?

A. Certainly or vice versa, in view of the limitations stated in my last answer.

X Q. 74. Do you not mean that the two are mechanical equivalents of each other, without any limitation, as an abstract question in practical mechanics?

A. No; that is to say, had the two, the post marker and the canceller, of Exhibit U, never been combined through having an existence as separate instruments and used separately, and only separately, and some one had never put them together so as to be used successfully, then they could not be considered an equivalent for the combined faces as had or found in Exhibit U or Exhibit B.

X Q. 75. But when the post-marker and canceller are combined, as they are in Exhibit U, they are practically mechanical equivalent to the die in Exhibit B, are they?

A. Certainly, and vice versa, in view of the construction as set out and claimed in the patent, Complainant's Exhibit K.

X Q. 76. (75 in original). Wouldn't you say that the two were mechanical equivalents of each other, if you had never seen the patent Exhibit K?

175 A. Were they put together as I have contemplated in my last answer, or constructed capable of use for such combination, and only to be used in such combination, then I would say yes.

X Q. 77. (76 in orig). Considering the post-marker by itself, would you consider it, as it is represented in Exhibit U, a mechanical equivalent for the post-marker in Exhibit B, if you had never examined the patent at all?

A. If you exclude the postage-stamp canceller of Exhibit B, then I would, not otherwise.

X Q. 78. (77). And so of the canceller as represented in Exhibit U?

A. Yes; excluding the post-marker in Exhibit B.

X Q 79. (78). And so of the cross bar in Exhibit U, with reference to what corresponds to it in Exhibit B, and not considering the patent at all?

A. Yes; that is to say, the bar would be a mechanical equivalent in either case, it being for the purpose of connecting the handle and the die, or acting face or faces of a post-marker and a postage-stamp canceller.

X Q. 80. (79). Do you mean that exactly?

A. I understand you to ask me, irrespective of the patent, had I presented to me a handle secured on to a cross bar or plate like the handle and bar and plate in Exhibit U and B, and adapted for the reception and securing to the under side of the bar or plate a die or dies, face or faces, stamp or stamps, to be secured thereto, and operated thereby at one operation, would then the bars or plates be mechanical equivalents of each other; I answer yes, irrespective of the patent.

X Q. 81. (80). What, in Exhibit B, corresponds to the cross bar in Exhibit U?

A. The part to which the handle is secured on one side, and the die marker and canceller on the other.

X Q. 82. (81). Is that the means by which the post-marker and canceller are connected together in Exhibit B?

A. No; they are made in one piece, and connected to the bar by means of a screw and nut, or the inner or outer threads found on the die proper, and the downwards projecting rim of the bar proper.

176 X Q. 83. (82). Would Exhibit B be substantially changed if the cross bar or plate were not used at all, but the handle was screwed directly to the die proper, except, perhaps, in point of strength?

A. It might be modified, I think, in the way suggested, without anything more than mechanical change by running a spindle up through the handle, or by uniting it by pin and thread, screwed into the handle. Or by cutting the die through in the centre, at a line between the post-marker and canceller it might be modified, and still nothing more than a mechanical change take place; but if the question is meant to call forth my answer or view as whether in such case as first supposed in my answer, whether there then would exist any bar, my answer would be there certainly would, in whatever united firmly the acting face or faces, and afforded additional strength and firmness for retaining and operating successfully the post-marker and canceller by means of the handle.

X Q. 84. (83). In case of such changes as you first supposed, the instrument so changed would still be the mechanical equivalent of Exhibit B and Exhibit W, wouldn't it?

A. Yes.

X Q. 85. (84). Look at complainant's Exhibit A, and state whether, as a whole, you would regard it as a mechanical equivalent of Exhibits B and U, and of Exhibit W, and of Exhibit V, if you had never considered the patent at all?

A. Yes, as a device or instrument.

X Q. 86. (85). And you would consider the cancellers and the post-markers and the cross bars respectively, in each, as they are constructed, and as they lie before you, the mechanical equivalents of the same parts in all the other instruments.

A. Yes. I do not wish to be understood, however, as answering other than broadly, for it is evident that had the introduction of these devices

come into use one after the other, there would have been an advance from A to W; in some of the details of construction, nevertheless,
177 as a combined post-marker and postage-stamp canceller, they could not be considered other than mechanical equivalents, and the different parts, to wit, the handle in each instrument, is equivalent to the handle in the others. The bar connecting the handle to the die, stamp, or marker and canceller, to the handle in each case, would be an equivalent to the bar in the other instruments, and the postage stamp canceller, with the post-office marker, would constitute an equivalent stamp or die, secured to the under side of the bar, which would be an equivalent to each of the others. This answer is given irrespective of the patent.

X Q. 87. (86). You don't notice any difference, do you, between any two of these instruments, other than a mechanical change or difference?

A. I wouldn't like to say that irrespective of the patent. But in view of the specifications, and claims, and modifications, described in the patent, complainant's Exhibit K, I say, no; there is no difference.

X Q. 88. (87). Please point out any difference which you would regard as substantial and not mechanical, if you had never considered complainant's patent at all.

A. Starting with Exhibit A, which we will suppose was the state of the art at a given time, with the construction there shown, plain and simple, if one had introduced a rim, barrel or tube, for enclosing the India rubber canceller, for the first time ever known, I would say he had made a substantial difference of construction, and a patentable invention, or he would have done something in a new way. Second, if cork had never been used for cancelling, and there was no patent covering an analogous or like material to rubber, and another should come and introduce cork, or wood, endwise, or some yielding substance, not including rubber, that would operate successfully, and introduce that for the first time, for the purpose of postage-stamp cancelling, or like uses, I would say he had found out a new way of doing a thing, if not a new application of material, and made a substantial advance. Again, if another, later, should appear with constructions like B and V, and metal faces had never been before used for postage stamp cancelling or
178 like purposes, or described for the same, and he was the first that made such construction and combination of such material, and the same had never been before known or used, and the previous constructers had made no pretensions of such being capable of being used, I would then say he had done a thing in a new way, and the difference was substantial. But if the man who contrived, and introduced, and patented Exhibit A, as a contrivance, construction, or a thing to cancel the postage stamps or franks on letters, packets or mail matter, had informed the public how to do that and at the same time put on the envelope the post-office mark, and date in combination therewith, and also stated that he contemplated modifications of his construction, and illustrated and described the same, embracing all of the previous suppositious cases, and even many more that might be made, and at the same time inform the public that all these were only the different mechanical changes and modifications of construction whereby and wherein he embodied and proposed to produce and give to the public the benefits of his ingenuity and skill, then I would say, in view of such a specification, or revelation, and description, these changes were only mechanical as regards the invention, and not only mechanical changes for carrying out the invention, but such as were described clearly and distinctly, and could not be regarded other than mechanical, or colorable changes, thereafter. This answer is given

in view of the illustrations, description, and claims such as I clearly find in the patent, Complainant's Exhibit K; yet the truth would remain the same, without any reference to the patent referred to here, had the inventor of the device or Exhibit A made such a description public; that is to say, the modifications found in the different exhibits inquired about would only be formal, colorable, or mechanical, and not substantial or material.

Adjourned to Monday, December 17, 1877, at 1 p. m.

179 NEW YORK, *December* 17, 1877—1 o'clock p. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

(Counsel for defendant objects to the last answer as irresponsive.)

X Q. 89. (88). As Exhibits A, B, U, V, and W stand on the table before you, take any two of them, and point out a single difference between those two which you would regard as substantial, and not merely mechanical, if you had never known anything about the complainant's patent. I wish you to base your answer on your general mechanical knowledge only.

A. It seems to me that I have done that clearly in my last answer; I don't think I could do it better. As a device for post-marking letters and cancelling postage stamps at one operation, each of the exhibits are the same; they are all operated by means of a handle, the same; each has the handle secured to a cross-bar or plate, which carries the die or stamp for both cancelling postage stamps and post-marking alike. The different shapes, and forms, and sizes, are certainly only mechanical modifications. The matter of size, breadth, thickness *or* and depth of the die proper are not material so long as the purpose or object of the instrument remain the same, the relation of parts and their combination remain the same, the mode of operation and the result remain the same, all of which conditions are entirely fulfilled in each of the instruments or exhibits referred to in the question.

X Q. 90. (89). Suppose you knew nothing of complainant's patent, and were to go into the New York City post-office, and should see Exhibits A and U in operation, and should examine them, would you from your general mechanical knowledge say that there was any substantial, and not merely mechanical, difference between them?

180 A. I would say that Exhibit U, having a tube with cork, was the better of the two, but the matter of substantial difference I should be unable to see farther than I have before expressed and explained in my answer to Q. 87.

X Q. 91. (90). You mean that a canceller consisting of a brass tube and cork is substantially different from a canceller consisting of rubber, all the rest of the instrument remaining the same?

A. I mean that the tube is a good thing to have either for cork or rubber, in my opinion; particularly where the rubber is so long and broad as in Exhibit A. The tube encircling the elastic canceller would tend to preserve it and add to its durability, though I think there is no substantial difference in the two instruments, when considered broadly, as instruments for cancelling the postage stamp and applying the Post-office mark at one and the same operation.

X Q. 92. (91). Suppose you don't consider them broadly, does that make any difference in your opinion?

A. I refer you again to my answer to Q. 87.

come into use one after the other, there would have been an advance from A to W; in some of the details of construction, nevertheless,
177 as a combined post-marker and postage-stamp canceller, they could not be considered other than mechanical equivalents, and the different parts, to wit, the handle in each instrument, is equivalent to the handle in the others. The bar connecting the handle to the die, stamp, or marker and canceller, to the handle in each case, would be an equivalent to the bar in the other instruments, and the postage stamp canceller, with the post-office marker, would constitute an equivalent stamp or die, secured to the under side of the bar, which would be an equivalent to each of the others. This answer is given irrespective of the patent.

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A. Starting with Exhibit A, which we will suppose was the state of the art at a given time, with the construction there shown, plain and simple, if one had introduced a rim, barrel or tube, for enclosing the India rubber canceller, for the first time ever known, I would say he had made a substantial difference of construction, and a patentable invention, or he would have done something in a new way. Second, if cork had never been used for cancelling, and there was no patent covering an analogous or like material to rubber, and another should come and introduce cork, or wood, endwise, or some yielding substance, not including rubber, that would operate successfully, and introduce that for the first time, for the purpose of postage-stamp cancelling, or like uses, I would say he had found out a new way of doing a thing, if not a new application of material, and made a substantial advance. Again, if another, later, should appear with constructions like B and V, and metal faces had never been before used for postage stamp cancelling or
178 like purposes, or described for the same, and he was the first that made such construction and combination of such material, and the same had never been before known or used, and the previous constructers had made no pretensions of such being capable of being used, I would then say he had done a thing in a new way, and the difference was substantial. But if the man who contrived, and introduced, and patented Exhibit A, as a contrivance, construction, or a thing to cancel the postage stamps or franks on letters, packets or mail matter, had informed the public how to do that and at the same time put on the envelope the post-office mark, and date in combination therewith, and also stated that he contemplated modifications of his construction, and illustrated and described the same, embracing all of the previous suppositi'ous cases, and even many more that might be made, and at the same time inform the public that all these were only the different mechanical changes and modifications of construction whereby and wherein he embodied and proposed to produce and give to the public the benefits of his ingenuity and skill, then I would say, in view of such a specification, or revelation, and description, these changes were only mechanical as regards the invention, and not only mechanical changes for carrying out the invention, but such as were described clearly and distinctly, and could not be regarded other than mechanical, or colorable changes, thereafter. This answer is given

in view of the illustrations, description, and claims such as I clearly find in the patent, Complainant's Exhibit K; yet the truth would remain the same, without any reference to the patent referred to here, had the inventor of the device or Exhibit A made such a description public; that is to say, the modifications found in the different exhibits inquired about would only be formal, colorable, or mechanical, and not substantial or material.

Adjourned to Monday, December 17, 1877, at 1 p. m.

179 NEW YORK, *December* 17, 1877—1 o'clock p. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

(Counsel for defendant objects to the last answer as irresponsive.)

X Q. 89. (88). As Exhibits A, B, U, V, and W stand on the table before you, take any two of them, and point out a single difference between those two which you would regard as substantial, and not merely mechanical, if you had never known anything about the complainant's patent. I wish you to base your answer on your general mechanical knowledge only.

A. It seems to me that I have done that clearly in my last answer; I don't think I could do it better. As a device for post-marking letters and cancelling postage stamps at one operation, each of the exhibits are the same; they are all operated by means of a handle, the same; each has the handle secured to a cross-bar or plate, which carries the die or stamp for both cancelling postage stamps and post-marking alike. The different shapes, and forms, and sizes, are certainly only mechanical modifications. The matter of size, breadth, thickness *or* and depth of the die proper are not material so long as the purpose or object of the instrument remain the same, the relation of parts and their combination remain the same, the mode of operation and the result remain the same, all of which conditions are entirely fulfilled in each of the instruments or exhibits referred to in the question.

X Q. 90. (89). Suppose you knew nothing of complainant's patent, and were to go into the New York City post-office, and should see Exhibits A and U in operation, and should examine them, would you from your general mechanical knowledge say that there was any substantial, and not merely mechanical, difference between them?

180 A. I would say that Exhibit U, having a tube with cork, was the better of the two, but the matter of substantial difference I should be unable to see farther than I have before expressed and explained in my answer to Q. 87.

X Q. 91. (90). You mean that a canceller consisting of a brass tube and cork is substantially different from a canceller consisting of rubber, all the rest of the instrument remaining the same?

A. I mean that the tube is a good thing to have either for cork or rubber, in my opinion; particularly where the rubber is so long and broad as in Exhibit A. The tube encircling the elastic canceller would tend to preserve it and add to its durability, though I think there is no substantial difference in the two instruments, when considered broadly, as instruments for cancelling the postage stamp and applying the Post-office mark at one and the same operation.

X Q. 92. (91). Suppose you don't consider them broadly, does that make any difference in your opinion?

A. I refer you again to my answer to Q. 87.

X Q. 93. (92). Do you think my last question can be answered by yes or no?

A. No, nor any other way better than it has been.

X Q. 94. (93). What is the difficulty in answering Q. 91 by yes or no?

A. I have to consider the Exhibit A and U, either broadly or with reference to the exact construction, and when considering them as exact constructions (I mean identical in all their parts), and supposing, if you please, them to be instruments for the same purpose, yet produced at different times or by different makers, neither of which set up any claim or pretension to being the first to make or invent an instrument with the combination, of post-office marker and postage stamp-canceller in combination that having been done, and well known in some manner prior to the production of either of the exhibits, then the question is narrowed down to simply the mechanical construction and combination of the two instruments as mechanical constructions and combinations.

181 In that narrow view, I understand your question now to ask me whether there is anything more than a mechanical difference, in which case I say, as I have said before, I think there would be found what might be considered, in a narrow view, a substantial difference, but that only when considering Exhibit U as an advanced or improved construction over A, for the same purpose.

X Q. 95. (94). Suppose you went into the post-office as already indicated, and saw Exhibit U and A in operation, and did not know when either of them was first made, or by whom it was first made, or which preceded the other, would you say that there was a substantial difference between them?

A. In the narrow view above referred to I should, but I will modify my previous answer this far. As after all, being in doubt whether one might be considered better than the other, in view of the fact that the post-office canceler in A might be made of harder rubber, and the die altogether made shorter, so that it would be difficult for me to state, even then, in this narrow view that I am trying to take of the two exhibits, whether there would be any substantial difference, I am inclined to think there would not.

X Q. 96. (95). I understand you to mean that considering Exhibits A and U as they are before you, with the limitations that I have indicated in my previous questions, that the canceler in Exhibit A is substantially different from the canceler in Exhibit U. Do I understand you correctly?

A. Yes, if you take into consideration my reason, for the fact is, I think, that the canceler in Exhibit A is a used up part of the instrument, as it is before me, and substantially worthless and impracticable, having been virtually worn out, or at least so much so as to be capable of giving no definite type or configuration of cancellation; but supposing that it is still capable of use for practical purposes, then no rather than yes, to your question. And supposing it to be fresh and new, and of rubber sufficiently hard to be practical, the question comes down to this, is such a rubber postage-stamp cancelling part sub-

182 stantially the same as a thimble or tube, containing cork, for the postage-stamp cancelling device; substantially the same, or different, in any view irrespective of any state of the art? If I am correct in my understanding of your question, as above explained, and without any reference to anything else, I am inclined to think that one would be fairly considered a mechanical equivalent for the other.

X Q 97 (96). Can you mention any other practical mechanical case in

which a band or tube is used to protect the softer material, in order to protect the softer material from spreading or quickly wearing out?

A. I don't think of any now.

X Q. 98 (97). Look at Exhibits A and U, without consid*sid*ering the cancelers at all. Is there any other difference between them, but merely mechanical difference?

A. No.

X Q. 99 (98). Look at Exhibit U and V, and say whether under the limitations of my preceding questions there is any difference other than a merely mechanical one between them?

A. I think not; I simply state as I have stated before, that one would be suggestive of the other, and therefore the difference would be mechanical; and although I have stated in my answer to X Q. 87, that under some circumstances, the changes in view of the different material employed, as there explained, might be considered substantial, yet the substitution of the metal acting surface in place of the cork, for imprinting with ink, might in some limited sense be considered substantially different, although on a closer examination, and more careful thought, I believe they can be considered only mechanical equivalents, as presented in the question now being answered.

X Q. 100 (99). Look at Exhibits V and A, and state how it would be in the case of these two under the limitations indicated in my preceding questions, and irrespective of the canceller in Exhibit A being so much worn?

A. The canceller in Exhibit V has a face of metal, of elliptical form, having bars and letters on the face, which seem to me to be only
183 formal modifications, and the substitution of a harder material, which really is only a mechanical change or modification of Exhibit A. It now occurs to me that it is common among mechanics to employ rings or rims of metal around mallets, chisel handles, old-fashioned beetles for driving wedges, and around the top of spiles, and for many other purposes to prevent bruising or splitting, consequent upon frequent strokes or blows, as also it is common among mechanics to use wood of different degrees of hardness, or knots for mallets, or lignum-vitæ, or metal; therefore I am still further confirmed by closer examination, and by further reflection, that the modification or change in the Post Office cancelling device is purely mechanical, and not substantial or material.

X Q. 101 (100). Do you mean what you last stated in the last part of your answer to apply to Exhibit U and A, irrespective of complainant's patent, and irrespective of the time when and by whom each was made?

A. Yes.

Adjourned to Wednesday, Dec. 19th, 1877, at 1 p. m.

NEW YORK, *December 19th*, 1877—1 o'clock p. m.

Pursuant to adjournment.

Present, counsel as before,

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 102 (101). Look at Exhibit U and Exhibit W, and state whether under the limitations indicated in my previous questions, you see any difference other than merely mechanical between them?

A. The postage-stamp canceller in Exhibit W is of rubber, and of different configuration on its face, as well as of elliptical form, and stuck fast to the bar or plate, whereas the postage-stamp canceller in Exhibit

W is of cork, as stated in my previous answers, and the plate or bar on which the post-office marker and the postage-stamp canceller, is of circular form in Exhibit W, instead of being an elongated bar, as
184 in Exhibit U. The metal employed in the post office marker, and the bar or plate is of brass in W, while the same is of iron or steel in Exhibit U. There are other slight or unimportant variations, all of which, with these specified, I regard as merely mechanical, referring you to my reasons repeatedly given in my previous answers.

X Q. 103 (102). Look at Exhibit A, Exhibit W, and Exhibit V, and Exhibit U, and state whether, under the limitations stated, you see other than mechanical differences between them?

A. I do not; referring you again, as in the last answer, to my previous answers and the reasons there given.

X Q. 104 (103). Compare Exhibit B with either Exhibit A, V, U or W, and state whether under the same limitations there is any difference other than mechanical, between Exhibit B and the other which you select?

A. These two Exhibits A and B are unquestionably *as* dissimilar as any of the 5 of complainant's exhibits, stamps, or device for the purposes specified. I therefore select these two for my answer. The Exhibit A has the post office marker, and the postage-stamp canceller connected to the under side of a bar which has a projecting pin on the opposite side of the bar under which the handle is secured. The post office marker seems to be soldered to the under side of the bar. The postage-stamp canceller is connected by a screw, passing through the bar and into it. In Exhibit B, I find the like handle secured on to a plate or bar of circular form, by means of a projecting pin or spindle, and I do not find any difference thus far, other than the circular form of the plate or bar; from the lower side of which, in Exhibit B, there projects downward a rim with a thread on the inner periphery of the same, instead of a plain flat surface as in Exhibit A. Now this cup like circular plate, in Exhibit B, performs the office of the bar in Exhibit A, and the fact of its form and thickness not being identical with the same part in Exhibit A, I regard as purely mechanical, or the fact that the die or the post office marker, and the postage-stamp canceller is
185 not connected thereto in identically the same way as in Exhibit A, I regard as nothing more than a mechanical change or modification. In Exhibit A the marker and canceller seem to adhere to each other, and are certainly in close relation, or juxtaposition. The same is true of the die in Exhibit B in a larger extent, and the face of the die bearing the post office marker and the postage-stamp canceller is made of one piece of metal, whereas in Exhibit A the post office marker is of metal, and the postage-stamp canceller is of rubber, which in view of the facts before stated, that it is common among mechanics, and has been for the past forty years to my knowledge, to substitute one material for another, in practice, where it is found to be better adapted to the use or purposes for which it was intended; and, therefore, substituting a harder material for the india-rubber, for the post office canceller, is certainly nothing more than a mechanical change, and as there is no special configuration of face, other than general circular form, of the postage-stamp canceller in Exhibit A, I cannot conceive of the difference of form and configuration on the face of the postage-stamp canceller, of Exhibit B, being anything more than formal or mechanical, particularly as the postage stamp in Exhibit A is so thoroughly worn that it is impossible to tell what configuration, if any, was originally made on its face, but I presume that there was some definite configuration, adapting it to satisfactory postage stamp cancelling, and which when

employed for the same purpose, and in the same way of bruising and inking, or stamping the post office mark, and the postage cancellation, on a letter, envelope, and postage stamp, printed the same thereon in a satisfactory manner, and the same has been used up in doing that work, so that I regard them as both substantially the same in combination, construction, operation and result. Now there is a difference in depth of material between the acting face or faces of the die (post office marker and postage-stamp canceller) and the under side of the cross-bar or plate, to which they are secured, which I do not regard as anything else than mechanical difference. The
186 dating type in the post office marker, Exhibit A, are set into the cavity there shown, and pressed and held in proper position by the small thumb screw, or screw bolt, running out at the side horizontally of Exhibit A, while the type for the same purpose are set in a cavity or space in the post office marker, of Exhibit B, and are held in place by the short bolt-like section, or part screwed up against the lower face of the bar or plate, the pressure being brought in a vertical direction instead of a horizontal direction, as in Exhibit A. This change I regard as only a change of direction and mechanical modification, of size and form, the type being provided with an overlaying lip or flange, on their inner end, so as to be firmly secured by the action of the screw, pressing the same between the upper face of the short screw bolt on the die and the inner or lower face of the cross-bar or plate. It will be observed that the type bearing the month abbreviation extends inwards towards the centre of the short circular bolt-like projection, on the back of the die, to within about a quarter of an inch of the centre, and the numerals giving the day of the month occupy the balance of the type space. Now it is manifest that were the sides of this section of the screw bolt or bolt-like projection, lying back of and above the acting faces, cut away, or reduced to an elongated diameter with circular ends of a breadth of $\frac{3}{4}$ of an inch, all the functions of this construction would be practically and successfully fulfilled, as well as they are in the entire circular form, and the change from the elongated to the circular form, or from the circular to the elongated form, can be considered as nothing more than formal or mechanical. And again, the employment of a screw as formal in Exhibit B, to press the flange of the type between two surfaces, or a tapered type in the same way for the purpose simply of holding them in position for putting the date in the postage office stamp, is a change can hardly be considered more than a mechanical change. Furthermore, the connecting of the die with the bar or circular plate, by vertical screw and nut, finds
187 its equivalent in the rubber (postage-stamp-canceller) and the screw hole in the cross-bar. So that I would say that the die in Exhibit A and the die in Exhibit B are composed of postage stamp canceller and post office marker (without reference to the date by removable type) of acting faces substantially alike, being part of material which are mechanical equivalents to each other for the purposes desired and of thickness in a vertical direction of mechanical difference, but sufficient in either case, and in both cases, to give the necessary strength for the required resistance, and both in part or wholly secured to the under side of a plate or bar, substantially alike and for the same purpose, though formally and mechanically different, and that as a device, Exhibit A and Exhibit B are mechanical equivalents for each other, having the same parts and elements in combination alike, each being for the same purpose, and in like combination operated in the same manner and producing the same result.

X Q. 105 (104). Look at Exhibit U, and say whether if the post-marker and cros'-bar were to be cast in one solid piece, that would be more than merely mechanical change?

A. That would be all.

X Q. 106 (105). Look at Exhibit U, and suppose that there were no cross-bar, and that the handle were screwed into the post marker and were directly above it, and that the canceller were soldered or bolted or otherwise firmly fixed to one side of the post-marker, would that be anything more than a mere mechanical change of Exhibit U?

A. If I understand your question, the post-marker would have a stem or spindle running up into the handle direct where in Exhibit U the cylindrical part thereof comes in contact with the cross-bar of that exhibit, and the postage stamp canceller would be fixed securely to the immediate side of such cylinder of the post-marker somewhat below where the same comes in contact with the handle. Now if I am correct in my understanding, it seems to me that I am asked whether or not such a connection of the postage stamp canceller and the post
188 office marker can be considered as a mechanical equivalent for the bar connection; to which I should say it certainly is that which firmly holds and secures together, and in combination, the post office marker and the postage stamp canceller, and the handle for operating the same would be the mechanical equivalent for the bar, and such part may be said to include material of strength sufficient to firmly and durably connect together the handle with any material lying back or above or between the acting or printing face or faces of the die and the handle; that is to say the acting face (of post office marker and postage stamp canceller) with material of strength sufficient to bear the printing blow required always being had. 2d. Material of strength sufficient to connect with the handle and to support and bear the strain requisite for carrying the acting or printing face or faces, before stated, and giving the blow, with the connecting material, which would be the bar or its mechanical equivalent running into the other two parts by some mechanical connection.

X Q. 107 (106). I understand you that the change would be merely mechanical; am I correct?

A. Yes.

X Q. 108 (107). You have used the term mechanical equivalent frequently in your testimony; what do you mean by it?

A. The thing or part that is for the same purpose used in the same way and produces the same result.

X Q. 109 (108). Do you mean as a general proposition that a device which is intended to accomplish the same purpose as another device, and which is used in the same way as the other, and when so used produces the same result, is a mechanical equivalent for that other?

A. Yes.

X Q. 110 (109). Don't you draw any distinction between a device well known and common among mechanics, and another which requires thought and skill and invention, though the two may be used for the same purpose, used in the same way, and accomplish the same result?

189 A. Show me the two devices and I will tell you whether I can make any distinction between them. My answer was correct as a general answer; if you have any special case of the character specified in the question, I should like to see it. However, on general principles I will say the substitution of mechanical equivalents does not require invention.

X Q. 111 (110). Looking at the cancellers in Exhibit U and V, to determine whether or not they are mechanically equivalent, do you ask yourself whether they are used merely and only for the same purpose, in the same way, and when used, whether they accomplish the same result?

A. No; I ask myself first for what they are used, next how they are combined in relation to the different elements or parts, how they are used or operated, and the result produced, and I have repeatedly during this cross examination gone through the detail of construction, and looked at the substitution of different material, and spoken of the difference of form or shape, lengths, breadths, thicknesses, &c., so that I might be clearly understood, and think I ought to be.

Adjourned to Thursday, Dec. 20th, 1877, at 1 o'clock p. m.

NEW YORK, *Dec. 20th*, 1877.—1 o'clock p. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 112 (109). Have you in the course of your examination used the term mechanical equivalents in the sense in which you defined it in yesterday's testimony, and only in that sense?

A. I think I have wherever I have spoken of the instrument as a whole, for the purpose of post-marking and cancelling the post-
190 age stamp on an envelope or packet at one operation; probably not when speaking of an isolated part or element.

X Q. 113 (110). Define the term mechanical equivalent as you have used it when speaking of an isolated element.

A. Generally in speaking of one thing in a combination which was there for a given purpose, the substitution of another thing formally or mechanically different, yet which thing was for the identical same purpose, and operated with the other parts or things connected therewith in nearly, though not exactly, yet substantially in the same manner and produced the same result. Such a thing would be a mechanical equivalent for the thing in the place of which it was substituted. For instance, in a machine for reducing and planing a board there should be placed a roller with spring bearings close to the upward cut of the knife, so that when the cylinder bearing the knife should revolve and cut in an upward direction this roller running across the board and revolving as the board was passed to the cutting knife, and being so placed near but in front of the cutting edge by the yielding pressure of its spring bearings, would adjust itself to various thicknesses of the unreduced or rough board, and notwithstanding such yielding pressure would bear sufficiently on the unreduced surface of the board to prevent the same from being lifted with the force of the cut. Now suppose I substitute a bar with spring bearings instead of the roller for the same purpose, in the same relations as to the other parts, the bar performing the same functions except the revolving, sliding instead of revolving, nevertheless this bar I would call a mechanical equivalent for the roller. I give this case because it is well known in the record of mechanical equivalents in the courts, and because it is as wide a distinction as is usually found. It will be found in several decisions in the United States courts—I think in the records of patent suits in which the owners of the Woodward patent planing machines were complainants.

191 X Q. 114 (111). Should you say that a spring is a mechanical equivalent for a weight?

A. Not broadly, yet it may be in some combinations.

X Q. 115 (112). Would you say that it was in all combinations where the sole object of either the spring or weight is to produce pressure?

A. No.

X Q. 116 (113). Mention a case in which it would not be.

A. I don't think of one this minute in which it would not be, though I presume there may be such cases.

X Q. 117 (114). Suppose that the function of a spring were not well known to mechanics, and some one by experiment and reflection should discover that function and substitute a spring for the purpose of producing pressure in a machine in which before that time a weight had been used for the same purpose, would he, in your opinion, be substituting a mechanical equivalent?

A. If you mean to ask if the first production of a spring would be an equivalent for a weight well known before, then I say no, for he certainly would have found out a new way of doing a thing.

X Q. 118 (115). In determining whether one thing which I will call A s a mechanical equivalent for another which I will call B, do you not ask yourself the question whether A is not so well known among average mechanics that such average mechanics can see without any very great reflection that A will do the same work and accomplish the same purpose as B?

A. I don't regard the amount of reflection that may be expended particularly, neither do I look at the average of mechanics as to what they may do or think, but I inquire whether one skilled in the art to which the manufacture and use of the thing or machine belongs, and my inquiry goes as to whether such a person, in view of the state of the art, would not be likely to modify or change the construction in the manner

192 represented by A instead of that represented by B, whether A is for the same purpose, operates in the same manner subtantially, and produces the same result as B. If these conditions can all be answered in the affirmative, then I say A and B are mechanical equivalents.

X Q. 119 (116). Do you mean producing identically the same result, or substantially the same result?

A. I mean producing a result not materially different.

X Q. 120 (117). I understood you to mean that if it would occur to a person skilled in the art that A could be put in the place of B, with substantially the same result, then A and B are mechanical equivalents. Am I correct?

A. Not exactly. I mean if it would be likely to occur to a person skilled in the art that A might be substituted as a mechanical change for B, A and B being for the same purpose, operating in the same way, and producing the same result, without materiality of change in either of these respects, then A and B would be mechanical equivalents.

X Q. 121 (118). If the substitution of A for B would occur to an average mechanic, though he were without any special skill in the art, would you say that the fact that A and B are mechanical equivalents would be likely to occur only to a person having special skill in the art?

A. All the conditions that I have stated in my last answer being the same, it would appear more clear, or certainly not less clear, on account of a common mechanic suggesting or making the substitution.

X Q. 122 (119). Suppose that the canceller in Exhibit V had the bars on its acting face changed, so that they would, by means of sharp edges

cut the postage-stamp a little in addition to inking it, would that be a merely mechanical change of Exhibit V?

A. I think that would make a substantial difference. That cutting a little might become very material, very detrimental, or very dam-
192 aging. Such a result is not contemplated or apparently desired, and I can readily conceive how it might be of so great damage as to make the instrument Exhibit V wholly impracticable and worthless. I would like to see, however, such a construction in its practical working; nevertheless, I give it as my opinion at present that that introduces a new purpose or result largely different from what is contemplated in the construction Exhibit V.

X Q. 123 (120). Suppose that an instrument in all respects like V, except that the edges of the bars on the acting face of the canceller were sharp and capable of cutting the postage-stamp a little, were in use, and suppose it was found that the sharp edges cut the envelope and the contents so that such an instrument could not safely be used, and suppose that the sharp edges on the acting face were filed away, would that be more than a merely mechanical change?

A. That would be a change that would certainly produce a different result; and if the instrument having the sharp edges could not be used because of the pernicious and destructive results of its use, and therefore had to be discarded, the person who changed it into a practical and useful instrument by never so slight a change, and with unequalled facility, and by the flash of a happy thought alone, I would regard such a person, nevertheless, if the first to accomplish by mechanical means or combination a valuable result, as having made a substantial difference.

(Answer objected to as irresponsive.)

X Q. 124 (121). Please answer my last question?

(Last cross-question read.)

A. Yes. In view of the fact that a wholly different result is obtained, and in view of the further fact that the implements, the sharp edges, are changed into flattened bars, or bars with broad faces, that will not cut are substituted in the place of cutting edges. I do not regard the facility with which a change is made, or the difficulty with which
194 a change is made, of very material consequence, so long as that by a change a good and practical result is obtained in the place of a bad and destructive result. The result being wholly different, and the means different, the law of equivalents does not hold in the case.

X Q. 125 (122). Do you call yourself an expert in patent law as well as in mechanics?

A. No, sir; I speak of the law or rule of mechanics as recognized in equivalents.

X Q. 126 (123). What do you mean by the law or rule of mechanics as recognized in equivalents?

A. That which I suppose everybody who is specially informed in regard to mechanical construction and combinations understood well, to wit: the facts that one thing when an equivalent for another thing, must first be for the same purpose, of substantially the same construction, and operate not materially different, and produce the same result.

X Q. 127 (124). Do you mean that the conditions mentioned in your last answer must be satisfied before, according to the law of mechanics, one thing can be a mechanical equivalent for another?

A. Yes.

X Q. 128 (125). I think you have stated that a spring may be a me.

chanical equivalent for a weight. Are the two of substantially the same construction?

A. No, not usually.

X Q. 129 (126). Then you do not mean that the conditions mentioned in your answer to X Q. 123, must be satisfied before one thing can be a mechanical equivalent for another? (Answer to X Q. 123 read.)

A. Yes, I do when I refer to an instrument, or a combination of parts.

X Q. 130 (127). Must all the conditions mentioned in your answer to X Q. 123 be satisfied before, according to the law of mechanics, one thing can be a mechanical equivalent for another?

A. Where the thing is an instrument, or machine having combined parts, I think so.

195 X Q. 131 (128). Confining yourself merely to a cancellation of the postage stamp, is not cancellation by cutting and inking substantially the same thing as by inking alone?

A. No.

X Q. 132 (129). What substantial difference is there, the only object in view being to so mark the stamp that it can't be used again?

A. Supposing that cutting the envelope, or cutting through the postage stamp, *and* &c., to be attended with no harm, still there would be a difference, and that difference would consist in a necessarily different construction to accomplish the cutting instead of an instrument to accomplish the imprinting of ink on the postage stamp by a bruising or printing blow. It seems to me very clear that there is a wide difference between cutting, or printing, or stamping, or impressing, or bruising. No one would think of employing the edge of an instrument made for cutting for the purpose of bruising, printing, or stamping.

X Q. 133 (130). Admitting that there must be a difference in construction, isn't the result substantially the same, the postage stamp in either case being perfectly cancelled?

A. I think in either case the postage stamp would be perfectly cancelled, but the result would not be the same. I am supposing now, that wherever there is an inking-bar in Exhibit V (which exhibit your questions have referred to), or acting surfaces of the canceller in that exhibit, or an instrument substantially like it, having a number of acting or inking surfaces, that such acting or inking surfaces were changed into sharp edges, I mean to say, that in such case the cancelling of the postage stamp would probably be effected by striking the edges on to it, whether there was ink or not on the edges. It has been customary for many years to pierce with point or points, or sharp edges, bills of exchange, notes, checks, *and* &c., on payment of the same, so indicating that they were cancelled. Now, if you in your question mean that the cancelling device supposed should be provided with the sharp edges, and that the same shall at their edges be slightly dipped in ink

196 to the extent of their extreme edges, I am not prepared to say that there would be by the blow a perfect ink cancellation, and yet there is no doubt that the edges referred to might be so dipped in ink as to impart sufficient of the same, in the operation of cutting the stamp, to leave enough ink to make an ink cancellation irrespective of the cutting, and yet there would be a very different means of cancellation, and a very different kind of cancellation, neither the means nor the result being substantially the same.

X Q. 134 (131). Suppose you were to regard the inking-bars in Exhibit V to remain as they are, and that in addition there should be along their edges a thin blade or knife edge projecting, say the fifteenth of an inch,

so that when the instrument was used the postage stamp would be cut and also marked by the broad faces of the inking-bars; would that construction be merely a mechanically different construction from what is seen in the canceller in Exhibit V?

A. No, that would be a materially different construction.

X Q. 135 (132). Would the change of removing the knife edges when it was found that they cut the envelope as well as the postage stamp be one that in your opinion would be likely to occur to an average mechanic?

A. It might or might not be. It would be more than merely a mechanical change in my opinion, because it would remove a pernicious part, and thereby produce a valuable instrument, which in its use would produce a very greatly improved result, materially different from what would be produced in the employment of the instrument with the sharp edges.

(Answer objected to as irresponsive to the question.)

X Q. 136 (133). Is it your opinion that such a change would occur to an average mechanic?

A. I am in doubt whether it would or not. Mechanics are very much like machines generally; they go in ruts and do what they are told to largely.

197 X Q. 137 (134). Do you think it would occur to any intelligent and skilled mechanic?

A. No, not as a mechanic.

X Q 138 (135). Would it in any other capacity?

A. As a genius or an inventor it might; if it had never been done or described before it would require invention.

X Q. 139 (136). What do you mean by if "it had never been done or described before;" what is "it?"

A. Taking away or removing from an instrument its purpose and construction, and capacity for cutting, and substituting therefor a construction that would not cut but bruise, receive and print ink instead on the postage stamp of an envelope.

X Q. 140 (137). I understand you to mean that in your opinion the removing of the knife edges would require invention. Am I correct?

A. No.

X Q. 141 (138). Do you mean that it would not require invention?

A. I understood you to suppose, in one of your previous questions, that knife edges were placed along or by the side of each of the ink printing bars of the postage canceler in Exhibit V, so that they might be readily moved. If I am right about that, it certainly would not require anything more than mechanical skill to remove them; but if I am to understand you now as supposing that they are firmly fixed, and have to be filed off as you suggested before, and so produce a different construction or device, then it would be something more than a mechanical change, and require invention.

X Q. 142 (139). In your opinion, would an instrument in which the knife edges were firmly embedded in the canceller be one substantially different from an instrument in which the knife edges were attached to the inking-bars in such a way that they could be readily removed?

A. It might or might not be. The fact of the blades or knife edges being fixed and not removable, or so connected as to be readily removable, so that any one could understand doing it, I refer to only

198 in a suggestive sense, and only in a view of a construction which was suggestive.

X Q. 133 (140). Confine your attention singly and only to the method

in which the knife edges are attached to the canceller, and state a case in which in your opinion a firm attachment would be materially different from another in which the knife blades are so attached as to be readily removable.

A. Suppose the blades to be cast into the postage cancelling device, standing out an eighth or a sixteenth of an inch more or less above the general face; then suppose another case where they are set in a space like that shown in the postage marker, and like the type are set in Exhibit V; I think that might be regarded as a substantial different way of setting knives or blades.

X Q. 144 (141). Would the difference be any greater than appears in the method of arranging the type in Exhibit B, as distinguished from the method in Exhibit V?

A. Yes.

X Q. 145 (142). Why do you think it would be greater?

A. Because the knives are not removable at all in a case I had supposed.

X Q. 146 (143). Look at Exhibit B, and suppose that the die were not removable at all, and that the post marking type were secured as they are in Exhibit V, would that be more than a mere mechanical change of Exhibit B?

A. No.

X Q. 147 (144). Why do you distinguish by this case of a firm attachment of the die, and a case where knife blades are firmly attached to the canceller, and say that in the one case the part of the removability of a part of an instrument is immaterial, and in another case that it is materia?

A. Because the means for producing the result and the result are changed in one case and not in the other by the removability.

X Q. 148 (145). How does the result differ in a case where the knife blades are firmly imbedded from a case where they are merely attached so as to be readily removed, as they are in the case you supposed,
199 where they are held in a receptacle by means of a screw as the post marking type are in Exhibit B?

A. When you remove the knives by simply turning the little thumb screw or pressure bolt, you have a different instrument from what you have with them cast in, or if you remove them by cutting them away you do it in a different way then by simply turning the thumb screw.

X Q. 149 (146). I understand you to say that these differences are material?

A. Yes.

Adjourned to Dec. 21st, at 11 o'clock.

NEW YORK, *Dec. 21st*, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 150 (147). I understand you have testified substan*stan*tially that an instrument in which the knife edges are firmly embedded in the canceller is not a mechanical equivalent for an instrument in which the knife edges are held in their place by a set screw as the post-marking type are in Exhibit V. Am I right?

A. I think not.

X Q. 151 (148). Do you mean that the two are mechanical equivalents?

A. Both being intended for the same purpose, being substantially alike in construction with only one modification suggested, and operated the same way, and producing the same result, I do not think the fact of the knives or blades being readily removable would make a material difference between the two instruments.

X Q. 152 (149). Well, are they or are they not the mechanical equivalents in your opinion?

A. I think they are as instruments.

200 X Q. 153 (150). I understand you to have testified substantially that when the knife edges are readily removable, as they would be when held in place by a set screw, that the idea of removing them when it was found that their cutting was injurious, and of using the inking-bars alone to cancel the postage-stamp instead of the inking-bars in connection with the knife edges, is an idea that would naturally suggest itself to a person possessing mechanical skill. Am I right?

A. I think not. I would like to have you show me the answer from which you can fairly draw such an understanding.

X Q. 154 (151). Please point out in what respect my understanding is incorrect?

A. In your assuming that I have said what I think I have not said.

X Q. 155 (152). Is it now your opinion that such an idea as I have just suggested is an idea that would naturally occur to a person possessing mechanical skill?

A. It might or might not. Doing the thing suggested would be producing a different instrument for a different purpose, operating in a different way, and producing a different result. That is to say, instead of having a cancelling instrument, the main feature of which would be to cut the postage-stamp by projecting knife blades, if not the envelope and contents, by the removal of the knives, supposing the knife guards or bars to be of uniform height and of breadth sufficient; the instrument would become a stamping die adapted for the purpose of marking or inking the postage.stamp whereby the cancellation would be accomplished, instead of by the knives or their edges.

X Q. 156 (153). Taking people as they go, and supposing the matter presented to their attention, do you think the idea would occur to one in a thousand?

A. That would be very difficult for me to say. It is very much like poising the egg on its end; after it is once done the wonder is that anybody might not have thought how to have done it.

201 X Q. 157 (154). Do you think the idea would occur to one in a million?

A. The same answer as last.

X Q. 158 (155). I understand you to mean that in your opinion this idea might not occur to any one of a million people, taking them as they go, and supposing the matter presented to their attention. Am I right?

A. Yes, or it might occur to the first man who saw the instrument.

X Q. 159 (156). Do you not think that it would be as likely to occur to some one of the million that the probability of its so occurring amounts to a moral as distinguished from a mathematical certainty?

A. I would not like to say that, in view of what probably is a fact, that something of the kind, not altogether dissimilar, was confined to one man out of all the millions on earth apparently, so far as any information that I have.

X Q. 160 (157). I understand you to mean that in your opinion it is not a moral certainty that the idea would so occur. Am I right?

A. Yes.

X Q. 161 (158). Look at the instrument which I now proproduce, and, without disturbing the piece of paper pasted on the cross-bar, state whether it is a mechanical equivalent for Complainant's Exhibits A, B, U, V and W.

(Objected to as not competent on cross-examination.)

A. I think it is.

(Instrument offered in evidence as marked Defendant's Exhibit No. 1—J. A. S., Ex'r., and objected to as inadmissable on cross-examination.)

X Q. 162 (159). Look at the instrument which I now produce, and, without disturbing the paper pasted on the cross-bar, and state whether it is a mechanical equivalent for Complainant's Exhibits A, B, V, U and W.

A. I think it is.

202 X Q. 163 (160). Take the canceller of Exhibit No. 2 apart and see how it is constructed.

(Objected to as above.)

A. I have done so; my opinion is not changed. The canceller is of metal having side grooves below and back of its acting face, which face is composed of circular rims with flat surfaces, and this metal die of cylindrical form fits loosely into a hollow tube, which tube is fastened to the cross-bar by means of a solid head soldered therein, through which a screw works by thread, the screw passing down through a cross-bar and taking its bearing in the same. Within the cylinder loosely sets a coil spring on to which the cancelling die rests, and the die is secured into the cylinder by screws passing through the same, their ends on opposite sides resting loosely in the short grooves in the cancelling die. These grooves not passing out either to the top or bottom of the die, so that it is secured into the cylinders surrounding it, when the stud-like projections inwardly of the screws which are secured into and pass through the cylinder that contains the spiral spring, on to which the cancelling die takes its bearing, which die has a yielding bearing on the spring, and a vertical travel, being held in place and position loosely by the cylinder and the aforesaid screws.

(Instrument offered in evidence, and marked Defendant's Exhibit No. 2.—J. A. S., Ex'r.)

(Objected to as above.)

X Q. 164 (161). Is the canceller considered by itself in Defendant's Exhibit No. 2 a mechanical equivalent for the cancellers in Defendant's Exhibit No. 1, and plaintiff's Exhibits A, B, U, V, and W?

A. As a canceller broadly considered for cancelling postage-stamps with ink it is.

X Q. 165 (162). And one could be substituted for another in the different exhibits without more than merely mechanical change?

203 A. That would depend upon circumstances. Suppose, as I have before stated, some one had produced or made for use, and used and patented a device specifically describing the construction shown and found as cancellers for postage-stamps in complainant's Exhibit A, and Defendant's Exhibit No. 1, confining himself to cork or rubber as a die, bearing the acting face with any configuration adapted to print ink upon the postage-stamp on envelopes, for the pu'pose of cancelling the same. That is to say, suppose the state of the art at the time had never developed any other postage stamp canceller by means of ink than such an instrument as I have described, then I say it would be something more than mechanical change, or modification, of con-

struction to produce a cancelling device like Defendant's Exhibit No. 2, and the difference would be substantial and material.

X Q. 166 (163). But as things stand, with your present understanding of the state of the art, you mean that the cancellers in Defendant's Exhibit No. 2, and in Defendant's Exhibit No. 1, and in Plaintiff's Exhibits A, B, U, V, and W, could be substituted one for another without more than a merely mechanical change, do you?

A. I mean to be understood with the state of the art as developed by complainant's specifications and drawings found in the Patent Exhibit K, the exhibits inquired about are the same instruments substantially in each case, and the modifications and changes of construction found in the different exhibits are formal and mechanical, not substantial or material in view of the end sought, or the purpose of the device, the combination of the parts, or the means employed, and the result sought and obtained by the employment of either of the instruments named in the question, to wit, cancelling the postage stamp with ink and applying at the same time the post-office mark with ink.

X Q. 167 (164). I understand you to mean that Defendant's Exhibit No. 2 is covered by the specification, drawings, and claims of Complainant's Patent Exhibit K. Am I right?

204 A. I did not say that; I spoke of the state of the art as developed by Complainant's Patent Exhibit K. However, the peculiarity of the construction would not make any difference in my view when regarding the combined instrument as set out therein, and found in the exhibit inquired about, the object being the same, the operation and the result the same, accomplished with the combination of parts the same.

X Q. 168 (165). Do you now think that Defendant's Exhibit No. 2 is covered by complainant's patent?

A. Yes.

X Q. 169 (166.) Are you familiar with the state of the art to which the Exhibits No. 1 and 2 of defendant, and Exhibits A, B, U, V, and W of the plaintiff belong, as it existed in 1860, say?

A. I do not think that I can say that I am, farther than I have, because so thorough the information which I have obtained in the study of the same in this case, and in reading the patent on which this suit is brought?

X Q. 170 (167). From what source have you obtained your information as to the state of the art in 1860?

A. I don't mean to say that I am familiar with the state of the art in 1860. I refer you to my last answer.

X Q. 171 (168). Have you any information as to the state of the art at that time?

A. Not of my own knowledge.

X Q. 172 (169). Have you any information that you have derived from printed publications and patents?

A. Not that I now remember of.

X Q. 173 (170). Do you think that you ever had?

A. I do not remember of having derived any information of the state of the art in regard to the instrument inquired about by reading any patent or description of a combined instrument for post-marking and cancelling postage stamps on letters, envelopes, packets, &c., other than the complainant's Exhibit K, it being the patent on which this suit is brought.

X Q. 174 (171). Supposing the art to cover as well separate instruments for post-marking and for cancelling as a combined instrument, what is

the earliest patent that you have ever examined bearing on the art?

205 A. I do not remember now of having read any other patent bearing on the art, excepting complainant's Exhibit K and the patents of which that is a reissue.

X Q. 175 (172). Have you ever examined the original patent or a certified copy thereof, which was granted to Mr. Norton about April 14, 1863, and on which complainant's Patent Exhibit K as a reissue is based?

A. I may have; I do not remember whether I have or not; my impression is I have not.

X Q. 176 (173). Have you ever examined the reissue that *that* was granted to Shavor and Corse in 1864?

A. I may have; I think so.

X Q. 177 (174). Have you ever examined the reissue that was granted to Mr. Norton in 1869?

A. I think not.

X Q. 178 (175). You say that you think you have examined the reissue to Shavor and Corse. When did you make that examination?

A. A number of years ago; 8 or 10, I should think. My recollection is very indistinct in regard to it.

X Q. 179 (176). You made it, I suppose, for your testimony in the case of Shavor and Corse against the United States?

A. If I gave testimony in such a case, I presume I did examine the patent referred to, and for the purpose of preparing myself to give testimony.

X Q. 180 (177). Have you ever testified in any suit except this and the you referred to in the beginning of your testimony in chief in regard to one the method of post-marking letters and cancelling postage-stamps?

A. I think not.

X Q. 181 (178). Do you remember examining any other patent than the reissue to Shavor and Corse in your preparation for your testimony in the former suit?

A. I don't remember.

X Q. 182 (179). Are you familiar with the state of the art to which Exhibits 1 and 2 of defendant and Exhibits A, B, U, V and W of the complainant belong as it now exists?

206 A. No farther than is indicated in my answer to X Q. 170, and the reading of the reissue to Shavor and Corse in 1864.

X Q. 183 (180). What information did you have of the present state of the art while you were giving testimony in this case of Campbell against James?

A. No information farther than indicated in my last answers.

X Q. 184 (181). Had you received any information as to the state of the art from any person prior to your testimony in this case?

A. I had considerable conversation with Mr. Norton and the Hon. Judge Williams, in which the state of the art was more or less referred to and different devices spoken of. I have also been in the department of the New York City post-office, where the post-marking and postage-stamp cancelling was being done—nothing more.

X Q. 185 (182). The Mr. Norton you speak of is the person to whom the original patent of 1863 was granted, and who is solicitor for complainant herein. Do you understand so?

A. Yes.

X Q. 186 (183). What information did you receive from Mr. Norton as to the state of the art?

A. That he was the first to make and introduce into use an instrument whereby the post-office mark and date, and the postage-stamp on the envelope could be printed at the same time and operation, whereby the postage-stamp would be bruised or broken somewhat in the enamel surface and at the same time so impregnated with ink as that it could not be washed out sufficiently and in a manner that it would not be easily detected as a postage-stamp having been used, and the cancelling of a postage stamp on an envelope at the same time and operation, and by one instrument, and by the use and employment of ink was accomplished, putting the post-office on the envelope at the same time and operation of the same instrument, and that he had accomplished this by the instrument and in the manner as set forth, illustrated, and described, and claim in the reissue letters patent, complainant's Exhibit K; and that he had made
207 various experiments and instruments as modifications of that device; and that he had, also, some time between 1850 and 1860 (I cannot remember the year) filed a caveat in the Patent Office of the United States, in which he had quite fully described his invention, and he had some years subsequent thereto applied to the Patent Office for an instrument different from the instrument described in the patent, complainant's Exhibit K, and that in that instrument he had employed knives for the purpose of cutting and cancelling thereby the postage-stamp, instead of postage-stamp cancelling face represented in complainant's patent Exhibit K, and that he had made application to the United Stases Patent Office for another patent on an instrument that he thought somewhat differed in construction from that described in the patent complainant's Exhibit K, but that the Patent Office had rejected that application for want of novelty; that there had been some other patents granted by the United States Patent Office, none of which he had any apprehension that the court would entertain as antedating him or invalidating the equity of his claims, specified in complainant's patent Exhibit K; that he had spent a great deal of valuable time; and money to the amount of at least $50,000, in connection with his efforts, first to produce and introduce into use in the United States Post-Office the post-marker and postage-stamp canceller described in complainant's patent Exhibit K; that he had great difficulty and many obstacles in his way; that he had been (I think before Congress), and had a committee appointed to adjust his claims; and I think that he had been before the Court of Claims with the same. That the Post-Office Department of the United States had for a number of years used his post-office marker and postage-stamp canceller; and that no other was used to any great extent to the present time; that there had been mechanical modifications and changes made in the construction of the instrument, and that the same had been introduced in the post-offices of the United States. He showed me the instruments, Exhibits V, U, and W, and asked me in regard to my
208 opinion of them as to their similarity and difference, and proposed to let me read certain certified copies of other patents as this case progressed or before giving my testimony.

X Q. 187 (185). Did Mr. Norton give you any other information as to the state of the art?

A. I think he said that there had been an instrument for post-marking and cancelling the postage-stamp introduced into the New York post-office from England, which he claimed had been patterned after his construction, and that the English instrument was made subsequent to his, and he thought that some English consul or Englishman or American had taken one of his stamps to England from the United States Post-Office Department; that there had been introduced in the post-

office in New York postage-stamp canceller and post-office marking device of English manufacture like the instrument set out in complainant's patent Exhibit K.

X Q. 188 (185). Did he give you any other information as to the state of the art?

A. It would be difficult for me to remember all that he did say to me, but I now recall that he said that the Post-Office Department in 1863 or 1864 had adopted his invention and instrument for post-marking and cancelling postage stamps, as set out in complainant's patent Exhibit K, and that it had been used almost exclusively by the Post-Office Department since its first adoption, and its adoption was on the recommendation of Postmaster Wakeman, of the New York post-office; and furthermore, that the Post-Office Department at Washington had called the attention of English officials to the value of his instrument, the post-office marker and canceller, as set out in complainant's patent Exhibit K, and that that department had furnished English officials with the instrument, and that they had taken them to England, and that the post office department of Great Britain had adopted it several years ago.

X Q. 189 (186). Do you remember anything else that he told you as to the state of the art?

209 A. I now having my memory refreshed recall that Mr. Norton said that what was true as regards the English Government and its officials as being furnished by the Post-Office Department at Washington with the device (the post office marker and postage-stamp canceller) was also true in regard to France, Germany, and most of the other European nations having postal systems similar to ours. I don't think of anything else only that he suggested to me to read certain patents, which I told him I thought it better not to read until after his prima facie case was made, in view of his great confidence had in the clear description of his invention, as found in complainant's patent Exhibit K, and in view of his very strong faith that there was nothing that could antedate his invention as secured in the patent in suit.

X Q. 190 (187). Have you examined the patents that he referred to?

A. I have not.

X Q. 191 (188). In giving your testimony, have you assumed that the information given you by Mr. Norton was a correct statement of the state of the art?

A. No, not necessarily; I have confined myself to the instrument as described, illustrated, and claimed in the reissue patent, complainant's Exhibit K, and said to him that he must take the responsibility of any good or evil that would come to him by my measuring any similar or dissimilar construction by the construction therein described, as I had given to him my views of what his invention was, and some of the modifications which might be fairly made under my construction and view after having carefully examined the patent on which this suit is brought.

X Q. 192 (189). I understand you to mean that in so far as your testimony has been based on the state of the art, you have confined yourself for a knowledge of the state of the art to complainant's Exhibit K. Am I right?

A. Largely; I would not like to say wholly.

X Q. 193 (190). Well, in what respect am I wrong?

A. The counsel for the defence has put many hypothetical cases assuming a state of the art different from that which would be
210 derived from the patent, and then besides I would not pretend to say that my mind may not have been somewhat influenced by

some other information of my own, such as I have referred to in my answers.

X Q. 194 (191). Do you think that you are competent to state whether a particular device in an art is a mechanical equivalent for another device in the same art unless you are familiar with the state of that art at the time to which your testimony applies?

A. Certainly I am.

X Q. 195 (192). I understand you to mean that a knowledge of the state of the art is not essential to the determination of the question whether the devices referred to in my last question are mechanical equivalents or not. Am I right?

A. I mean as a mechanical expert I am qualified thoroughly, irrespective of any knowledge of a general character pertaining to the state of the art to which any two devices to which they may be properly said to relate, knowing the object of the devices, knowing the combination of the parts, knowing the operation of the two things, and the result produced by the operation and the combination to say whether they are alike or different as devices, irrespective of any state of the art outside of the two things being compared.

X Q. 196 (193). You state that you can tell under the circumstances stated in your last answer whether the two devices are alike or different as devices. Do you mean by that whether you can tell that the two things are mechanical equivalents?

A. Certainly; when I say alike or different I mean substantially alike or different as I have used the term all through; not whether they are slightly alike or formally different.

X Q. 197 (194). Aside from complainant's Exhibit K, and from whatever memory you may have of the reissue to Shavor and Corse, which you state you examined eight or ten years ago, and from what you saw when you visited the stamp department of the New York City post-
211 office, have you any personal knowledge of the state of the art to which defendant's Exhibits Nos. 1 and 2, and complainant's Exhibits A, B, U, V, and W belong, as it exists now, or as it has ever existed?

A. Yes; I remember seeing postage-stamps on envelopes a great many years ago, and seeing them crossed with ink with a pen or something of that description I should say, and of having seen them with the postmark printed partly on the envelope and partly on the stamp.

X Q. 198 (195). Have you any other personal knowledge?

A. I think I remember also, years ago, now that my attention is called to it, of having seen some kind of uniform ink mark on the face of the postage-stamp; I do not pretend to fix the date when I first saw that, however.

X Q. 199 (196). Have you any other personal knowledge?

A. I don't think of any now.

X Q. 200 (197). Do you think you had any when you were giving your preceding testimony?

A. Not in my mind that I specially remember of.

X Q. 201 (198). I think you have stated that you were 52 years old. Enumerate what different employments you have been in since your boyhood.

A. When I was about 17 years old I went as an apprentice into the employment of a blacksmith and carriage-maker, which I only remained a few months engaged in, as my brother who was a builder, or carpenter and joiner, as it is termed, wished me to learn that business with him,

which I was persuaded to do, and was engaged most of my time in working at that business, and in manufacturing sash, blinds, doors, &c., by machinery, and by hand for six or eight years, when I commenced soliciting patents, having sold out my interest in planing mills, the sash and blind business. I solicited patents for one or two years, and then engaged in the manufacture and introduction of a candle moulding machine, which has been almost universally adopted in this country and Europe. In 1859 I commenced the business that I am now in. In 1853 I obtained my first patent for an invention of my own, and have made a number of inventions, and procured a number of patents
212 since that time on inventions of my own; was engaged with my brother in bringing out and perfecting Kittles' patent planing and matching machine, or floor dresser. After that date and during the ensuing five years, and while I was in the lumber planing business, in the manufacture of sash, blinds, doors, &c., I was engaged somewhat in building the floor dressers, the same as I was thereafter in building the candle moulding machines. I commenced to act as a mechanical expert in patent cases in 1854 or 1855; have been frequently called as a mechanical expert, and have acted as such in very many patent cases since.

X Q. 202 (199). Have you had any other opportunities of obtaining a personal practical knowledge of mechanical pursuits?

A. Yes. The preparation of myself to act as a mechanical expert in patent cases has brought me into the practical knowledge of the manufacturing, or the process of making very many different things, and given me a knowledge of the construction and operation of a great variety of different machines, which knowledge or information I hardly could have had without my having become interested sufficiently to be well informed in regard thereto.

X Q. 203 (200). Have you had any other opportunities of obtaining such knowledge?

A. Well, I might say that it has been common during the past 20 years or more, with people more or less acquainted with me, to consult me in regard to the practical construction of machines or devices for different purposes, their similarity or difference, as compared with others constructed for the same purpose. And with regard to the practicability of devices or constructions irrespective of other constructions.

X Q. 204 (201). Have you had any other opportunities to obtain such knowledge?

A. Nothing further specially that I think of, unless it be my general interest in mechanic', and my reading and observations that have been consequent thereon.

213 X Q. 205 (202). How did you prepare yourself to become a mechanical expert?

A. I didn't seek that as an employment and did not prepare myself specially for it, only as I was called into cases. I suppose the turn of my mind, my education, practical knowledge, and my ability to analize constructions, was of a character that was satisfactory to those who employed me, and that by the recommendation of such, others came for my services. I never have set myself up for (and advertised myself as many do) as a professional mechanical expert.

X Q. 206 (203). You have stated that you had some scientific knowledge of mechanics; how did you obtain it?

A. I don't remember stating that. I do not wish to be understood as not having anything more than a practical knowledge as a qualification as a mechanical expert.

X Q. 207 (204). Well, how did you obtain whatever scientific or theoretical knowledge of mechanics you possess?

A. I attended at the Albion Seminary, State of Michigan, two academical years, and spent some time in the Alfred Academy in Alleghany County, this State. I left the school in the State of Michigan on account of ill-health, and for the same reason the academy last referred to, and abandoned a scientific education for that reason only. However I have given a great deal of attention to mechanics and have read on mechanical subjects quite largely.

X Q. 208 (205). At what age did you leave the academies you have referred to?

A. I think I was about 22 years old.

X Q. 209 (206). Were you attending them while you were engaged in the blacksmith, carriage-making, and carpenter business?

A. It was in the year 1847 or 1848, I think, that I put those two years in those schools, after I was 20 years old and prior going into the planing mill or floor dresser business.

X Q. 207 (207). Did you receive any theoretical training between the ages of 10 and 20?

214 A. I went to the common school and studied what was common to be studied in common schools at those times; wholly, however, in the winters.

X Q. 211 (208). What was common to be studied in those days in common schools—anything relating to mechanics?

A. Yes; natural philosophy.

X Q. 212 (209). Did you study natural philosophy; and if so, what branches of mechanics did the book you studied cover?

A. The laws of mechanics, mechanical powers, hydrostatics, &c., which I studied.

X Q. 213 (210). At what age did you study natural philosophy?

A. Before I was 17 years old; I cannot remember the year; I presume when I was 15 or 16 or 17 years old.

X Q. 214 (211). What branches of mechanics did you study in the academies you have referred to?

A. I don't remember now; I took up the studies that were being taught. I do not remember whether I continued in natural philosophy or not.

X Q. (215 (212). Mention some of the books on mechanics which you have at any time studied with care?

A. I don't know that I can mention any specially.

X Q. 216 (213). You have studied some such books with care, have you not?

A. I have read scientific treatises and mechanical works, and as I have been called in the cases where I required information I have gone to an encyclopedia which I have, for such information as I thought requisite to correct my views, or to confirm me in my judgment.

X Q. 217 (214). What is the name of that encyclopedia?

A. I think it is Mechanical Dictionary, or a Mechanical Encyclopedia, and another, Chambers' Encyclopedia, and formerly I had what was known as the American Encyclopedia.

X Q. 218 (215). I understand you to mean that, as far as you now remember, your theoretical knowledge of mechanics has been
215 mostly obtained by consulting the encyclopedias you have mentioned, as from time to time a particular question was brought to your attention. Am I right?

A. No; I don't mean to be understood so; neither do I mean to be

which I was persuaded to do, and was engaged most of my time in working at that business, and in manufacturing sash, blinds, doors, &c., by machin ery, and by hand for six or eight years, when I commenced soliciting patents, having sold out my interest in planing mills, the sash and blind business. I solicited patents for one or two years, and then engaged in the manufacture and introduction of a candle moulding machine, which has been almost universally adopted in this country and Europe. In 1859 I commenced the business that I am now in. In 1853 I obtained my first patent for an invention of my own, and have made a number of inventions, and procured a number of patents
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A. Yes; natural philosophy.

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X Q. 214 (211). What branches of mechanics did you study in the academies you have referred to?

A. I don't remember now; I took up the studies that were being taught. I do not remember whether I continued in natural philosophy or not.

X Q. (215 (212). Mention some of the books on mechanics which you have at any time studied with care?

A. I don't know that I can mention any specially.

X Q. 216 (213). You have studied some such books with care, have you not?

A. I have read scientific treatises and mechanical works, and as I have been called in the cases where I required information I have gone to an encyclopedia which I have, for such information as I thought requisite to correct my views, or to confirm me in my judgment.

X Q. 217 (214). What is the name of that encyclopedia?

A. I think it is Mechanical Dictionary, or a Mechanical Encyclopedia, and another, Chambers' Encyclopedia, and formerly I had what was known as the American Encyclopedia.

X Q. 218 (215). I understand you to mean that, as far as you now remember, your theoretical knowledge of mechanics has been
215 mostly obtained by consulting the encyclopedias you have mentioned, as from time to time a particular question was brought to your attention. Am I right?

A. No; I don't mean to be understood so; neither do I mean to be

understood as having devoted a number of years in school exclusively to scientific training. I do mean to be understood as having given a great deal of time to mechanical subjects theoretically and practically, and as having brought to bear a fair and reasonable amount of common sense, without any pretension to special scientific knowledge on subjects of a mechanical character or nature that I have tried to inform myself or others about.

X Q. 219 (216). Since leaving the academies have you studied any work on mechanics systematically?

A. No; if you mean thereby as pursuing a course of study.

X Q. 220 (217). Have you studied any such work except with reference to some particular case or some particular question?

A. Usually when I have taken up a subject I have tried to follow it through, and in doing so my reading has led me on beyond any separate question into a general information.

(Objected to as irresponsive.)

X Q. 221 (218). Are you familiar with the details of the mechanism of the steam engine?

A. I think so.

Adjourned to Saturday, December 22, 1877, at 11 a. m.

216 NEW YORK, *December* 22, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 222 (219). Do you think that you are familiar with the details of the mechanism of the sewing machine?

A. Yes.

X Q. 223 (220). Do you think that you are familiar with the details of the different machines by which cotton cloth is made?

A. Yes; fairly so.

X Q. 224 (221). Do you understand the knitting machine?

A. I have never given any special attention to that.

X Q. 225 (222). Do you understand the details of the manufacture of fire arms?

A. No; though I have been through the Remington works.

X Q. 226 (223). Do you understand so that you can describe the machines by auk of which locomotives are constructed?

A. I wouldn't like to say that I could, thoroughly.

X Q. 227 (224). Can you describe the principles of bridge building?

A. I could in some respects; some not.

X Q. 228 (225). Do you know what the parallelogram of forces is?

A. I don't know that I could explain that.

X Q. 229 (226). Can you explain the function of the different rods and braces and arches which are used in the construction of a heavy roof like that of the Grand Central Depot of this city, so that you can give a reason why the several rods and braces should have the position they do have rather than some slightly different position, and why the arches should have one curavature rather than another?

A. I think I understand pretty well the construction of such a
217 roof, but I think it would trouble me to give a reason why the arches should not answer if slightly different, or that the rods, braces, &c., might not be changed slightly.

X Q. 230 (227). Have you ever studied the application of geometry to the construction of buildings, bridges, and machinery generally?

A. Not as a profession or science. I never studied geometry at all, indeed.

X Q. 231 (228). What is the metecentre of a ship or other body floating in a liquid?

A. I don't know by that term.

X Q. 232 (229). How many sorts of equilibrium are there?

A. I don't pretend to say.

X Q. 233 (230). Can you explain what takes place when a candle burns?

A. Combustion.

X Q. 234 (231). Do you know anything about chemistry?

A. Yes.

X Q. 235 (232). Can you explain how water can be decomposed quantatively and qualitively?

A. I don't think I could successfully.

X Q. 236 (233). Mention the different machines, without giving a detailed description of any of them, which are used for the manufacture of cotton cloth?

A. The preparing machinery of the cotton, the spinning jenny, and the loom.

X Q. 237 (234). What is the spinning jenny?

A. It's the machine that carries the spindles that twist the cotton into threads.

X Q. 238 (235). Name the principal elements of that machine, according to its present development.

A. The carriage, the spindle bearers, the spindle pulleys, and the thread guide and the spindles. I do not pretend to say these are all.

X Q. 239 (236). Are these all you know?

A. These are the acting and material parts.

(Objected to as irresponsive.)

X Q. 240 (237). Are these all you know?

A. Substantially.

218 X Q. 241 (238). How long is it since you had occasion to consult any authority as to the mechanism of the steam-engine?

A. I refreshed myself last night, supposing I should be inquired of this morning in regard to it.

X Q. 242 (239). Is the mechanical effect of a blow different when given by the hand and arm of a man and when given by machinery, as in the case of a trip-hammer?

A. The instrument or the hammer proper being the same that is employed in either case, and the force behind being equal, the effect, I think, would be about the same.

X Q. 243 (240). Suppose that complainant's Exhibit U were operated so asto give the blows by means of a machine constructed according to a well-known pattern instead of by the hand of a man, would the change in the method of operation be more than a merely mechanical change?

A. It would be a change from manual or physical to mechanical as to power or force.

X Q. 244 (241). Do you mean that the working of the arm is not mechanical?

A. I suppose the scientific idea is that it is mechanical, but I choose to say that it is physical or manual. If you desire to regard man as a machine I have no objection if you say he is one of God's machines.

X Q. 245 (242). Please answer my question 240.

(Question read.)

A. The same answer.

X Q. 246 (243). I understand you to mean that it would be more than a mere mechanical change of operation. Am I right?

A. The question assumes a machine that would grasp the handle of the instrument, and use it in the same manner that it would be used in the hand of an individual in producing the result for which it is intended. I say such a substitution of power or force would be simply a substitution of a mechanical power or force in the place of manual or
219 physical force, but if you choose to regard the user or operator of the instrument as a machine or piece of mechanism, then the substitution of another piece of mechanism would be simply a mechanical change in the operating or driving force.

X Q. 247 (244). Do you know what potential energy is in physical science?

A. I suppose the energy of the will in the control of physical force. I may be incorrect as I do not make any pretension to have been schooled specially in the sciences, or the use of scientific terms.

X Q. 248 (245). Do you understand on what principle a given material must be increased in quantity in order to sustain a given increase of strength, the strain coming at the same point of the material in both instances?

A. I think if you will give me the case in some practical form, I would have very little trouble in giving you a satisfactory answer, and will say I probably would. I think it is manifest in the character of the questions being propounded to me by the counsel that he hopes to weaken the force of something that has gone before in my answers by showing me up as unscientific in my education, and I wish to state now that I frankly acknowledge that I have not a scientific or collegiate education, neither have I ever pretended to have, nor do I pretend to be able to fully comprehend or explain the meaning of strictly scientific terms, and I do not know indeed as I would be specially improved in my qualifications as a practical and common sense man, or an expert, had I such ability, for I remember that when I finished the schooling that I had, that I detected in myself what I frequently observed in young men recently from schools or colleges, a peculiar smartness in the use of terms, and ability to show off an apparent profoundness of education in word learning, and I therefore request the counsel, if he please, and can, to let his questions be of a less learned or scientific character, and more of what would be regarded as practical and common sense.

X Q. 249 (246). Suppose that a bar of iron will be fractured by a weight of one hundred pounds and by no less weight, how will you deter-
220 mine the question of how much that bar of iron must be increased in size in order that it may not be fractured by a less weight than two hundred pounds, and may be fractured by just that weight of 200 lbs., all the other conditions of the two cases being identically the same?

A. At the point of fracture my first proposition would be that it should require just double the material to support just double the weight.

X Q. 250 (247). That is, if the part of the bar exposed to the influence of the weight in the first case weighed two pounds, it must be increased to four pounds in weight in order to sustain the increased strain supposed. Do you mean that?

A. No; I mean it must have double the supported power at the point of the fracture, and have the metal requisite for that. It does not follow that the metal may not be placed advantageously so as to save weight

Give me the conditions under which the bar breaks, the length, the form where the support and where the weight is applied if you please.

X Q. 251 (248). Suppose the bar to be round and of uniform diameter, to be in a horizontal position, and to be firmly attached at each end to two firm props, and the weight to be applied midway between the props in each of the cases that I have indicated above, and the iron of the bar in each case to be of the same quality, and suppose the diameter of the bar in the first case, which is fractured by a weight of 100 lbs. to be $\frac{1}{10}$ of an inch: the question is how you will determine how much that bar must be increased in size in order that a weight of 200 lbs. would be necessary to break it?

A. In practice I suppose I should determine it in the same manner that most constructors do, to wit, go to the tables and take the result of actual experiment, and trust to them as being correct, or, if I preferred, I might make my own experiments, and tabulate them and call them practical or scientific tests, or I might repeat if I had that result ready in my mind what had been found out that way; I do not know of any special rule, or I do not think of any at this time that would be a
221 satisfactory guide to secure a positive result, but would say the increase of the body of the metal equal to double the body of the first bar would be sufficient, whether twisted together with the first or rolled into a rod, or drawn into a wire of slightly increased diameter.

(Counsel for defendant applies for an adjournment at this hour, 1.45 p. m., to the 26th of December, at 1 p. m., on the ground that he desires to leave the city for the holidays, and because the examination has continued day by day without interruption for the convenience of plaintiff, with the exceptions of Sundays, and one day last week.

The adjournment objected to by the complainant's counsel until the usual hour of adjournment to-day, for the reason that the witness now on the stand has been under cross-examination for nearly two weeks at great expense to complainant, and because the cross-examination has been unreasonably protracted, and the questions have ceased to be material or of consequence in the case.)

Adjourned by the examiner to Wednesday, December 26th, 1877, at 11 o'clock a. m.

NEW YORK, *Dec.* 26, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel for complainant, and consented to an adjournment until 1 o'clock p. m. to-day, having received from defendant's counsel the following telegram, to wit, "Chicopee, Mass., Dec. 25th, 1877. To Hon. George H. Williams: Missed train. Can't arrive before one o'clock to-morrow. S. B. Clarke." Which is marked and filed Telegram No. 1, J. A. S., exr.

222 1 o'clock p. m.—Pursuant to adjournment last above.

Present, counsel for complainant Marcus P. Norton, esq., and George H. Williams, esq., and S. B. Clarke, esq., of counsel for defendant.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 252 (249). You consider yourself an expert in the interpretation of mechanical drawings. Do you not?

A. I do.

X Q. 253 (250). Look at Figure 3 in Complainant's Exhibit K, and state what you suppose the circle in that figure represented while you were giving your testimony in chief, except the last clause in your last answer, which reads "however, the circular form has reference there to the handle."

A. I had given it no special attention until the time when I was giving that answer, and it occurred to me as the circle caught my eye that it was fairly suggestive of a circular form for cross-bar, the A within the circle not at the moment striking my eye (the A denoting the handle).

X Q. 254 (251). Where in your answer to Q. 9, of your examination-in-chief, you said that with reference to Complainant's Exhibit B that "it strongly resembles the illustration in said patent, Figure 3." What did you mean by that?

A. I meant the combined face of the post-office marker and postage-stamp canceller. I may have taken in the circular line indicating the diameter of the handle; as I have said before, excluding the letter A from that figure, it would be suggestive of a circular plate, lying back or above of the acting face or faces. Even without that circle, the bar is circular at the ends in form as represented in Figures 3 and 6, also 1 and 2, at the ends, the circle of course being of a smaller diameter.

X Q. 255 (252). What is your best recollection of what you supposed the circle in Figure 3, Complainant's Exhibit K, represented when
223 you stated that Complainant's Exhibit B strongly resembles the illustration in said patent, Figure 3?

A. Just what I have stated before, to wit, that it may have been in my mind that a plate lying back or above B proper, or a part of B proper, not having noticed at the glance the letter A, and as I said in my examination-in-chief, that it might be suggestive of a circular form in part or in whole of the bar B, but at the time of giving this answer I noticed the letter A, and stated that that circle meant to represent the diameter of the handle. I don't think that figure ought to have had that circle upon it, and yet it is clearly enough understood what it was meant to indicate. I think that Figure 6 is a better figure for a face view of the instrument, however, either is clear enough, and either is suggestive of any modification of the die or face of the combined instrument.

X Q. 256 (253). I don't ask you for what may have been in your mind. I ask you for what your best recollection is as to your actual understanding of the signification of the circle in Figure 3 at the time referred to. Please answer.

A. I think my mind was running on to the question whether the modification which I have regarded as purely mechanical and formal found in the parts of the Exhibits B and W, corresponding to the bar, or parts marked and described as B, in the Complainant's Patent Exhibit K, as a modification, and I was looking at the different figures in the drawings of that exhibit when comparing B and W, and reflecting whether such modifications were not merely mechanical or formal modifications and whether the same would not be suggested by the construction illustrated in Complainant's Exhibit K, when my eye fell upon the circle of Figure 3, and I thought it suggestive evidently in part of a circular form to the bar, but irrespective of that the fact remains as I answered.

X Q. 257 (254). I understand you to mean that before all your testimony in chief was written down as it stands, you changed your mind as to the signification of the circle in Figure 3. Why did you change your mind?

224 A. I don't want you to understand that any farther than I have

stated, and I do want you to understand that that circle had not entered into my estimate or judgment in regard to the formal change found in Exhibit B and W at all, neither does it now, only so far as at the time was indicated in those answers when special reference is made to it. and that I really had not given any thought at all to that line until I was answering the question, and as it is found in the answer now referred to as according to my recollection. That is to say, that circular line lying back of the bar proper in Figure 3 struck me at the instant when giving that answer that it might fairly be suggestive of a construction not essentially different from that found in Exhibits B or W, and I had evidently, (and this is my recollection,) not given any special thought in regard to that line, or importance to it farther than that; and farther, I had not regarded, nor did not, nor do not regard that line as the outline of the bar B, anything more than possibly suggestive, it not being an elevated or shaded view of the handle.

(Objected to as irresponsive.)

X Q. 258 (255). Did you or did you not change your mind as to what you supposed the circle in Fig. 3 to be intended to represent prior to or at the time of the writing of the last clause of your last answer in chief which is, "however, the circular form has reference there to the handle"?

A. I think I had not given thought enough to that line to have given it any special importance at all until about the moment of giving the last answer in chief referred to; I had glanced at it, and thought it was suggestive in part, but as soon as I thought there was danger of being misunderstood, I put that last clause referred to into that answer.

(Objected to as irresponsive.)

X Q. 259 (256). Did you or did you not change your mind or your view, or your impression, or your understanding, of what the circle in Fig. 3 was intended to represent prior to or at the time of the writing of the
225 last clause of your last answer in chief, which is, "however, the circular form has reference there to the handle"?

A. If there was any change, it was nothing more than an impression; I certainly had no definite mind or idea different during my examination in chief from what I now have or had at any time during that examination, further than fully expressed in previous answers of to-day.

(Objected to as irresponsive.)

X Q. 260 (257). Please answer my last question.

(Question read.)

A. No.

X Q. 261 (258). Do you mean to say that when you said that the illustration in Fig. 3 strongly resembled Exhibit B, your impression at that time was not that the circle suggested a circular plate instead of a bar?

A. No.

X Q. 262 (259). Well, what was your impression?

A. For my answer I refer you to my last three or four or five answers preceding this, which you have indicated were irresponsive, for my answer to the present question.

X Q. 263 (260). At the time that you said that Exhibit B strongly resembles the illustration in Fig. 3, is it not your last recollection that your impression then was that the circle in Fig. 3 was intended to indicate a circular plate instead of a cross-bar?

A. Same answer as my last.

X Q. 264 (261). Please answer my last question.

(Question read.)

A. I have stated several times upon this record that I had nothing more than an impression, and that arising at the time of answering,

that that circle might suggest in part to a construction that a circular form for the bar B, and I still state that as a fact, and have not changed my mind about it. No.

X Q. 265 (262). What does the last word in your answer, that "No," mean?

226 A. It means what "no" always means in the English language, in common parlance.

X Q. 266 (263). Do you mean it, or did you mean it, as a negative answer to my question?

A. Yes; for short, instead of the longer or explainative part going before it.

X Q. 267 (264). At the time of stating that Exhibit B strongly resembles the illustration in Fig. 3, what is your last recollection of what your then impression was as to what the circular Fig. 3 was intended by the patentee or the person who made Fig. 3 to represent. I do not ask you for what the circular might, in your opinion, suggest to a constructor, but for your own actual impression at that time of what the circle was intended to represent.

(Complainant's counsel objects, on the ground that the witness has fully and fairly answered the question several times, and that its frequent repetition is encumbering the record with useless matter.

Defendant's counsel requests plaintiff's counsel to point out where, in his testimony, witness has answered the last question, and says that he is willing to withdraw the question if in fact the witness has answered the question.

Counsel for complainant refers his objection to the court.)

A. As I have stated before, I had not given at that time any special thought as to what the circle represented, nor indeed noticed the letter A on it. In glancing at that figure, it occurred to me, in view of the other figures, 1 and 6, that it was in part suggestive of a modification that might be made in the form of the bar not unlike that found in Exhibit B.

X Q. 268 (265). Do you mean that you at that time had no impression as to what the circle in Fig. 3 was intended to represent?

A. Yes; for I had not noticed the letter A on it until I had
227 substantially given my answer; and if I had previously, when reading and studying the patent, thought anything about it, it had gone out of my mind at that time.

X Q. 269 (266). Why, then, did you say that Exhibit B strongly resembles the illustration in Fig. 3?

A. Waiving the letter A, or indeed the circle, for the same reason that I say now, and have fully explained in my examination-in-chief, as well as in this cross-examination, to wit: It represents the acting face, or faces, or die, having a postmarker and postage canceller combined with a metal portion lying back or above the same, mechanically sustaining them for the purpose of connection, and also affording strength sufficient to firmly secure them to each other in relation thereto, and for the further purpose of connecting or securing a handle whereby to operate them in the printing of the post-mark and cancelling the postage-stamp with ink on an envelope, packet, or other mail matter, the same having removable type to change the date in the post-marker; and the circle found in that figure, while it actually represents the diameter of the handle, may be said (striking out of view the letter A) to be more or less suggestive of a circular form of plate or piece lying above the bar proper for any purpose like the circular piece of india rubber found in Defendant's Exhibit No. 2, nothing more.

X Q. 270 (267). When you said that Exhibit B strongly resembles the illustration in said patent, Fig. 3, did you mean to convey the impression that Exhibit B any more strongly resembled Fig. 3 than Fig. 6?

A. No; no further than the suggestion which I have stated before, of the circular line, irrespective of its indicating the form and diameter of the handle.

X Q. 271 (268). Did you not mean to give the impression that if a model were constructed according to Fig. 3, it would have a cross-bar or plate strongly resembling in respect to form the cross-bar or plate in Exhibit B?

A. Yes; and I mean to give that impression now. The same is true in regard to Fig. 6, and Fig. 1, and Fig. 2, and Fig. 5.

228 X Q. 272 (269). Did you mean to give the impression that if a model were constructed according to Fig. 3, it would have a cross-bar in a circular form, as is the case in Exhibit B?

A. No, not necessarily; it might or might not.

X Q. 273 (270). Did you mean to give the impression that if a model were constructed strictly according to Fig. 3, it would have a cross-bar in a circular form, as is the case in Exhibit B?

A. No.

X Q. 274 (271). What form would the cross-bar have been if a model had been constructed strictly according to your interpretation of Fig. 3 at the time that you said the illustration in Fig. 3 strongly resembles Exhibit B?

A. A bar twice as long as it is broad on its lower face, with curved or circular ends slightly depressed in its longitudinal centre, with or without a plate lying back or above it, which, as I have stated before, irrespective of the purpose of a circle representing the handle A, and the letter A, might in part suggest such a modification of form back or above the bar, or in the bar, instead of the elongated or circular end B.

Adjourned to Thursday, December 27th, 1877, at 11 a. m.

NEW YORK, *December* 27, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued:

X Q. 275 (272). In your last answer in chief you stated that "the face view of Exhibit W will be found fairly illustrated in the Fig. 3 of the drawings Complainant's Exhibit K." Precisely what meaning did you at the time mean to convey by that?

229 A. That the figure did fairly represent Exhibit W. For a more full answer to this question I refer you to my answer of the 266th X Q.

X Q. 276 (273). Did you mean to convey the impression that Fig. 3 any more fairly represented Exhibit W than Fig. 6?

A. I refer you to my last answer, with its reference, for as full an explanation of my meaning as I am able to give, unless it should be found in other answers where I have repeatedly tried to make myself understood as to my meaning and understanding at the time the direct question 13 was asked, as well as the present time; and I now say, as I have frequently said before, waiving the letter A, indicating the object of the circular line, it might indicate a circular plate, as I have before suggested and explained repeatedly, and without any reflection or special thought or deliberation. I presume my mind caught the suggestion from

that line sufficiently to have recurred to that figure, as showing a formal change or modification of the bar B, or some portion back or above it that might be made in a circular form like that in Exhibit W, instead of as in that figure as well as in figures 1 and 6, where the bar is only circular at its opposite ends.

X Q. 277 (274). When was the letter A and its significance in Fig. 3 first brought to your attention?

A. While giving my answer to the 13th direct interrogatory. And I wish to state on the record that I presume that I observed the line and the letter A in Fig. 3 while reading the patent, and have no doubt but I did while reading the patent, complainant's Exhibit K, and comparing the same with the patent as spread on the printed and amended bill in book form, which was and has been understood to correspond in all respects as to drawings and description with the patent, complainant's Exhibit K, and which does, with the exception of the circular line and letter A, and the numbering of the figures, to wit, the figure which is marked 3 in Exhibit K in the printed record is marked 2, and the figure
230 which is marked 2 in Exhibit K is marked 3 in the printed record. I had made in the book that I have corrections to correspond with Exhibit K in regard to the number of these figures. This error in numbering these figures was readily observed in reading the specifications.

X Q. 278 (275). Did you come to a distinct impression that the circle in Fig. 3 refered to the handle during the time in which you were dictating to the examiner any portion of your direct testimony except the last clause of your last direct answer?

(Objected to on the same ground as stated in objection to X Q. 264. Defendant's counsel makes the same request.)

A. I think so; I had not looked at the figures or the drawings in a sense of studying the same in Exhibit K, as I had confined myself in the study of the patent, as contained in the printed book, though I had compared it with the book or the book with it, and in giving my answers I have had the book or amended bill containing the patent continually before me, and in the Fig. 3 which had been so often referred to, there is no circle nor letter A in the book; when my eye fell on it in Exhibit K, it occurred to me that it was suggestive of a circular form instead of an elongated form of the bar B; I did not then, had not before, do not now, think that was the bar.

X Q. 279 (276). At what portion of that time did you first get at distinct impression that the circle referred to the handle?

A. While giving the answer and at the moment my eye caught the etter A.

(Objected to as irresponsive.)

X Q. 280 (277). Read my last two questions to witness and let him answer the last one.

A. I can't tell the time any nearer than I have.

X Q. 281 (278). Did you have such a distinct impression while dictating any portion of your direct testimony preceding the last clause
231 thereof, which is, "however, the circular form has reference there to the handle"?

A. I think so; undoubtedly I had.

X Q. 282 (279). Didn't you get such distinct impression during the interval between the time of dictating the last clause and the time of dictating what preceded it?

A. It may have come to me at that time; I think I had that impression long before, and on first reading and comparing the patent, com-

plainant's Exhibit K, with the printed record, but it was of so little importance in a clear understanding of the construction that I had given no special attention to it, and for a time doubtless it may have made no impression or had any weight on my mind.

X Q. 283 (280). During the interval that I have referred to, did any one in the room suggest in your hearing that the circle indicated the handle?

A. I think there was something said about it before finishing the answer, by some men in the room.

X Q. 284 (281). By whom?

A. I don't know who spoke of it first.

X Q. 285 (281). What is your best recollection as to who suggested that the circle referred to the handle?

A. I think I made the remark that the figures were not alike in that respect when Mr. Norton made the remark that the circle had no business there, or something to that effect; that it referred to the handle; if my recollection serves me, I think I said, "Yes, I see that," which I am sure I had seen and observed before I had been spoken to by anybody.

X Q. 286 (282). Do you mean that you said in the room that you were sure you had seen and observed the fact referred to before you had been spoken to by anybody?

A. Something to that effect, or in substance the same.

X Q. 287 (283). State the words you used as nearly as you can.

A. I am not able to repeat the words.

X Q. 288 (284). Do you remember that you said anything more than substantially this: "Yes, I see that?"

A. Yes, I think there was something more than that said.

232 X Q. 289 (285). Give the words that were said as nearly as you can. Give a sentence.

A. I am not able to give the words. I know I felt a little annoyed at the fact that Mr. Norton had said anything to me while giving that answer.

X Q. 290 (286). How are you paid for your services as an expert witness in this case?

A. By draft on the complainant.

X Q. 291 (287). Wholly by draft on the complainant?

A. Yes; I suppose I shall be; I haven't been wholly paid yet; but I had already two drafts, one of which has been paid.

X Q. 292 (288). When are you to be paid for the balance of your services?

A. As soon as this examination is completed with me.

X Q. 293 (289). Have you any interest in the result of this suit?

A. No.

Redirect:

R. D. 294 (290). Cannot any person who can read tell by reference to the specifications and description in complainant's Exhibit B, that the circle marked A indicates the handle to the instrument?

(Objected to on the ground that the witness is not shown to be competent to testify as to what any person can do.)

A. Yes; any man of intelligence.

R. D. 295 (291). Referring to the subject of mechanical equivalents, I ask this question: Suppose that A makes a machine or construction, which upon trial is found to be worthless or pernicious, and unfit for the purpose intended, and B takes the same machine, and by any change of

construction makes it useful and perfectly adapted to the end intended, does B thereby, in your judgment, make a substantial change in the machine or construction?

(Objected to on the ground that the witness has been shown incompetent to testify to this question.)

233 A. He does.

R. D. 296 (292) Where two machines are made for the same purpose, one of which is worthless and pernicious, and therefore is not used, and the other on account of some change in form or substance is valuable, and therefore goes into general use, can these two machines, in the nature of things, be the mechanical equivalents of each other?

(Objected to on the same ground as above.)

A. They cannot.

R. D. 297 (293). State whether or not, to make a substitue a mechanical equivalent for an element in a machine or combination, it is necessary that such substitute should be something known and used by skilled mechanics, and with which when substituted, the machine or combinabination operates as before, and with the same result.

(Same objection.)

A. Yes; it is.

R. D. 298 (294). Mechanically speaking, is cutting a substance with a knife the same operation as making an impression upon the same, or a similar substance with a stamp, by ink or otherwise, and not cutting?

(Same objection.)

A. It is not.

R. D. 299 (295). Mechanically speaking, is a knife in a machine which is intended to cut, and when used does cut through the substance upon which the machine is employed, an equivalent for a stamp in a similar machine which is intended to impress, and which when used only, does impress, with ink or otherwise, the substance upon which such machine is employed?

(Same objection.)

A. It is not.

R. D. 300 (296). You have stated that you considered yourself a
234 practical expert as to constructions; name over as briefly as you can the different machines and constructions as you now remember, which you have been called upon to examine or testify about as an expert.

(Objected to as irrelevant and immaterial, and as not being a reply to anything brought out on the cross-examination.)

A. I have been called upon to examine and testify about the machinery in construction and operation for making candles; machinery for folding and gumming envelopes; the construction of locomotive head lights; the construction of lamps for burning kerosene; the construction of lanterns; the construction and operation of sewing-machines; the construction and operation of shade-rollers; of bail-binders; of coal breakers; the construction and operation of machines for enameling mouldings, for gilding the same; the construction and operation of heaters and stores; of railroad frogs; of track rails for railroads; spring mattresses, and spring bed; of chairs of different kinds, and doubtless of many other things which I do not now recall.

S. P. KITTLE.

Subscribed and sworn to before me, this December 27, 1877.

JOHN A. SHIELDS, *Examiner*, &c.

Complainant offers in evidence, and files as his Exhibit Y, a certified copy of the record in the circuit court, northern district of New York, in the case of Shavor & Corse vs. Hoole, and referred to in folios 21, 22 and 25, pages 6 and 7 of complainant's printed amended bill, and the same is marked complainant's Exhibit Y., J. A. S., ex'r.

Adjourned to Friday, December 28, 1877, at 11 a. m.

235 CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

EDMUND W. ELY, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. Edmund W. Ely; I am 31 years of age; reside at Chester, Massachusetts, and I am an axe manufacturer.

Q. 2. State if you know Christopher C. Campbell, the complainant in this suit; and, if so, state how long you have known him.

A. I do; I have known him 15 years and more.

Q. 3. Are you acquainted with his mother and relatives?

A. I am acquinted with his mother and some of his relatives.

Q. 4. Do you know from common report where he was born?

A. I do.

Q. 5. State where.

A. In Chester, Massachusetts.

Q. 6. Do you understand him to be citizen of the United States?

A. I do.

Cross-examination:

X Q. 7. Where is his present residence?

A. East Chatham, New York.

X Q. 8. How old a man is he?

A. I couldn't say, but think he must be 42 or 43.

X Q. 9. What is his business?

A. Station agent on the Boston and Albany Railroad.

X Q. 10. Do you know how much property he has?

A. I do not.

236 X Q. 11. For how large a judgment against him should you say he was responsible?

A. I couldn't say.

X Q. 12. What business was he in before he became station master?

A. He was in the mercantile business one or two years before he went there; about that time I should say.

X Q. 13. How long has he been station master?

A. Some six or eight years, or perhaps longer; I couldn't say.

X Q. 14. What mercantile business was he in, and was he in as a principal or a clerk, and where?

A. Principal, in general assortment of goods in a country store in Chester, Massachusetts.

X Q. 15. What business was he in before the mercantile business, and where and how long had he been in such business?

A. Station agent, in Chester, Massachusetts; I couldn't say how long exactly; one year or two.

X Q. 16. What business before that, and where and how long was he in it?

A. I think he was ticket agent at the same place; I couldn't say how long.

X Q. 17. Make an estimate of how long?

A. Well, I should think from one to three years.

X Q. 18. What business was he in before that?

A. I couldn't say.

X Q. 19. Where did he live before that?

A. Chester, I think was his home.

X Q. 20. How much pay does he get as station master in his present place?

A. I couldn't say.

X Q 21. Do you know of his ever having received any property by will or descent, or in any other manner except by earning it himself?

A. I think he has.

X Q. 22. From whom and how much, in general terms?

A. From his mother, I think; I don't know how much.

237 X Q. 23. Do you know of his mother ever having much property?

A. I don't know how much.

X Q. 24. Make a rough estimate?

A. Well, I don't know as I could; I suppose she had a house and place in Chester that complainant had.

EDMUND W. ELY.

Sworn to before me this December 26, 1877.

JOHN A. SHIELDS, *Examiner, &c.*

NEW YORK, *December* 28, 1877—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Complainant's counsel here rests on the proofs and testimony in this cause, and gives notice to defendant's counsel that the prima facie case is now complete, and further gives notice to the defendant's counsel that the complainant and his counsel are now and here ready, without notice in writing, to proceed at once with the taking of such evidence as the defendant's counsel may desire to take.

The complainant's counsel now and here requests the defendant's counsel to proceed now with his defence, if any he has, in this cause, and that, too, without requiring any notice in writing by the defendant's counsel with reference thereto.

Complainant's counsel also notifies the counsel for the defendant that they are ready at once to proceed with this case, now in the hands of the defendant, and to continue the same from day to day (Sundays excepted), until the same shall have been completed.

238 United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN TRUST,
vs.
THOMAS L. JAMES, U. S. POSTMASTER, NEW YORK.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, John A. Shields, an examiner duly appointed by the circuit court of the United States for the southern district of New York, do hereby certify that the several witnesses named in the foregoing depositions appeared before me on the days therein specified, and each of said wit-

nesses being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in said entitled cause, gave the testimony which is herein contained. That said testimony was reduced to writing in the presence of said witnesses, and from their statements, by a clerk duly appointed by me for that purpose, and after the same had been carefully read over to said witnesses, they severally subscribed the same.

I further certify that Marcus P. Norton, solicitor for complainant, and Hon. George H. Williams, of counsel for complainant, and Samuel B. Clarke, esq., of counsel for defendant, were present at the examinations.

JOHN A. SHIELDS,
Examiner.

239 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on the second day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the Hon. Hoyt H. Wheeler.

CHRISTOPHER C. CAMPBELL,
vs.
THOMAS L. JAMES. } In equity.

On reading and filing the subjoined consent, and on motion of Stewart L. Woodford, U. S. attorney, and of counsel for the defendant, it is ordered that Nelson K. Hopkins, esq., of Buffalo, New York, be, and he is hereby, appointed a special examiner of this court, to take the testimony at Buffalo, New York, under the 67th equity rule, as amended, of John Powers, and of such other competent witnesses as may be brought before him on the part of the defendant. And it is further ordered that A. J. Falls, esq., of Washington, D. C., be, and he is hereby, appointed a special examiner of this court, to take the testimony at Washington, D. C., under the 67th equity rule, as amended, of such competent witnesses as may be brought before him on the part of the defendant herein, or on the part of the complainant herein.

(Signed) HOYT H. WHEELER.

240 Consent is hereby given that an order may be made in the terms of the above draft.

Troy, New York, February 1, 1878.

(Signed) GEO. H. WILLIAMS,
Of Counsel for Compl't.

(Signed) STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol'r.

(Endorsed:) Opened and filed as per stipulation, this first day of July, 1878.

United States circuit court for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES. }

Proofs for final hearing taken for and on behalf of complainant, before

A. J. Falls, esq., a special examiner appointed for the purpose, at
241 his office, in the city of Washington, D. C., on the 25th day of April, 1878.

Present, Geo. H. Williams, esq., of counsel for complainant, and Assistant U. S. Attorney. Samuel B. Clarke, of counsel for the defendant.

HORATIO KING, a witness called on behalf of complainant, being by me first duly sworn, testifies as follows, viz:

Direct examination:

By Mr. WILLIAMS:

Q. 1. State your age, residence, and occupation.

A. I am sixty-seven; residence, 707 H street, Washington, D. C.

Q. 2. State how long you were officially connected with the Post Office Department of the Government in Washington.

A. From March, 1839, to March, 1861.

Q. 3. Were you First Assistant Postmaster-General during any part of that time, and if so, how long?

A. From March, 1854, to the 12th of February, 1868, serving as Postmaster-General the rest of the time.

Q. 4. While you were First Assistant Postmaster-General, was the subject of stamps to be used in the post-offices in the United States under your jurisdiction or supervision?

A. It was.

Q. 5. Please to read what I now present to you, and state if you have any knowledge or recollection of it.

(Objected to by counsel for defendant, because the thing presented to the witness purports to be a printed copy of some original, and it is not proper to refresh the witness' recollection by it without preliminary
242 proof of the existence of the original, and that this copy is a true copy within the knowledge of the witness.)

A. "POST-OFFICE DEPARTMENT, APPOINTMENT OFFICE,
"*Washington, May 4th*, 1859.

"POSTMASTER AT TROY, N. Y.:

"SIR: You are hereby authorized to use for post-marking letters at your office, for the term of three months, 'Norton's Improved Marking Stamp.'

"Respectfully,

"HORATIO KING,
"*First Assistant Postmaster-General.*"

"POST-OFFICE DEPARTMENT,
"*Washington, D. C., March 23*, 1868.

"I hereby certify that the foregoing is a true copy of a letter on file in this department.

"In testimony whereof, I have hereunto set my hand, and caused the seal of the Post-Office Department to be affixed, at the General Post-Office, in the city of Washington, the day and year above written.

"ALEX. W. RANDALL,
"*Postmaster-General.*"

I have a perfect recollection of having written that letter.

(Answer objected to so far as it states the contents of an alleged letter, because it is not the best evidence.)

Q. 6. Was it written at the date which it bears upon its face?
243 (Objected to because it asks for secondary evidence.)

A. I feel sure that it was written on that date; I could not state it positively if I had not this memorandum.

(Answer objected to, because it is not shown that the memorandum to which the witness refers is a proper memorandum to refresh his memory.)

Q. 7. State what the book from which you have read said letter and certificate purports to be.

(Objected to because the book should be submitted to the court for its determination of that point.)

A. Purports to be a true and complete exemplification of the printed record in the cause of Shavor and Corse against the United States, No. 2571 in the Court of Claims, as the same appeared to the judges of the Court of Claims, when the said case came on to trial on the 28th of January, A. D. 1869, with what purports to be the seal of the court is attached, and a certificate signed by John Randolph, assistant clerk of Court of Claims.

Q. 8. Are you acquainted with the handwriting of James H. Marr?

A. I am.

Q. 9. Look upon the paper which I now present to you, and state whose signature is affixed to it.

A. Evidently that of James H. Marr.

Q. 10. What is the official position of Mr. Marr in the Post Office Department?

A. Chief clerk of the appointment office; I think that is his position.

(Complainant's counsel offers in evidence said paper, marked "Complainant's Exhibit, Z, Z—King, date, April 25, 1878."

244 Objected to by defendant's counsel as immaterial or incompetent, and irrelevant.)

Q. 11. Look upon the papers which I now present to you, and state what they purport to be.

A. They purport to be a certificate of the Postmaster-General, D. M. Key, that the annexed copies of letters are true copies of originals now on file in the Post-Office Department; the first letter purports to be from Marcus P. Norton, Troy, New York, April 2d, 1859, to Hon. Horatio King, First Assistant Postmaster-General; the next letter purports to be from the same to the same, dated Troy, New York, April 11, 1859; the third and last letter is also from the same to the same, dated Troy, New York, October 31st, 1859.

Q. 12. State if you have any recollection of having received about the said dates letters of which you now hold certified copies.

(Objected to as irrelevant and immaterial.)

A. I have no doubt that I received such letters, because they are noted on my memorandum previously referred to, but I have no distinct recollection of them, as of that to the postmaster at Troy, previously referred to of May 4, 1859.

(Complainant offers in evidence the papers referred to in the two next preceding answers of the witness, and they are marked "Complainant's Exhibits, X, X—King, April 25, 1878."

Objected to as irrelevant and immaterial, and because the originals of the letters would not be evidence on this testimony, even if their handwriting was properly proven.)

Q. 13. Are you acquainted with Marcus P. Norton?

A. I am.

245 Q. 14. Independent of any writings, can you remember generally that as early as the year 1859 he had conferences or correspondence with you or with the Post-Office Department, relative to a

combined post-marking and stamp-canceling instrument which he claimed to have invented?

(Objected to as leading and as assuming a fact.)

A. I do remember that as First Assistant Postmaster-General I had such correspondence and conferences with him as early as the year 1859.

Q. 15. Prior to the presentation or reference to such a combined post-marking and stamp-canceling instrument by Marcus P. Norton, had you ever known or heard of such a thing?

A. I never had.

Cross examination:

By Mr. CLARK:

X Q. 16. When was that memorandum to which you referred once or twice on your direct examination as your means of refreshing your recollection made?

A. I cannot give the exact date, but it is a rough draft of a synopsis that I made in preparing the case of the Norton combined marking-stamp, to present to Congress many years ago.

X Q. 17. You were the attorney or agent for the owners of a patent for such a combined instrument in their application to Congress for remuneration for the use of such instrument by the Post-Office Department, were you not?

A. I was.

X Q. 18. The alleged owners of such patent for whom you acted were Jacob Shavor and Albert Corse, of Troy, New York, were they not?

A. They were.

246 X Q. 19. You acted as such agent with an understanding that you were to receive a quarter of whatever sum was recovered, did you not?

A. I had a letter from Marcus P. Norton, agreeing, with the approbation, as I understood, of Shavor and Corse, that I should receive one-quarter, after deducting expenses.

X Q. 20. You still consider that you are entitled to receive a portion of whatever is recovered for the use of this combined stamp, do you not?

A. I think, in such event, that I should be at least reasonably compensated for my long and arduous services in the case.

X Q. 21. Why can't you fix the exact date in making the memorandum?

A. I can't fix it because it was so many years ago, and I have no memorandum at hand with which to refresh my memory. I think I could tell by reference to papers at home.

X Q. 22. Is your recollection good as to the dates of things that happened so many years ago?

A. Well, I think it is. Comparatively, it is remarkably good.

X Q. 23. Well, then, why can't you fix the date of making that memorandum?

A. While I know it is many years ago, I could not fix the exact year.

X Q. 24. Well, why can't you, if your memory of dates is remarkably good?

A. While my memory as to dates with respect to many important events is good, I do not profess to be able to give the exact month or year of all the events of my life. I will add that if it is necessary to get this information, I will take measures to do so with pleasure.

X Q. 25. Your memory being such as you have shown, do you swear

positively that you recollect the letters and conversations of Mr. Norton were made and written in regard to the combined stamp as early as 1859, you relying not at all on any written memoranda or other papers?

247 A. Well, I think I could, because I left the department on the 7th of March, 1861, and I know it must have been prior to 1860; also, from the fact that I know I had correspondence, or the department had correspondence with General Dix, who was postmaster of New York, I think, early in 1860, and I know such correspondence with Norton took place some time prior to the appointment of General Dix as postmaster at New York.

X Q. 26. Are you sure that General Dix was not appointed postmaster at New York as late as July or August, 1860?

A. I feel perfectly sure that he was not.

X Q. 27. Do you know in what year the patent was issued on which you acted as agent for Shavor and Corse?

A. No; I do not.

X Q. 28. The memorandum was made after the patent was issued, was it not?

A. I understood he had a patent at the time.

X Q. 29. Do you recollect whether it was before the close of the civil war that you acted as agent, as you have stated?

A. I think it was; I think Norton came to me as early as 1861 or 1862.

X Q. 30. You are sure that your connection with the matter didn't begin before you left the department, are you not?

A. I am perfectly sure, and I am sorry that such a question should be asked me. I not only never thought of any such agency before leaving the department, but it was with no little reluctance that I consented to act in the matter when I did.

X Q. 31. State, according to your best recollection, the year in which you first became such agent.

A. Well, I think in 1861 or '2.

X Q. 32. Now, how long was it after that before you made that memorandum for the application to Congress?

A. I think it must have been between 1861 and 1867.

248 X Q. 33. You are not sure that it was earlier than 1866, are you?

A. I could not state positively, but I know I had charge of the matter some time before I prepared the case for Congress.

X Q. 34. The memorandum was made at the time of such preparation, was it not?

A. Yes, sir.

Redirect examination:

By Mr. WILLIAMS:

R. D. 35. You have stated, in your cross-examination, that the alleged owners of the patent at the time you acted were Shavor and Corse. You may state what your understanding was as to how Norton was interested in the matter.

(Objected to as irrelevant and immaterial, and as improper on redirect examination.)

A. I do not think that I knew of Norton's having any partners in the matter when I first consented to act in the case. I do not remember of hearing of Shavor and Corse as transferees until near the time when the

case went to Congress; and I know that Norton always claimed to be largely interested in the case.

Recross-examination:

By Mr. CLARKE.

R. C. 36. From whom did you hear that Shavor and Corse were transferees?

A. From Norton, I presume, as my correspondence was almost entirely, if not altogether, with him.

HORATIO KING.

Subscribed and sworn to before me this twenty-fifth day of April, 1878.

A. J. FALLS,
Special Examiner.

249 W. S. DAVIS, a witness called on behalf of complainant, being by me first duly sworn, testifies as follows, viz:

Direct examination:

By Mr. WILLIAMS.

Q. 1. State your age, residence, and occupation.

A. Age, fifty-one years; residence, Washington, D. C.; occupation, assistant superintendent of the blank-agency division of the Post-Office Department.

Q. 2. How long have you been officially connected with that agency of the Post-Office Department?

A. Twenty-two years.

Q. 3. Look upon the two papers which I hand you now, and state what they are.

A. They are copies of contracts of E. S. Zevely. They are copies of original papers on file in our office.

Q. 4. Are there any other contracts of E. S. Zevely on file in your office?

A. I think not, sir.

Q. 5. Your office is the one in which contracts for furnishing stamps are kept on file, is it not?

A. Yes, sir.

Q. 6. Do these contracts provide for the furnishing of the combined post marking and stamp-canceling instrument substantially like those now in use?

(Objected to as not the best evidence.)

A. No, sir.

Q. 7. During the existence of these contracts did Mr. E. S. Zevely furnish to your office, in the Post-Office Department at Washington, any combined post-marking and stamp-canceling instrument like, or substantially like, the one now in use?

250 (Objected to because it is not shown what kind is meant, or that the witness is competent to testify on the point.)

A. No, sir.

Q. 8. Were all the stamps which he furnished to the department such as were described in the contract?

(Same objection.)

A. Yes, sir.

Q. 9. Did anybody have a contract to furnish the Post-Office Depart-

ment with the combined post-marking stamp-cance ling instrument from and after the early part of 1863; and, if so, who?

A. Messrs. Fairbanks & Company, from April 1st, 1863.

Q. 10. When did a man known as Deacon Gray become officially connected with the Post-Office Department in Washington?

A. He was appointed superintendent of the blank agency division of the Post-Office Department on the 15th of June, 1869, and took charge of the office on the 1st day of July, the same year.

Q. 11. Was that his first connection with that agency?

A. Yes, sir.

Q. 12. State in what year you first heard or knew of Norton's combined post-marking and stamp-canceling instrument.

A. My impression is that I saw it the latter part of 1858; I think before the patent was granted.

(Complainant offers in evidence copies of the contracts referred to by witness marked, respectively, "Complainant's Exhibit, Y Y—Davis, April 25th, 1878, A. J. Falls, examiner," and "Complainant's Exhibit, W W—Davis, April 25th, 1878, A. J. Falls, examiner."

Objected to as immaterial and irrelevant.)

251 Q. 13. Are you acquainted with A. D. Hazen? And, if so, state what office he holds.

A. Yes, sir; Third Assistant Postmaster-General.

Q. 14. Are you acquainted with his signature?

A. I have seen it very often.

Q. 15. Look upon the paper I now hand you, and state, if you know, whose signature is appended.

A. I take this to be Mr. Hazen's signature.

(Complainant offers the paper referred to by the witness, marked Complainant's Exhibit, V V—Davis, April 25th, 1878, A. J. Falls, examiner.

Objected to as irrelevant and immaterial.)

Cross-examination:

By Mr. CLARKE.

X Q. 16. Do you have a good recollection?

A. Well, I do, tolerably good.

X Q. 17. You referred to a paper when you testified as to when Deacon Gray became connected with the office, did you not?

A. Simply a memorandum.

X Q. 18. In your answer that your impression is that you saw Norton's combined post-marking and stamp-canceling instrument in the latter part of 1858 you state that you think it was before the patent was granted; when was the patent to which you refer granted?

A. I don't know. I think it was in 1859; that is, according to my best knowledge and belief.

X Q. 19. Did Norton have more than one patent, do you know?

A. I think he had.

X Q. 20. The patent to which you refer in that answer was the first one, was it not?

A. The patent of 1859.

252 X Q. 21. Do you swear positively that it was in 1858 that you first saw the instrument referred to?

A. No, sir.

X Q. 22. It may have been in 1859 or 1860?

A. It may have been in 1859 or 1860; yes, sir.

X Q. 23. How can you state positively, on your oath, that during the

period covered by the contracts which have just been offered in evidence' from 1863 to 1871, Mr. Zevely did not furnish to the Post-Office Department any combined instruments?

A. Because after the orders were filled the stamps passed through my hands.

X Q. 24. There were a good many orders and a good many stamps passed through your hands, and it was a long time ago; that is true, is it not?

A. Yes, sir.

X Q. 25. Do you swear that you may not have forgotten the person who furnished some of the stamps that passed through your hands?

A. I think I have not forgotten.

X Q. 26. Without reference to what you think, are you positive?

A. To the best of my knowledge, I swear positively.

X Q. 27. But you may be mistaken, may you not?

A. Hardly possible.

X Q. 28. Were you in that office every day from 1863 to 1871?

A. I would not like to say; I can say this much, however, that I have not lost three months in the twenty-two years that I have been in that department.

Redirect examination:

By Mr. WILLIAMS:

R. D. 29. You stated, in answer to a question of mine, that your
253 impression was that you saw Norton's combined post-marking and stamp-canceling instrument in the latter part of 1858; was the instrument for cutting the stamps or defacing them with ink marks upon them?

A. I cannot say, as I saw both devices; I cannot say which was the first one; I recollect seeing both of them.

R. D. 30. Did you see them both about the same time?

A. I do not know that I can recollect; I think it was, but I am not positive.

R. D. 31. When you saw the device for canceling the stamps by cutting, did you form or express any opinion about its practicability or value? (Objected to as immaterial, and because witness is not shown to be competent.)

A. I did, sir.

R. D. 32. What?

A. The stamp that I saw was not a cutting; it was like a needle point, something like perforators, as far as my recollection goes, to rough up the surface; the objection to that was, that it might injure the contents and become dull after using it a short while, and the perforator is entirely useless.

R. D. 33. The other stamp you saw was a stamp for blotting the postage stamp, was it?

A. Yes, sir.

Recross-examination:

By Mr. CLARK.

R. C. 34. By what material was this blotting done?

A. Do you mean the cancelor? Iron, the first one I saw.

W. S. DAVIS.

Subscribed and sworn to before me this twenty-fifth day of April, 1878.

A. J. FALLS,
Special Examiner.

254 Complainant offers in evidence a certified copy of a letter from John A. Dix to General Skinner, dated post-office, New York, August 28th, 1860, and marked Complainant's Exhibit U U, April 25th, 1878, A. J. Falls, examiner.

(Objected to as irrelevant and immaterial, and because of the unsworn statement of somebody not connected with the case at all.)

Complainant offers in evidence a certified copy of a letter from Abraham Wakeman, postmaster to A. N. Zevely, esq., Third Assistant Postmaster-General, dated January 3, 1863, post-office, New York, and marked Complainant's Exhibit T T, April 25th, 1878, A. J. Falls, examiner.

(Same objection.)

Complainant offers in evidence certified copy of a letter from General Skinner, First Assistant Postmaster-General, to Marcus P. Norton, dated July 25th, 1862, and marked Complainant's Exhibit S S, April 25th, 1878, A. J. Falls, examiner.

(Same objection.)

Complainant offers in evidence certified copy of a letter from A. N. Zevely, Third Assistant Postmaster-General, to Marcus P. Norton, dated October 7th, 1862, and marked Complainant's Exhibit R R, April 25th, 1878, A. J. Falls, examiner.

(Same objection.)

255 Complainant offers in evidence certified copy of the deposition of Edmund Hoole, in the case of Jacob Shavor and Albert C. Corse against the United States, marked Complainant's Exhibit Q Q, April 25th, 1878, A. J. Falls, examiner.

(Objected to as irrelevant and immaterial, and because Mr. Hoole ought to be examined in this case, and an opportunity given to cross-examine him, and because it is not properly certified.)

Complainant offers in evidence a certified copy of a letter from the Post-Office Department, signed D. M. Key, Postmaster-General, and dated April 24th, 1878, and marked Complainant's Exhibit P P, April 25th, 1878, A. J. Falls, examiner.

(Objected to as immaterial and irrelevant, and as an improper way of proving the alleged acts.)

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, A. J. Falls, a notary public within and for said District, appointed by special order of the court, a certified copy of which is herewith annexed, to act as special examiner, under the 67th rule in equity, as amended in the cause stated in the caption, do hereby certify
256 that the foregoing examination was held at my office, No. 613 15th street, Washington, D. C., on the 25th day of April, A. D. 1878.

I further certify that, at the said time and place, I was attended by Horatio King and W. S. Davis, witnesses produced on behalf of complainant; that the said witnesses were, previous to the commencement of their respective depositions, by me severally examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the said depositions hereinbefore appearing were re-

duced to writing by James D. Ryan, a disinterested party, in the presence of counsel for both parties, who assented thereto, and read over to said witnesses respectively, and were thereupon by them respectively subscribed, and were at the same time severally authenticated by my signature. I further certify that I am not of counsel, nor attorney, nor relative of either of the parties to this cause, nor in any manner interested in the result of the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 25th day of April, 1878.

[SEAL.] A. J. FALLS,
Special Examiner.

257 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL, COMPLAINANT, and assignee in trust,
agst.
THOMAS L. JAMES, DEFENDANT. AND POSTMASTER of New York.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

Be it remembered that on the 17th and 18th days of May, 1878, personally appeared Cyrus A. Sherwood and Marcus P. Norton, witnesses on the part of the complainant, before me, a special examiner, appointed by the circuit court of the United States for the southern district of New York, to testify and the truth to say in a certain matter now depending and undetermined in the circuit court of the United States for the southern district of New York, on the equity side, wherein Christopher C. Campbell, assignee in trust, is complainant, and Thomas L. James, U. S. postmaster at New York, is defendant.

IRVING BROWNE,
Special Examiner.

258 Circuit court of the United States for the southern district o New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT, and assignee in trust,
agst.
THOMAS L. JAMES, DEFENDANT, AND U. S. postmaster at New York.

Proofs for final hearing taken on the part of the plaintiff in the above cause, before Irving Browne, special examiner, under the 67th rule in equity.

TROY, N. Y., *May 15th*, 1878—9 a. m.

Present, Marcus P. Norton, esq., solicitor, and George H. Williams, esq., counsel for complainant.

By consent of complainant's solicitor, hearing was adjourned to May 17th, 1878, 10 a. m., on account of absence of defendant's solicitor.

MAY 17th, 1878—10 a m.

Complainant appeared by Marcus P. Norton, esq., and George H.

Williams, esq.; and Samuel B. Clarke, esq., assistant U. S. district attorney, appeared for the defendant.

259 Complainant's counsel offers in evidence a certified copy of a letter dated May 4th, 1869, from Horatio King, First Assistant Postmaster General, to the postmaster in Troy; received and marked King, A B C—I. B., Ex., May 17, 1878.

(Objected to by defendant's counsel as irrelevant and immaterial.)

Complainant offers in evidence a certified copy of a letter from C. E. Wheeler to Hon. A. M. Zevely, dated November 28, 1863; received and marked Wheeler, D E F—I. B., Ex., May 17, 1878.

(Same objection made.)

Complainant offers in evidence certified copy of an assignment by Charles Eddy, Jacob Shavor, and Albert C. Corse to W. W. Secombe, dated October 7, 1871; received and marked Secombe, G H I—I. B., Ex., May 17, 1878.

(Same objection, and also that the instrument contradicts the certificate, it being clear that it is not an assignment.)

CYRUS A. SHERWOOD, called as a witness for the complainant, and being duly sworn, testified as follows:

By Mr. WILLIAMS:

Q. 1. State your name, age, residence, and occupation.

A. Cyrus A. Sherwood; age 62 years; residence Troy, N. Y.; am a machinest and model maker.

260 Q. 2. Look on the paper I now present to you, and state what it is.

A. (Witness looking at paper). A bill for work that was done for Mr. Norton, in the years 1857, 1859, and 1860, 1862, 1863, 1864, and 1865.

Q. 3. Is this paper a copy of anything; and, if so, what?

A. It is a copy from my books.

Q. 4. Were the entries as they appear in this paper made in your books at the dates therein specified?

A. They were.

Q. 5. Was the work done at the times as stated in this paper?

A. It was.

Q. 6. This paper shows that work was done at various times upon stamps; was that work done upon stamps of one kind or form, or various kinds and forms?

A. There were various kinds and forms made at that time.

Q. 7. When did you first make a stamp for Marcus P. Norton which when used would post mark a letter and cancel a stamp thereon at the same time?

(Objected to by defendant's counsel as assuming a fact, and as leading.)

A. As near as I can remember, it was in 1857.

Complainant offers in evidence the paper referred to by witness, as a part of his deposition; received and marked Sherwood, J K L—I. B., Ex., May 17, 1878.

(Objected to by defendant's counsel: First, because witness states that it is a copy, and it is therefore not the best evidence; second,
261 because it is not shown by whom the original entries were made or that they were made under the witness' supervision, and because it is not shown that the paper offered is made up from any book of original entries.)

Cross-examination:

By Mr. CLARKE:

X Q. 8. What book is this bill of work—Ex. J K L—copied from?

A. From books that I have in my possession.

X Q. 9. How many?

A. Well, I think there are four, taking the whole of the account.

X Q. 10. Where are they?

A. Part of them are at my house, and a part in Green Island, at my sister's.

X Q. 11. Where is Green Island?

A. Just across the river, opposite Troy, in Albany County.

X Q. 12. Will you get those books and bring them here?

A. I can.

X Q. 13. Who made this copy?

A. I made it myself.

X Q. 14. Was your testimony on the direct examination based upon your having had your memory refreshed by the entries in your books, or by this copy thereof?

A. By the entries in my books—it was refreshed by the entries in my books.

X Q. 15. I think you have stated that this paper —Ex. J K L—was made up from four books; have you, or did you have at the several years mentioned in this exhibit, any other books in which entries of work done for other parties were made?

A. The entries were made in the same books for other parties; I never kept but one book at a time.

262 X Q. 16. Can you swear positively as to what sort of stamp was made, or worked on, by you on May 8th, 1857, the entry corresponding to which date in this exhibit is "to three hours' finish stamps"?

A. Well, by the word "finish" is meant labor on the stamp, as near as I can remember. It was the first stamp Mr. Norton got up—dating wheels stamp.

X Q. 17. Can you state positively about it?

A. There is no question in my mind as to it, but I wouldn't swear positively.

X Q. 18. Can you swear positively as to what sort or kind of stamp was worked on by you on any of the other dates mentioned in this exhibit?

A. I can.

X Q. 19. Can you so swear with reference to any of the other dates in 1857 or 1859?

A. I couldn't swear positively as to the style of stamp, with the exception of the first one; th——

X Q. 20. The first one appears to be on May 8th, 1857. I think you have stated that you could not swear positively as to that?

A. My answer before was that I could not swear positively as to the particular date; that being the date of its commencement; my impression is that it was.

X Q. 21. Did you not swear positively on your direct examination that the work was done for Mr. Norton at the times stated in this paper?

(Question 5 and answer read to witness.)

A. It was—that's correct.

X Q. 22. How, then, can you be uncertain as to the dates on which the work was done on the first stamp to which you have referred?

A. Mr. Norton had other work done at the same time, and different stamps. I think I am positive that the first charge was made on the first stamp. I couldn't swear positively that that was so.

X Q. 23. So that I understand you to mean that you cannot
263 swear positively as to the sort or kind of stamp that was worked on by you on any of the dates in 1857 and 1859 which are shown in this exhibit?

A. With the exception of one—the first one. That I can swear positively as to.

X Q. 24. What was the first one?

A. It was a dating wheel stamp, the wheels giving the dates, with a die for the office and year in the top of the frame that held it, blotting or canceling at one end, the impression given by a blow on the lever by the hand.

X Q. 25. This lever was hung in a frame, was it not?

A. It was not.

X Q. 26. How was the lever affixed?

A. It was hung to a stud on the bed-piece.

X Q. 27. Was the whole instrument a hand stamp?

A. It was.

X Q. 28. Explain what you mean by the bed-piece.

A. The foundation on which the stamp was fastened.

X Q. 29. I understand you to mean that there was a foundation, which was not moved when the stamp was used, from which projected a stud, and through this stud worked a lever, which moved with an action or blow of the hand, and which was brought back to its place by a spring, or some similar means; is that correct?

A. That's what I mean by the foundation; that's correct.

X Q. 30. The stamp had wheels with letters and figures on them, which could be rotated so as to make any particular date?

A. It had.

X Q. 31. Did it have any other wheels, so that if necessary a wheel could be put in proper position, and such words as "free," "paid," "advertised," or similar words used in post-offices, could be printed?

264 A. It had.

X Q. 32. Did it have any other such wheels for any other purpose?

A. None but the dating wheels.

X Q. 33. Was there any other attachment to the frame of the stamp except these wheels that you have spoken of?

A. There was a tight plate giving the office or printed matter that wanted to be printed.

X Q. 34. Is that all?

A. As near as I can remember.

X Q. 35. What means were there for canceling?

A. In the rotating wheel—in previous question—that lies level with the tight plate, at the end of the tight plate.

X Q. 36. Do I understand you to mean that in addition to the rotating wheels you have spoken of, by which the words "free," "paid," etc., could be printed, there was also a wheel by which a cancellation mark could be made?

A. The cancellation could be on one section of the wheel that had "prepaid" on it, or a duplicate put in at the same place.

X Q. 37. I am not asking what it could be, but what it was.

A. The canceling was on the wheel that was marked "prepaid." There were several of those wheels that fitted the same place, with different designs and marks on them.

X Q. 38. What configuration was there on the canceling face?

A. I think there were straight marks merely.

X Q. 39. Which of the books from which Ex. J K L is made up in your office—covering what years?

A. Those of the years 1859, 1860, 1862, and 1864 are at my house. The others are across the river.

X Q. 40. Is your recollection accurate as to the dates of things that happened so long ago, unless it is refreshed from books?

A. It is not.

265 Redirect examination:

R. D. 41. You speak of the dating wheel stamp as the first one got up by Mr. Norton; you mean by that, I suppose, the first one that you got up for him?

A. That is what I meant.

CYRUS A. SHERWOOD.

Subscribed and sworn to before me this 17th day of May, 1878.

IRVING BROWNE,
Special Examiner.

MARCUS P. NORTON, called as a witness on the part of the complainant, and being duly sworn, testified as follows:

Direct examination:

By Mr. WILLIAMS.

Q. 42. State your name, age, residence, and occupation.

A. My name is Marcus P. Norton; residence, Troy, N. Y.; 48 years of age; occupation, lawyer.

Q. 43. There has been filed in this case a certified copy of a letter which reads substantially as follows:

TINMOUTH, VERMONT, *Aug. 7th*, 1854.

COMMISSIONER OF PATENTS:

SIR: I send to day an additional description of my machine for mailing and folding letters, etc. When will my caveat expire? The copy you sent me has no date. I wish to petition for a patent before
266 the caveat shall expire. Please communicate the answer to Mr. Hodges, if I trespass your rules, etc.

Respectfully, your obedient servant,

MARCUS P. NORTON.

Did you write that letter; if so, when and where?

A. I wrote that letter on the 7th day of August, 1854, at my father's house in the town of Timmouth, Rutland County, State of Vermont.

Q. 44. What was the additional description referred to in that letter?

A. The additional description referred to in that letter is contained in the caveat filed as an exhibit by the complainant in this suit, and is, if I am not mistaken, the first paper introduced and filed as evidence by the complainant; it was and is denominated an additional description to that caveat, and was dated Timmouth, Vt., Aug. 7th, 1854.

Q. 45. Prior to 1861 was there a combined and post marking and stamp-canceling instrument or device in use anywhere, with your knowl-

edge, except for the purpose of experimenting as to its utility and value?

A. None whatever.

Q. 46. When did you first present to the Post-Office Department at Washington your combined post-marking and stamp-canceling instrument?

A. The one described by the witness Sherwood in this examination I exhibited in the Post Office Department in Washington for examination and consideration in the fall of the year 1854; subsequent to that time, and in the winter of 1857 and 1858, I presented to the Post-Office Department a device post-marking the letter envelope with the name of the post-office and the date, and at the same time, and by the same blow of the instrument canceling the postage stamp on the letter, and at that time and at other times thereafter endeavored to get
267 that instrument used by the Post-Office Department for that purpose.

Q. 47. Explain your delay until January, 1863, in applying for a patent.

A. In the fall of the year 1860, the Post-Office Department expressed a willingness or desire to use the invention above referred to and contained in the bill in this suit, and had some correspondence with the postmaster at New York with reference to the same. I consented that that invention might be used by the government or Post-Office Department simply and only for trial tests or experimenting. Those tests or experiments were commenced in the post-office in the city of New York some time in the fall of 1860, or the early winter of that time Those experiments were continued during the year 1861, and for some time in the year 1862, at which time I called at the Post-Office Department and made inquiries as to whether the tests that had been made were satisfactory to that department. I was told that no satisfactory answer could be given me at that time, because no application of reference in writing had been made to the postmaster in New York; within a few days after that time I wrote a letter to the Postmaster-General requesting him to refer that invention to the post-office at New York for experimental tests; a few days afterwards I received a letter from the Post-Office Department saying, among other things, that my invention had been so referred, and in due time would be reported upon; on the 3d day of January, 1863, a report was made by the postmaster in New York to the Post-Office Department, saying, among other things, that the tests or experiments had proven entirely satisfactory to the post-office in New York, and recommended the general adoption by the Post-Office Department of that invention. On the 5th day of January, two days after that report was made, I filed my application for a patent on this invention in the Patent Office of the United States. Had
268 the postmaster at New York made that report at an earlier time after December, 1860, I should have filed the application for a patent as soon as it could have been done, having my model and drawings prepared for that purpose some time in the early winter of the year 1861.

(Such parts of answer as relate to the contents of written instruments objected to, on the ground that it is not the best evidence.)

Q. 48. Give as near as you can the time when you first caused a combined post-marking and stamp-canceling instrument to be made substantially like the one now in use.

A. I had such an instrument made shortly after the filing of my caveat in the United States Patent Office, on or about October 20th,

1853, under the title of "machine for mailing and folding letters;" two or three of such were made between that time and the preparation of my additional description in that caveat, dated Tinmouth, Vt., Aug. 7th, 1854; the post-marking device, the postage canceling device, and the cross-bar were each constructed and used in that machine as and for the same purpose as they are now used.

Q. 49. Was there any bag tied or attached to the model which was filed in the Patent Office when you obtained your patent in April, 1863?

A. None whatever; the drawings on page 31 of the printed pleadings and papers in this cause correctly and fairly represent the model used on that occasion and all of it; I mean page 31 of the amended bill, also page 29 of the original bill and pleading.

Q. 50. Did you know W. W. Secombe, and if so, is he alive or dead?

A. I knew him very well for many years; his home and business were in the city of New York; he is now dead.

269 Q. 51. State as near as you can about the time of his death.

A. He died in September or October, 1877, or about that time.

Q. 52. Do you know whether or not subsequent to the 10th of July, 1873, the date of his reassignment to Miss Helen M. Ingalls, he claimed any right or interest in or under the patent to her of October 4th, 1870, division A, in this suit?

A. He never did to me, nor have I ever known that he made or pretended to make any claim of the kind stated in the question; in 1872, or fore part of 1873, I brought a suit against Mr. Secombe, in the State courts, which he afterwards settled, and in that settlement he was to reassign, and did reassign, all the right, title, and interest which the Secombe Manufacturing Company, or he himself, had in any letters patent that had been granted to me.

Q. 53. Did that include the patent or patents that had been assigned to him by Miss Ingalls?

A. It not only included the patent of April 14, 1863, and all of its reissues, but also several patents upon improvements for canceling internal revenue stamps, and each and every patent that had been assigned to that company or to him by myself or by Miss Helen M. Ingalls, my assignee. I mean by this answer to include the invention and patent on which this suit is founded.

Q. 54. Have you had any conversations with him on the subject since the commencement of this suit?

A. On one or two occasions I have had conversations with him on this subject since the commencement of this suit.

Q. 55. State for what purpose you called on him.

A. I called upon him for the purpose of obtaining several original papers that I believed to be in his possession relating to the subject matter involved in this suit.

Q. 56. What took place at the time?

270 (Objected to as immaterial.)

A. I made inquiries of him as to whether he had certain original papers relating to this matter, stating to him at the same time the papers that I desired; he said he thought he had them, and having changed his office—place of business—not long before that time, he said he would look them up and hand them to me the next time I might be in New York; I told him that any time would answer before we began to take the proofs in this case.

Q. 57. Did you subsequently call for the papers?

A. When next in New York—after that conversation—I went to his place of business, saw his partner in business, inquired of him for Mr.

Secombe; he told me that Mr. Secombe had suddenly died of heart disease, and had been dead about ten days at that time; I went to that place at that time for the purpose of obtaining the papers that Mr. Secombe had promised that I should have.

Cross-examination:

X Q. 58. Have you any interest, direct or indirect, in the result of this suit?

A. I can't answer that question until the suit is determined; if the parties holding the title to the patent in this suit shall recover anything against the defendant and shall then choose to give me something I certainly shall not refuse it; I have no promise or agreement from the parties holding the title to this patent, either written or verbal, by which they agree to pay me a single dollar, or any other sum out of this patent and invention.

X Q. 59. Whom do you mean by parties holding title to this patent?

A. I mean the complainant, Christopher C. Campbell, assignee in trust upon the terms and conditions in the assignment to him mentioned in the bill in this cause, and there set forth at large.

271 X Q. 60. Have you any interest, direct or indirect, in the patent granted to you in April, 1863, or in any reissue thereof?

A. The records of the Patent Office, the bill in this cause, and the evidence so far taken show that I have not; if the complainant in this cause shall recover upon that patent or its reissues, and shall keep faith with Miss Helen M. Ingalls, who assigned to him the patent in question, then she and my wife and children will be benefited; if that be called an indirect interest, then I am in that wise interested; otherwise I am not. As I have before stated, I have no agreement, in writing or otherwise, by which, in law or otherwise, I can compel anybody to pay me a dollar; the title to the patent named in the question, and all rights under it, and its reissues have, in my opinion, been fully and entirely vested in Mr. Campbell by means of the deed of assignment set out in detail and at large in the bill in this cause, and upon the terms and conditions specified in that deed of assignment.

X Q. 61. Have you any pecuniary or proprietary interest, direct or indirect, in the patent of April 14, 1863, or in any reissue thereof?

A. My answer to this question is the same as my last two previous answers.

X Q. 62. Can you give a categorical answer to the last question?

A. I don't think I can or ought to in view of the last two questions and the answers thereto.

X Q. 63. Explain why you cannot answer the question before the last categorically.

A. Because, in my opinion, your last two questions cover the entire ground of the inquiry, and the answers to those questions being of a somewhat itemized statement, a categorical answer, "Yes" or "No," would be improper in view of those statements, and the whole subject matter of the inquiry as to my interest having been fully inquired about by those questions, and my answers to the questions
272 being full and in detail, the court will understand from those answers precisely how I stand with reference to the subject matter of the inquiry.

X Q. 64. You mean, then, as I understand, that you have got some pecuniary or proprietary interest in the patent or its reissues inquired about—is that correct?

A. I have said nothing during my cross-examination that would lead you to suppose or to suspect any understanding of the kind you have named in your question; you must, therefore, judge for yourself whether you are correct or not in your allegation made in the question.

X Q. 65. Do you expect to get any money out of this suit?

A. I have no doubt that if exact justice be done in this cause the complainant will recover all he has named in the bill besides his costs, and I have no doubt that he will distribute such recovery according to the terms and conditions of the assignment set out at large in the bill; I shall be quite satisfied if my wife and children shall receive in this or any other recovery on this patent the money agreed to be paid by Mr. Campbell under that agreement; I can't say what Mr. Campbell may do, but if when he is through with this litigation he shall deem it proper to pay me any money I shall not refuse to accept it; but I have no claim, in writing or otherwise, that requires him to pay me any money whatever out of this suit, or out of any recovery on this patent; under such circumstances it is difficult for me to see or to know how I can expect any money from Mr. Campbell.

X Q. 66. Do you expect to get any money out of this suit?

A. My answer to that question is the same as last above given.

X Q. 67. Can you give no better answer than that?

A. I think that answer is sufficient; it is plain and meets the
273 whole subject matter of the inquiry in my opinion; were that question put to the complainant I have no doubt he could tell you what he expects; I would further say that the assignment of this patent and all its reissues, made by myself to Miss Helen M. Ingalls, and by her to the complainant, Campbell, are each actual bona fide assignments, made and recorded in good faith, and the title being thus vested in the complainant it strikes me that the examining counsel ought to know that I cannot receive or obtain in any manner whatever any money in this suit, other than that paid to me for professional services, the same as in any other suit.

X Q. 68. I am not after what you can legally get by process of court, but I do want to know what you expect, and I ask the question the third time whether as a result of this litigation you expect to obtain any money from any source?

A. And for the third time I answer as I have before answered; and I further answer that I have no legal or equitable title or claim whatever in or to the patent on which this suit is founded, and to sustain this statement I refer the court to the several certified copies of deeds of assignment put in evidence by the complainant's counsel; a careful reading of each of those papers ought to convince examining counsel that there was no necessity of putting this question, as he says, for the third time; and I have no further or other answer to make to the subject matter of this inquiry, having fully and fairly stated every matter of fact touching the subject matter of the inquiry within my knowledge.

X Q. 69. You are determined not to let me know whether or not you expect to make any money out of this litigation, are you?

A. I am determined on nothing but the truth and the whole truth concerning this matter of your inquiry, and that I have already given you, and can make no other statement; you already know just as much
274 about it as I know, no more and no less; I have withheld nothing concerning the subject matter of the inquiry; I have neither motive nor desire to keep from you the exact facts, not only about the subject matter of the inquiry, but any other matter of fact involved under the pleadings in this cause; and I certainly do hope that the time will

come, if it has not already, when you shall have some information in this cause that shall satisfy you that the complainant withholds nothing and desires nothing but truth and justice as between himself and the defendant.

X Q. 70. Is your expectation a fact?

A. I don't know what the counsel means by the question.

X Q. 71. What word don't you understand there? You have stated that you have given me all the facts. I think that the expectation of your mind with which you gave your direct testimony is a fact, and I want to find out what that fact is.

A. To the first part of the question I answer—each and every word in the connection in which they are arranged; my answer to the second branch of the question is, that where I said I had given you the facts I referred to my answers to your last previous questions; as to the third branch of your last question, I disagree with you, and have therefore no answer to make.

X Q. 72. Have you told me anywhere whether you expect to make any money out of this litigation or not?

A. I have endeavored in the best way I know how to show to you where the legal and equitable right and title to the patent in suit now is, and I have tried to show you from that fact that it would be impossible for me in any manner whatever, by law, or by any other means of a coercive nature, to receive a single dollar out of this suit or out of this patent; if you cannot understand that, it is certainly not my fault; and I have also told you that I do expect some time to be paid for
275 professional sevices; I have also fully explained to you as to what Helen M. Ingalls expects, and has a right to expect, and that I have nothing to expect from her, having, as before stated, no agreement in writing or otherwise with her or anybody else on the subject matter of expectation; it is, therefore, difficult for me to see how I can expect.

X Q. 73. Does the amount of compensation which you expect to obtain for professional services depend at all upon the result of the suit?

A. It does not.

X Q. 74. Aside from what you expect to obtain for professional services, have you told me anywhere whether or not you expect to get any money out of this litigation?

A. I have told you all I know concerning the subject matter of the inquiry.

X Q. 75. Do you know whether or not you have any expectation of getting anything out of this litigation except for professional services?

A. In my previous answers I have told you all I know concerning the subject matter of this inquiry; I have no personal knowledge or information of any kind whatever different from that I have so often stated to you on this record concerning the subject matter of the inquiry; the certified copies of the several deeds of assignment filed by the complainant's counsel, and together with the one set out at large in the bill, will give you all the information there is to be had on this matter.

X Q. 76. Do you understand the last question, in which you were asked, "Do you know," etc.?

(Last question read.)

A. I understand the last question, and have, in my opinion, made a full answer to it.

X Q. 77. Since you understand the question, I ask it again: "Do you

know whether or not you have any expectation of getting any money out of this litigation, except for professional services?"

276 A. Since you have asked the question again, I make the same answer to it; and I further say that I have no knowledge or information from any source whatever as to what the future may have in store for me.

X Q. 78. You have resolved that on this cross-examination you will not make categorical answers or suffer yourself to be pinned down to precise and definite positions, have you not?

A. I have made no resolve of that kind, but I have resolved, come what may, to observe the obligations of my oath, viz, to tell the truth, the whole truth, and nothing but the truth, not only on my direct examination but also on your cross examination.

X Q. 79. Did Jacob Shavor and Albert C. Corse execute any instrument about the month of February, 1864, purporting to reassign to you the patent which was granted to you in April, 1863?

(Complainant objects to this question as not pertinent to the direct examination, and states that if defendant proceeds with the inquiry into this or other matters foreign to the direct examination, he must make Mr. Norton his own witness for those purposes.

Defendant's counsel calls plaintiff's counsel's attention to the fact that witness, in answering questions in regard to his interests, has called the court's attention to the assignments, copies of which have been put in evidence; it is with reference to the witness' interests in the case that this question is now put.)

A. On the evening of the 23d day of February, 1864, in my office in this city, and before John T. Lamport, a United States commissioner, Jacob Shavor and Albert C. Corse signed and sealed an instru-

277 ment in writing of the character contemplated in the question, a certified copy of which has been filed in evidence by complainant's counsel; that instrument was in my handwriting, read by me to them, and they stated to the commissioner that it had been read to them, and that they understood it, and thereupon Mr. Lamport subscribed his name as a U. S. commissioner, having previously sworn those persons to that part of the instrument that was in the nature of an affidavit; and that instrument was left by them with me on that evening.

X Q. 80. Was the instrument produced by the witness Campbell as the original of that reassignment, signed, sealed, and delivered on the 23d February, 1864?

A. I have not a single doubt but that it was, for if it had not been, Mr. Lamport would not have signed his name in the official character he did, and the instrument bears that date.

X Q. 81. Did the instrument which you have stated was signed and sealed by Shavor and Corse on the evening of February 23, 1864, have the same written matter and the whole of the same written matter which precedes the signatures of Shavor and Corse in the instrument produced by Mr. Campbell?

A. Every word and every figure were the same down to and including the jurat; the affidavit and certificate that now appear on that original paper, and made by Mr. Lamport with reference to the authenticity of the paper, were subsequently put there, I think, some time in 1870.

X Q. 82. Had the half sheet preceding the signatures of Shavor and Corse been folded before it was written on?

A. If it had been folded before I had no knowledge of it, either then or since.

X Q. 83. You would have noticed it if it had been, wouldn't you?

A. If it had been, and I had knowledge of it at the time, I
278 should not have written on it; and in writing on it I did not discover anything in the way of the writing.

X Q. 84. Did you cancel the 50-cent. stamp—I think it was—using the initials of Shavor and Corse?

A. I am not certain about that; if they left my office without canceling the stamp that evening, it is very likely I canceled it for them.

X Q. 85. What is your best recollection as to whether or not you canceled the stamp?

A. I have stated it in my last answer.

X Q. 86. If you did cancel the stamp, did you use your own initials or those of Shavor and Corse?

A. I don't think I would have used mine.

X Q. 87. Why?

A. Because I did not execute the instrument. If I canceled that stamp I think I must have used their initials; and yet it is not material how the stamp was canceled if it was canceled to prevent its second use. Were that instrument here I could state positively whether I canceled the stamp or not.

X Q. 88. Did Shavor and Corse give you any authority to put their initials on that stamp?

A. If they did not, it was not necessary they should.

X Q. 89. Please answer my last question.

A. I answer the same as in my last answer.

X Q. 90. You were present, were you not, when Dr. Ward, the microscopist, stated that the handwriting on the stamp was made by the same person who wrote the body of the instrument, or substantially that?

A. I don't think I was present when any such statement was made; and if he made such statement I don't think he would know any more about it than I myself would know if you would show me the instrument to which you refer. I know my own handwriting quite as well, and, I think, better than anybody else, with or without an instrument of any kind.

279 X Q. 91. You were present, were you not, during the whole of the examination of Dr. Ward?

A. I was not. His examination was entirely in the hands of Mr. Williams, complainant's counsel. I heard part of it.

X Q. 92. You read over his testimony, did you not, on the day it was given?

A. I have no recollection of reading his testimony on that day or any other day. I frequently read the testimony of witnesses on the part of defendant, but never those which I regarded as so utterly immaterial as I supposed that of Dr. Ward would be after seeing him in the front room of this office looking with a microscope after fly-specks, or something else on that instrument. The instrument was plainly written; in my judgment needed no inspection of that kind, and I couldn't to-day tell all that he testified to, but I do remember of his saying something with reference to the seals and signatures to that paper being genuine.

X Q. 93. Do you recollect of Dr. Ward's stating anything with regard to the handwriting on the 50-cent, revenue stamp?

A. If he said anything in my presence about that I don't recall it now,

nor do I deny but that I may have canceled that stamp. If I did so, I did it because I believed I had a right to do it.

X Q. 94. Have you not frequently canceled revenue stamps on instruments not executed by you, using your own initials?

A. I don't remember about that. If I ever did do so, it was because I believed I had the legal right. I know it to be a frequent occurrence for banks to cancel revenue stamps on checks that were not canceled.

X Q. 95. When was that alleged original reassignment from Shavor and Corse attached together at the top in the form in which it appeared when it was put in evidence?

280 A. The reassignment from Jacob Shavor and Albert C. Corse to me, and of the date of February 23, 1864, was, some time during the year 1869, refastened or resecured at the top by myself. I did that because the top was worn away, and the fastening had become loose, and I bound it with an extra thickness of paper and put in, I think, four extra metallic fastenings, two at each side of the middle one. The middle fastening, I am inclined to think, was also new. At that time I found it necessary so to secure it, and to put it upon record in the Patent Office about the time the extra fastenings were put into the paper.

X Q. 96. You also gummed the sheets together then, didn't you?

A. The sheets had been previously secured by an adhesive substance known as gum-arabic; that paper had been used before the Senate Committee on Post Offices and Post-Roads, and, if I am not mistaken, had been to the Government Printing House, and printed, with other papers that were used before that committee. It being an original paper, on my application to the chairman of that committee he returned it to me, and it, on receiving it, I thought it best to refasten it by a better adhesive substance, I did so before recording it in the Patent Office, which was, I think, some time in the summer of 1869. My purpose in doing that was to make each and every of those sheets firmly secured together, as I had found a necessity existing for that course. Previous to its going to the Senate committee it had been used before the Committee on Post-Offices and Post Roads in the House of Representatives; that House returned that paper to me, together with other papers, by a resolution of that House, and that resolution was passed some time, I think, during the session of 1865.

X Q. 97. When were the sheets, on which Lamport's affidavits now appear, attached to that instrument?

281 A. I can't say about that, but I presume at the time the instrument was made; it was a sheet intended to protect the sheet on which the signatures were. The custom in my office always was to put an additional or extra sheet against the last sheet of any important instrument that had writing upon it, for the protection of that sheet, and then to put over that a wrapper of buff or yellowish color. I have no doubt that sheet was put there at that time.

X Q. 98. Were any metallic fastenings used when the instrument was first made, or was gum-arabic alone used?

A. Both were used. The middle one, of the one in the centre of the paper, was the same as the one now in that instrument.

X Q. 99. Was any other than that one?

A. No.

X Q. 100. Is the cover or wrapper now on the instrument the same that was originally put there when the instrument was made?

A. It is the same identical one.

X Q. 101. How did it happen that the rough usage which made it

necessary to refasten the instrument did not also so injure the wrapper as to lead you to put a new wrapper on?

A. The end of that wrapper was entirely worn away, if I mistake not; hence the necessity of putting on the extra binding that now appears on that paper. Then, again, there was some writing on that wrapper in the handwriting of Horatio King, formerly Postmaster-General, and it was marked in his handwriting No. 21, that being one of the number of the several papers that were used before the House Committee on Post-Offices and Post-Roads in 1864, and in 1865 withdrawn by me under resolution of the House and transferred by me to the Senate committee of the same character.

Adjourned by consent to May 18, 1878, at 9 a. m.

282 MAY 18TH, 1878—9 a. m.

Counsel for respective parties appeared as before.

Cross-examination of Mr. NORTON resumed:

X Q. 102. Yesterday you stated, in answer to question 95, "the middle fastening, I am inclined to think, was also new;" in answer to question 98 you stated, "the middle one or the one in the centre of the paper was the same as the one now in that instrument." Which of those answers do you wish to abide by?

A. Each of them, because I see no inconsistency as to those answers, or either of them, when properly understood.

X Q. 103. How do you wish them understood?

A. The first fastening of the kind that now appears on the middle of that instrument had to be removed at the time I put on the binding strip at the top, and it is very likely that the points that are turned down on the outside binding were one or more broken off, rendering it unfit for use; if that were so, a new one of the same kind was used in its place; I am not entirely clear on this point, but think it more than likely that the first one was broken in the respect stated in reference to the points at the same time it was removed so as to allow me to put on the heavy binding strip at that end of the paper; if they were not so broken, then the same binding strips were used that were first put in the paper.

X Q. 104. Do the sheets of which that reassignment is composed have two pages or four—that is, are they folded at the top where they are fastened?

A. They are not folded at the top; they are separate sheets, such as I always used in my office, and I had those sheets and all the paper of that kind that I used manufactured for me here in the city.

283 X Q. 105. Do you wish to make any explanation in regard to your oath as to interest in the case of Shavor and Corse against the United States in the Court of Claims?

A. I should be very glad to do so, for the reason that I know that a misconstruction has been put on that deposition in reference to the subject-matter contained in the question.

X Q. 106. Give it.

A. My assignment to Jacob Shavor and Albert C. Corse of my patent dated April 14, 1863, and number 38175, and dated on or about April 20th, 1863, was made to those persons in order that I might be a witness in a suit on that patent or any of its reissues for the purpose of testing the validity of the patent, it having at that time been assailed and denied by the then Postmaster-General, Montgomery Blair, in two or three letters now in my possession, and addressed by him to the Committee on Post-Offices and Post-Roads of the U. S. House of Representatives, where

I had a bill or joint resolution pending contemplating compensation for this patent. Upon the receipt of those letters by that committee I was notified by its chairman, John B. Alley, that it would be necessary to test my claim in the courts before that committee would take further action. Jesse O. Norton, a member of that committee, was the subcommittee to whom was referred the pending matter of compensation then before that committee. I consulted with him as to the course I should pursue with reference to a suit, as there were matters concerning the history of this invention which I considered would be important testimony in a suit of that kind, and inasmuch as I could not be complainant, or plaintiff, and at the same time a witness in the same suit, he advised me to make an assignment of the patent to some friends or clients of mine in whom I could trust. Being the attorney and counsel for the firm of Charles Eddy & Co., of this city, in which Jacob Shavor
284 and Albert C. Corse were partners, I consulted that firm about taking an assignment of that patent; Mr. Charles Eddy refused to have anything to do with it, but I subsequently made an arrangement with Jacob Shavor and Albert C. Corse to take the assignment and become plaintiffs in a suit at law against a subcontractor by the name of Edmund Hoole, then making the device containing the invention covered by this patent. A suit of that kind was brought in the United States circuit court for the northern district of New York; it was duly and regularly called in open court, and a trial was had before Judges Nelson and Hall, Judge Hall conducting the proceedings of the court. The jury returned a verdict in favor of the plaintiffs, and under the instructions of Judge Hall rendered special findings in the making up of their verdict; nominal damages only were asked, together with some costs, as it was stated to the court that the object of the suit was to test the validity of the patent. The assignment of April 20th, 1863, was read as evidence by myself in that cause; I also read as evidence in that suit a certified copy of my caveat filed in the U. S. Patent Office the 20th of October, 1853, including the additional description added to the subjoined description in that caveat, signed by me on the 7th of August, 1854, and so dated at the town of Tinmouth, Vermont. This assignment of April 20th, 1863, was never delivered to Shavor or Corse, and I have no knowledge of their ever having seen it; they did not pay me a single dollar, nor did they agree to pay me any sum whatever for that patent, but merely acted as my assignees under an arrangement which I had with those men. Being aware that the legal title to that patent was vested in those persons, without any compensation or consideration whatever, and having in view the uncertainties of life, I, on the 23d day of February, 1864, received from those persons a reassignment and retransfer of the patent in suit, which deed of
285 assigment is mentioned at folio 19, page 5, of the amended bill. At the time I made the deposition referred to I held in my possession, or under my control, the deed of assignment last referred to. Being myself a lawyer, I regarded the legal title as being vested in those persons, while I held that deed of assignment unrecorded in the Patent Office, and the suit in the Court of Claims having been brought in February or March, 1867, to recover against the United States whatever might be found due, for the use of this invention by the United States between April 14, 1863, and the time of the filing of the petition in the Court of Claims, I was quite willing that the title should continue to be vested in those persons. Under those circumstances, and with my view as to the title being in them, while the assignment I have mensioned remained unrecorded in the United States Patent Office, I testified in

that case in these words: "I have no interest in the claim, which is the subject matter of inquiry," but did not testify that I had no interest in the patent on which that claim was founded. When I said on that examination, "I have no interest in the claim, etc.," then pending in that suit, I meant that I had no legal claim to anything they might recover, in that suit, between the 14th of April, 1863, and the time of the filing of the petition in that court. Had I been cross questioned by the U. S. attorney on that occasion, with reference to the matter of which I am now inquired of, I should then have explained that part of my deposition substantially in the manner I have explained it here, and if requested by said attorney, I should have produced the reassignment dated February 23, 1864; but as I was not cross examined with reference to that matter, my deposition was left containing the words stated in quotation in this answer. I regarded myself as having no interest in the claim pending in that suit, for the reasons I have above stated. If I were mistaken in that deposition and had an interest at that time, it
286 was in consequence of my view of the law with reference to the matter inquired about.

X Q. 107. Have you ever made any different explanation of your oath in that case?

A. Never having been called on before for an explanation, I have never made any explanation with reference to that oath in any proceedings in any court.

X Q. 108. Have you anywhere else?

A. Yes.

X Q. 109. What was that other explanation?

A. It was made to Judge Williams, counsel in this case, and upon his inquiry with reference to it, and was substantially the same as I have made here to-day; I may have made it more in detail to him.

X Q. 110. Have you ever made any other explanation of that oath?

A. Yes.

X Q. 111. To whom, and when, and what was it?

A. It was made to General Benjamin F. Butler a few years ago, while he was out of Congress and engaged in his profession, with whom I consulted with reference to this patent, and as to the best mode of getting the compensation to which Miss Helen M. Ingalls was entitled by law to receive from the United States; I think that consultation was about three or four years ago; he made substantially the same inquiry of me about this matter that Judge Williams made after he became counsel in the case, and I gave him substantially the same explanation that I have given here to day; I have no recollection of any other consultation with anybody in reference to the matter inquired about.

X Q. 112. Did you not, shortly after issue was joined in this case, in one of the corridors of the post-office building, in the city of New York, state to me that you had sworn that you had no interest in the claim under investigation in the case of Shavor and Corse against the United States, because the claim in that case covered a period of
287 only about nine months, being the interval between the date of the original assignment to Shavor and Corse and the date of the reassignment by them to you, or substantially that?

A. I recollect of no such conversation; if I made any such statement to you the records of the Court of Claims show that I was mistaken about it; I think I did, however, at one time say to you that had the reassignment of February 23, 1864, been recorded at about the date of it in the U. S. Patent Office, their claim would then have been for a period of nine or ten months.

X Q. 113. Did you not prepare, or partially prepare, a printed book, which was submitted to the Post-Office Department, or some officer thereof, about the year 1871, and in which an explanation of your oath was given?

A. In the winter of 1870–'1 an investigation was had in the Post-Office D partment, before Mr. Terrell, Third Assistant Postmaster-General, who was detailed for that purpose by the Postmaster General. At the close of that investigation a book was prepared, containing the main evidence submitted to him, including some ex parte depositions. I do not remember and do not believe that I was examined as a witness on that occasion. If I made an ex-parte affidavit during that investigation, it must be on file in the Post-Office Department, and that will best show what I there stated in reference to the matter inquired about. Should you show me any book to which your question refers, I could then inform you as to whether I prepared, or took any part in the preparation of, a book such as the question inquires about. If I there made any explanation about this matter, that explanation could not be inconsistent with the one I have made to-day, unless it be with reference to the length of time their claim continued under my assignment to them of April 20, 1863. Since then I have examined the records of the
288 Court of Claims and find that their claim under that assignment began April 20, 1863, and continued up to the filing of the petition in the Court of Claims. If I have ever made any statement inconsistent with that record, I was simply mistaken about it.

X Q. 114. That does not answer my question; please state, according to the best of your recollection, without any "ifs," whether you prepared or partially prepared that book which you say was presented to Third Assistant Postmaster-General Terrell.

A. I cannot tell you until you first produce here, and exhibit to me, the book you had in view at the time you proposed the last two questions.

X Q. 115. I have in mind the book which you state, in your answer to question number 113, "was prepared containing the main evidence," etc.; please answer my last question with reference to that book.

A. Show me the book contemplated in your last question, and give me an opportunity to examine it, and I will then tell you whether I prepared or took any part in the preparation of such a book; until then I cannot.

X Q. 116. In saying you cannot, are you telling the truth, the whole truth, and nothing but the truth?

A. That is my oath on this examination, and I have as high regard for it as you any other man would have for your oath. I have not the slightest doubt that I am telling the truth on this occasion, and I believe that the counsel knows I am, from the fact that nearly all the original records in the Post-Office Department with reference to this matter have disappeared from that department, and are now in possession, as I have been informed, of defendant's counsel.

X Q. 117. Why cannot you tell me whether you had any part in the preparation of the book to which you refer in your answer to question 113?

289 A. Because some three or four different books containing evidence have been printed and filed in the Post-Office Department within the last ten years, and I do not know to which you refer, and cannot tell until you show me the book you have reference to.

X Q. 118. I refer to the book that you refer to in your answer to question 113.

A. If you refer to that book, no statement of the kind you inquire about was contained in it; if any such statement as that you inquire about is contained in any other book, I would be glad to see it, in order that I might explain it if it is necessary; the book I refer to was printed by William H. Young, a bookdealer and printer in Troy, in 1870.

X Q. 119. Was a printed book or pamphlet prepared in the interest or Miss Ingalls, to which your name was subscribed as attorney, and that of a Mr. Mason, as counsel, and presented to Third Assistant Postmaster-General Terrell at about the time of the investigation you have spoken of?

A. The arguments of Mr. Mason, opening and closing argument, were printed in pamphlet form and submitted to Mr. Terrell, before whom the investigation was had; if any other book was printed at that time, it is very likely on file in the Post-Office Department; if examining counsel will be kind enough to produce here the book which he has in his mind when he puts the question, it would enable me to save him the labor of putting this kind of questions about some book which I may or may not know about.

X Q. 120. Was there anything else in that book besides Mr. Mason's arguments?

A. The argument of Mr. Mason was printed in two separate pamphlets; I have copies of them, and they show no other matter except his arguments in opening and closing the case.

X Q. 121. Was a book prepared in the interest of Miss Ingalls,
290 to which your name was attached as attorney, and that of Mr. Mason as counsel, containing a number of affidavits and some matter in the nature of comments by you or Mr. Mason upon the case, and bearing upon the title page something to the following effect: In the matter of the application of Marcus P. Norton for compensation for the use of the combined postmarking and postage stamp canceling device, patented April 14, 1863, and reissued at several subsequent dates, which are stated on said title page, and bearing also at the foot of said title page the usual printer's mark, indicating that the book was printed in Washington in 1870 or 1871?

A. Since the taking of the testimony began in this case on the part of the defendant, and at several times and in different places, I have seen in your possession a book of that description; where you got it I know not; whether it is bogus or fraudulent or a forgery, I know not; having several times asked you to let me examine it, and been by you each time refused; if you will produce that book, and let me examine it, I should be very glad, and will then try and give you such answers as I may be enabled to after such examination.

X Q. 122. That does not answer my qu stion. Please try again.

A. I have no other answer to give until the alleged book is produced before this examiner,

X Q. 123. Who has alleged that such a book exists or has ever existed? I ask you whether there was such a book?

A. Examining counsel makes that allegation by his questions already upon this record. In my last answer I stated that I had seen in the possesion of the examining counsel a book purporting to be of the kind covered by his several questions; I have also stated that I can tell nothing about that book being genuine or fraudulent until it is produced
here before this examiner, and I request examining counsel now
291 to produce it, and then I will try to give him correct answers about it, if on examining it I find I have any knowledge of it.

X Q. 124. I ask you to state whether any book like that which is described in question 121 was prepared to your knowledge?

(Question 121 read to witness.)

A. I cannot state any such thing, for reasons which I have repeatedly given during my examination this morning.

X Q. 125. You cannot state whether you know of such a book being made?

A. I have already stated that I have frequently seen in your possession during the progress of the defense a book of the description you give; whether you made that book or not, I don't know; whether it is fraudulent or genuine I don't know, because you never would allow me to examine it. You have on several occasions shown me such a book, so that I could read the title page and no more. You indicated to me that there was something in that book that was very terrible; what, you did not state.

X Q. 126. Was the preparation of such a book as question 121 indicates made with your knowledge?

A. If you will let me see the book which you have so frequently exhibited to me in the manner stated in my last answer, I can then answer you, and not until then, for I am induced to think the book you have is fraudulent and forged. Could I see it I could better tell.

X Q. 127. I will now test you with a distinction; if I produce the book which you say that you have seen in my possession, you will be able to state whether you knew of the making of that particular book. That is not what I am after. I wish you to tell me whether you know of the making of any book which answers the general description contained in my question No. 121.

292 A. I have already fully answered the question, and answered it several times, as this record will show, and I have no other or further answer to give on the subject at this time.

X Q. 128. Do you decline to state whether you took part in the preparation of any book which answered to the general description contained in my question No. 121?

A. I have made no such refusal, but have frequently said that if the examining counsel would produce the book about which he is making so many questions I could tell upon examination of it whether heretofore I had any knowledge of it or took any part in its preparation.

X Q. 129. Well, tell me whether, to your knowledge, you took part in the preparation of any book answering to the general description contained in my question No. 121.

A. I cannot answer that question until I have seen the book described in that question No. 121; more than that I have already said that there were several printed pamphlets filed in the Post-Office Department at the time of the investigation referred to.

X Q. 130. Is that all the answer you wish to make?

A. It is, and I have so expressed myself several different times during the examination this morning, and given reasons therefor, and if any book of that description shall here be produced by examining counsel, I shall endeavor to give him full and fair answers to any question he may put concerning the same; and I further answer by saying that I have endeavored to answer each and every question put by examining counsel this morning to the best of my knowledge, as I understood those questions, and as to the book described by counsel I cannot say that I took any part in the preparation of any such book. Mr. Mason had full charge of that investigation; if any such book was prepared at that time, and

293 the book be a genuine one, and Mr. Mason signed it, I must have

aided him in the preparation. Whether the evidence taken before Mr. Terrell was all printed or not I cannot say, but I am inclined to think it was not, having recently seen some of the manuscript evidence taken on that occasion; possibly a book in the form of argument, containing some of the evidence, was printed and used on that occasion; if so, I took part in its preparation, and I also took part in the preparation of Mr. Mason's argument in the case, seeing that he had certain dates correctly, etc.

X Q. 131. Did you know at the time thereof of the preparation of any book answering the general description contained in my question No. 121?

A. If any book was prepared of that kind on the part of Miss Helen M. Ingalls and submitted to the department I must have known of it at the time; I mean at the time the investigation was going on.

X Q. 132. Was any book of that kind prepared to your knowledge—answering, I mean, to the description contained in question 121?

A. I have already answered that there was a book substantially of that kind prepared, and it was printed here in Troy, and that I took part in the preparation of that book; it may be that that book was reprinted in Washington, and some additions made to it; if it was, it was printed by McIntosh & Cunningham, or Cunningham & McIntosh, as they did printing for me at the time in printing briefs and other matters I needed in Washington, and they had done printing for me for several years in that way, but whether it was in 1871 I can't say, and if such reprint was had I took part in the preparation of that book. I am inclined to think that the book printed in Troy was reprinted in Washington, and used before the Committee on Post Offices and Post Roads in the Senate, just before Mr. Gilbert, of that committee, made his report
294 upon the bill then pending concerning this invention, which was, I think, in 1872, in the month of May. I don't now remember that a book of that kind was used at the time of that investigation in the Post-Office Department, and yet it may have been. I intend this answer to be an affirmative answer to the question.

X Q. 133. State generally what matter was in that book which you say you did know was prepared.

A. There were several certified copies of letters from the Post-Office Department; the affidavit of John A. Dix, of New York; one or more affidavits by Cyrus A. Sherwood, of this city; an affidavit by Edmund Hoole, and I think one or two letters written by him; an affidavit made by Pomeroy; an affidavit made by Frederick G. Ransford; one or two affidavits made by myself. I think there were one or two reports by committees of Congress printed in it, one made by Mr. Thomas W. Ferry, who was then in the House, and one made by Mr. Van Winkle, a Senator; some statements from the Post Office Department with reference to the amount of labor saved by the use of this invention; and the rest, I think, was made up of arguments or statements of counsel founded upon those papers; and I think those papers were printed at different places in the argument; and my impression is, the book was designed to be a book of argument as to the matter of this invention and the patent thereon, and this book now referred to was the last one printed of which I have any knowledge. There were at least two or three books previously printed, of one of which I had knowledge.

X Q. 134. Was your name attached as attorney?

A. I am not certain whether the book was signed by anybody as attorney; if it was, my name would be there.

X Q. 135. As attorney for whom?

A. It would be either for Miss Helen M. Ingalls or Mr. Secombe; which, I cannot say at this time.

295 X Q. 136. What was the date of the reprint in Washington?

A. I can't say as to that. I think it was 1872; if in 1872, I was attorney for Mr. Secombe.

Adjourned till 2 o'clock p. m.

2 O'CLOCK P. M.

Cross-examination resumed:

Mr. Norton desires to explain the testimony given this morning with reference to a book.

During the recess for dinner I have examined several papers concerning this matter of inquiry, and from that examination I am satisfied that the book of the description named in question 121 was first printed at Troy, N. Y., and then reprinted at Washington by Cunningham & McIntosh, and that I now have no doubt but that I understand the book referred to in question 121, and that that book so reprinted was entirely under my supervision; in the morning I could not understand what book counsel referred to.

X Q. 137. Please produce the papers which you have examined, and also a copy of that book.

A. I have no copy of that book; the papers that I have looked at are bound with a large number of other papers in a book, and I have no separate copy of it.

X Q. 138. Will you produce the papers?

A. The book that I consulted I produce, consisting of ninety pages.

X Q. 139. Explain how this book assisted you to make that statement.

A. By examining the title-page and the matter contained in it; and also by examining another pamphlet next to it, entitled "Opening Argument by Mr. Mason," recalled to me the fact in reference to the other book.

296 X Q. 140. Are either of these pamphlets which you show the one which you say was reprinted in Washington?

A. The one that has 90 pages in it was reprinted in Washington; the other two adjoining it were never reprinted, but were originally printed in Washington.

X Q. 141. Is the one with 90 pages the one that, in your examination this morning, you said was reprinted in Washington?

A. It is, together with some additional papers.

X Q. 142. Did you examine any other paper during the recess?

A. None but those three.

X Q. 143. The third is the closing argument of Mr. Mason, is it?

A. It is.

X Q. 144. Do you know of the preparation of any pamphlet or book bearing a printer's mark indicating that it was printed in Washington in 1870, and having on the title-page "Marcus P. Norton's postmarking and postage-stamp canceling device; application for compensation for the use of said device," or some words of similar effect, and purporting to be subscribed by you as attorney for Miss Ingalls, and by Mr. Mason as counsel, and containing affidavits and comments and arguments?

A. Not in the year 1870.

X Q. 145. You know of no such book having a printer's mark on the title-page of 1870?

A. I don't recall any within that year, but there was such a book either in 1871 or 1872, but whether I signed it or not I don't remember now. I prepared the book for the printer.

X Q. 146. Was it different from the one you have already referred to?

A. It was the same one; I am not positive about the years.

X Q. 147. Was such a book prepared, to your knowledge, bearing the printer's mark of 1869?

297 A. There was a small book wholly prepared by myself, either the last of 1869 or the forepart of 1870, I am not certain which.

X Q. 148. Is there a copy of that book under your control?

A. I am sorry to say there is not.

X Q. 149. Where did you last know of a copy being?

A. On file in the Post-Office Department; there was also a copy filed with the Committee of Post-Offices and Post-Roads in the Senate of the United States.

X Q. 150. When did you last have a copy under your control?

A. I think it was 1870 or 1871.

X Q. 151. What did it contain generally?

A. It contained some of the matter contained in all these pamphlets; it also contained a refutation or denial of a printed pamphlet that parties adverse to my rights personally, or those of parties holding this patent, had filed with the Postmaster-General.

X Q. 152. Who were the parties that had filed that statement to which you replied?

A. If my memory serves me, that pamphlet purported to be signed by Charles Eddy, Jacob Shavor, Albert C. Corse, Frederick G. Ransford, Peter Low, William B. Hatch, Weed & Clark, and Jeremiah D. Green. I now remember that my answer to that pamphlet was in August or September, 1869.

X Q. 153. Was it after the recording of the Shavor and Corse reassignment?

A. It was, and before my settlement with Mr. Eddy in October of that year.

X Q. 154. In whose interest was it made?

A. I don't remember now.

X Q. 155. To whom was it presented?

A. To Postmaster-General Creswell.

X Q. 156. Did it make any reference to the matter of title to the patent?

298 A. I think it did.

X Q. 157. Did it make any explanation of your oath in the Court of Claims?

A. I don't remember about that.

X Q. 158. Do you not remember that you insisted in that pamphlet that your oath in the Court of Claims was true, because the claim in the case of Shavor and Corse *vs.* The United States covered only about nine months, being the interval between the date of the original assignment and of the reassignment of Shavor and Corse to you, or something to that effect?

A. If such statement was made, which I do not now remember, I am now satisfied that I was mistaken about that.

X Q. 159. Was any other pamphlet or book presented, to your knowledge, to the Post-Office Department, or any officer thereof, containing statements and affidavits and arguments in opposition to that which

had been submitted by Shavor and Corse and the others you have mentioned?

A. None to my knowledge.

X Q. 160. Or to any committee of Congress?

A. The pamphlet that was signed by the persons I have named never, to my knowledge, went to any committee of Congress, but the pamphlet containing ninety pages, printed at Troy, and afterwards a copy, reprinted with additional papers, were each presented by me to the Senate committee.

X Q. 161. To your knowledge, was any pamphlet presented to any officer of the Post-Office Department, or to any committee of Congress, which discussed the title to the patent, with reference to the arguments made against the validity of the reassignment contained in that statement of Shavor, Corse, and others, besides the one already stated by you to have been submitted to Postmaster Cresswell, between the date of the recording of the reassignment and October, 1869?

A. I have no knowledge of any such.

299 X Q. 162. Have you any means of refreshing your recollection about that?

A. I have not, for I have never seen or heard of any such pamphlet.

X Q. 163. You now explain your oath in the Court of Claims, as I understand you, by stating that you believed that the title to the patent would not become vested in you until the Shavor and Corse reassignment of 1864 should be recorded. Is that correct?

A. My legal opinion then was, and now is, that an assignment must be of record in the Patent Office before a person can become vested with the legal title; I may then and now be mistaken on that point; no questions were asked me during that deposition concerning the title, excepting as I have before stated, so far as I now remember about it.

X Q. 164. Did you believe that the assignment to Mr. Eddy, as trustee, of one-third interest, in October, 1869, took precedence over the assignment to Miss Ingalls, which purports also to have been made in October, 1869?

A. That is a question that I think belongs more properly to the court to determine; it involves a question of law.

X Q. 165. On what day was the assignment to Miss Ingalls made?

A. The assignment to Miss Ingalls was prepared about October, 18th; it might have been a day or two before that time; it was actually dated on the 20th day of October, 1869, and by me signed and sealed on that day.

X Q. 166. Was it fully executed on the 20th?

A. It was.

X Q. 167. Were you then contemplating the arrangement which was made with Mr. Eddy on the 23d?

A. I was not.

X Q. 168. Did you believe that the assignment to Eddy of a
300 one-third interest, which was dated the 23d and recorded the 25th of October, would take precedence over the assignment to Miss Ingalls, which you say was made on the 20th, and which was not recorded until some time in 1870?

A. The circumstances attending the making of both those assignments raises, in my judgment, a question of law more properly for the court than for me to determine.

X Q. 169. Do you decline to answer my question?

A. No, I hesitate about testifying to conclusions of law, as I think the

court can determine those questions without any legal opinion of my own; if, however, you insist on such an opinion, I will give it.

X Q. 170. Please give it. (Question 168 read to witness.)

A. Under the circumstances attending the making of those assignments, and those immediately following, I regarded Miss Ingalls as having at least the equitable right to that one-third interest in addition to the two-thirds of which she held both the legal and equitable right and title; but Mr. Eddy, having recorded his assignment in trust of the one-third, he had the legal title to that one-third, so long, at least, as he kept his agreement with me in reference to it.

X Q. 171. Did Miss Ingalls know of the assignment to Eddy?

A. Some time afterwards she knew that Mr. Eddy, for himself, and as agent or attorney for Jacob Shavor and Albert C. Corse, had made a settlement with me, about the 23d of October, 1869, of all our matters of differences of every name and nature, and on that occasion I informed her of that assignment to him, in trust for himself and Shavor and Corse, if I am not mistaken.

X Q. 172. Did you inform her of the assignment to Eddy at or before the time it was made?

A. Not until afterwards.

301 X Q. 173. What explanation have you to offer of your conveying property to Eddy which you had previously conveyed to Miss Ingalls, without informing Miss Ingalls, when you believed that Eddy, by putting his assignment on record, could deprive Miss Ingalls of a third of what had been conveyed to her?

A. At the time I made the assignment to her the arrangement was that I should act for her, and exercise my own judgment in any matter concerning that patent; an application was then pending before Mr. Cresswell, having reference to the past use of this invention, and with reference to its future use by the government; that application was defeated by the attorneys, Weed and Clark, claiming to act for Shavor and Corse, by the filing of some affidavits, and the printed pamphlets signed by them. Mr. Eddy came to Washington to see me, about the 22d of October, 1869, the next day or two after that application was defeated; we entered into an agreement or arrangement by which all past differences between us were to be settled, and he was to do certain things with reference to the patent, and inasmuch as Miss Ingalls' assignment had not been recorded at that time, I thought it wiser to yield to the force of circumstances and assign to him, on the 25th day of October, 1869, the one third interest, and dated the assignment on the 23d day of that month, the day on which the agreement was consummated. Afterwards, upon informing her with reference to that settlement, and stating to her the circumstances under which it was made, as well as the obligations on the part of Mr. Eddy, she did not object to the course I had pursued with reference to this matter.

X Q. 174. Have you any explanation to offer in regard to the letters in your handwriting which were put in evidence, in this city, on the defendant's behalf?

A. Were those letters here, there are some things about them

302 that I would like to say something about; if counsel will indicate the particular parts or points which he thinks need explanation, I will answer him as best I may.

X Q. 175. You read the letters in your handwriting which you put in evidence, didn't you?

A. I did.

X Q. 176. Did you notice the statement in one of the letters to Mr. Shavor, "you hold two-thirds by agreement and three-thirds by assignment"?

A. Something of that kind I observed in one of those letters.

X Q. 177. Explain that.

A. Under my agreement with Shavor and Corse with reference to this invention and patent, they were to furnish all the necessary means to obtain compensation from the government for the past and future use of this invention; I was to do the professional part for that purpose. I was to have and retain a two-thirds interest in the invention and patent; they were to have one-third for furnishing the money required for the purposes I have stated; the title was to remain in them so long as they kept their agreement with me, and the suit in the northern district of New York, which was in contemplation of being brought at that time, was to be in their name. My statement in that letter having reference to their holding three-thirds had reference to my assignment to them bearing date 20th day of April, 1863, but not actually made until some time in January, 1864, or fore part of February, 1864; it was dated back to the 20th of April, 1863, and recorded in the Patent Office on or about the 8th day of March, 1864, and not having recorded their reassignment to me of the 23d of February, 1864, I regarded the legal title as being in them; the two-third and one-third interest referred to in your question was that interest which I held under their agreement with me. In the spring of 1869 they utterly failed to keep their agreement with me, and served on me a notice to that effect. Being re-
303 lieved from my agreement with them, I thereupon reinvested the whole right and title in myself to that patent by the putting on record of the reassignment dated the 23d day of February, 1864, of which recording I gave them due notice personally.

X Q. 178. If they were to have one-third and you two-thirds, why did you say "you hold two-thirds by agreement"?

A. That was simply a mistake in the writing of the letter; it did not mean or contemplate any such thing, but right the reverse.

X Q. 179. Why didn't you record the reassignment before 1869?

A. Because they had not broken their agreement with me until I was compelled to borrow four thousand dollars of Samuel O. Gleason, of this city, in order to prosecute for compensation for the use of this invention by the government; and even after that I urged these persons to keep their contract with me, and finally they gave me the notice of which I have spoken; and I further learned, in the summer of 1869, that either Mr. Shavor or Corse, or both of them, had filed a paper in the Post-Office Department claiming the entire invention and patent, and notifying the department to have nothing more to do with me. As soon as I learned of these matters I was under no moral or legal obligation to further withhold the recording of that reassignment. These are the reasons why I did not record it at an earlier period.

X Q. 180. Why did not you record that reassignment before 1869?

A. Because those persons had not fully broken their agreement with me until the winter of 1868–'9, and the filing of that paper in the Post-Office Department, of which I had no notice until June, 1869.

X Q. 181. In one of the letters that were put in evidence you recollect the proposition that Shavor and Corse should reassign the patent, do you not?

A. I remember something of that kind.

304 X Q. 182. Explain it.

A. That referred to whatever interest they might have by reason

of the money that they had advanced to me, and previous to the date of the re-assignment, which was about ten months or eleven months after the granting of the patent. I thought they should give up whatever claim they might have on that account, inasmuch as they had failed to keep their agreement with me. Those letters show, I think, that I was constantly annoyed with reference to the money they were to pay for that one-third interest, the agreement being an oral one.

X Q. 183. In one of the letters you proposed that they should re-assign, so that you might get the legal title to the patent, did you not?

A. I don't remember any such thing in any of those letters; if I used the word "legal," it was a mistake.

X Q. 184. You stated that you wished to make an explanation about these letters; why were you not examined in New York, where the letters are?

A. I don't know anything about that.

X Q. 185. You don't know why you were not examined in New York—do I understand you correctly?

A. I don't, unless it is because you didn't subpœna me as a witness there. I have always supposed that a witness has a right to be examined somewhere near his home.

X Q. 186. Do you wish this examination adjourned so that the letters can be obtained, and you can make a full explanation of all the points in them which you wish to explain?

A. I wish for no such adjournment; I am being examined before the same examiner who took the defendant's evidence about four months ago; I think you could have had the letters here if you had wished them for any purpose. All I care to say about the letters generally is that Mr. Shavor required me to write a letter every day, and sometimes got mad because I did not write two on the same day; of course if I had the letters I might be able to give a more full explanation, but I will try and answer all your questions without the aid of those letters, for I do not regard them as having anything to do with this case or anything at issue in it.

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X Q. 187. When, on your direct examination, you stated that the additional paper which accompanied your letter dated Tinmouth, Vermont, August 7, 1854, was contained in the caveat which has been offered in evidence, did you mean to be understood that the additional paper which now appears in that caveat file was contained in, and that the whole of it was contained in, the additional paper which accompanied your letter.?

A. Do you mean the identical paper now contained in that file with an endorsement on it by M. D. Leggett?

X Q. 188. No, I mean the words and the matter in the body of the "additional paper."

A. I say yes, every matter and everything that is contained in that additional paper of that date, now on file as evidence in this case on the part of the complainant, was prepared by me, and in the same handwriting of the letter of that date referred to in my direct examination, and that I sent that letter and that additional description in the same letter, addressed to the Commissioner of Patents, at Washington, D. C.; and that such additional paper was so prepared by me a few days before the date of it, and was submitted by me to Mr. Silas H. Hodges, then residing and practicing law at Rutland, Vermont, and who was my attorney with reference to that caveat, under my power of attorney to him, dated Rutland, Vermont, March 11, 1854. The letter and additional description was sent by mail to the Commissioner of Patents.

X Q. 189. You stated that an instrument made after the terms
306 of that caveat was used before the additional paper was filed—where, when, and by whom?

A. The use was an experimental use by myself and by Mr. James Richardson, of Poultney, Vermont, who constructed that machine for me, in the winter of 1853–'4, and such experimental use was at Poultney, Vermont, in Mr. Richardson's shop.

X Q. 190. Was that machine constructed according to the terms of the additional paper or according to the terms of the caveat?

A. According to both.

X Q. 191. Was it a hand instrument?

A. The first was a machine that went by crank or foot power; the second was a hand instrument like that described in the additional description, dated August 7, 1854; and the several constructions were according to e ch plan named in that paper.

X Q. 192. When was the second made and used, and where, and by whom?

A. The second one that I refer to was made by Mr. Richardson, at Poultney, Vermont, some time in the winter or spring of 1854, and the use was only experimental at and in his shop, and at the same time.

X Q. 193. Mr. Richardson did not keep a post-office, did he?

A. He did not at that time.

X Q. 194. Where is Mr. Richardson now?

A. Mr. Richardson has been dead several years.

X Q. 195. Where, when, and by whom was the third made, if there was a third?

A. Mr. Richardson, at the time I have stated, made one of each of the various descriptions in the additional paper of August 7, 1854, and also of the subjoined description dated October 13, 1853.

X Q. 196. When was the next one made?

A. There was one made by Cyrus A. Sherwood, some time in the fore part of the year 1857, containing among other things the invention for postmarking the letter envelope and canceling the postage-
307 stamp thereon at the same operation, by one blow of the instrument.

X Q. 197. Describe the construction of that.

A. There was a frame fastened to a table underneath it, in which frame there were two cylinders, containing type to print the month and the day of the month; around the upper surface of those dating wheels there was a plate so arranged as to be movable, so that one plate would give the name of the post-office where the letter was postmarked; in the end of that plate there was a horizontal wheel whose type were on a line with the face of the dating plate or type; on the upper surface of that wheel there was a metallic canceling device, which, when brought in conjunction with the dating wheels and the postmarking plate of which I have spoken, a letter would be postmarked and the postage-stamp canceled by means of a hammer plate upon which the blow for the printing and canceling operation was given; the type were inked by means of a roller passing over them, and located in the end of an arm extending outward from a stud or post for that purpose; when the inking device had passed over the type, another arm, containing the hammer of which I have spoken, came directly over the postmarking and canceling device, and by means of a stem extending upward from that hammer, with a smooth head, the blow was given by the hand upon that upper projecting stem, and by that means the postmarking of letters and the cancellation of postage-stamps was done at the same

time and by the same blow; those dating wheels had arms or pointers upon the outside to enable the operator to adjust the wheels for the proper date to be given; the two arms spoken of were each attached to the stud or post of which I have spoken, so that they could be moved backwards or forwards in a horizontal direction; on the surface of this horizontal wheel containing the canceling device there were other
308 type secured to that surface for the purpose of printing the word "paid," "unpaid," "paid in stamps," "paid in money," "missent," "forwarded," "advertised," and such like.

X Q. 198. When and where was that instrument used?

A. It never was used, only experimentally; that was at Sherwood's shop, at the hotel where I then boarded, and at my office in this city.

X Q. 199. The Secombe reassignment, to which you referred in your direct examination, was the one of which a certified copy has been filed in this case, was it not?

A. It was; and it is also referred to on page fourteen of the amended bill, folios 52, 53, 54, and 55 of that page.

X Q. 200. Do you not know that the patent Division A, 4143, is not conveyed by that reassignment?

A. I don't know any such thing, but, on the contrary, I know that it is; I absolutely and personally know that fact, and that that was the intention of that instrument, which I drew myself on the day it was executed.

X Q. 201. Did you not, subsequent to the date of that Secombe assignment, which has been put in evidence, request Mr. Secombe to reassign the patent, the last reissue of which is Division A, 4143?

A. I have no recollection of any such thing; he claimed to have purchased an interest in the patent dated August 9, 1859, and I asked him to assign to Miss Ingalls all the interest in that patent he might have, which he promised me he would do.

X Q. 202. Are you sure that you did not ask him to reassign Division A, No. 4143?

A. I am sure that I have no recollection of any such thing. At the time the original bill was prepared I gathered up all the original papers bearing on the title to this patent; that assignment not being
309 among those papers, I had forgotten about it, and supposed that I had not any assignment of that kind on record in the Patent Office; but after I had filed the bill the 1st of June, 1877, I went to Washington on business, and examining the Patent Office records of assignments I found from that examination that that assignment had been recorded in the Patent Office, in Liber B[17], page 430, and that it—the assignment—bore date July 10th, 1873. I went and examined the Digest of Assignments in that office, and there found that that assignment, after its record, had been delivered by the Patent Office clerk to one Jeremiah D. Green, of Troy, N. Y., since which time I have never seen it. If any request ever was made of Mr. Secombe in the manner inquired about, it was because I had reason to believe that the assignment had been lost or in some manner put beyond my reach. On discovering the record spoken of, I called Judge Williams' attention to that assignment of record, and he examined it and stated that the bill must be amended so as to allow that assignment to come into the case. The bill was so amended, and I took a printed copy of the amended bill to Mr. Secombe, and he examined it and stated that he remembered the assignment referred to in the bill, page 14, folios 54 and 55, and did not at that time make any claim, or pretend to make any, to any part of the patent contained in the amended bill. It may be that while I supposed

that there was no record of this assignment, and that it had been lost or destroyed by some person, and in order that there should be no possible dispute with reference to the final settlement of the suit which I brought against Mr. Secombe, I think some time in the year 1872, or the terms and conditions of that settlement, and to make the matter doubly sure for Miss Ingalls, I may have asked him to make a new reassignment. Division B, No. 4144, of that patent, was never in the world assigned to Mr. Secombe individually, but was assigned by Miss Ingalls to the Secombe Manufacturing Company.

310 X Q. 203. I understand you to say that the reason the Secombe reassignment was not inserted in the original bill was because you couldn't find the document itself, and because you had forgotten that it had ever been recorded. Is that correct?

A. No; I don't wish you to have any such impression as that; what I wish you to understand is this, that when I prepared the bill I supposed I had received from Miss Ingalls all the papers that had reference to the title to this patent, that assignment, not appearing among any of those, had been lost or destroyed, and that I did not think of having a digest prepared by the Patent Office with reference to these various assignments, as I ought to have done before I prepared the bill. I knew of such a paper, and knew that I let Jeremiah D. Green have it, and that I had several times asked him for it, and that he did not let me have it, and I had never seen the original assignment since that time, and I was fearful that I never would see it, and I didn't know it was recorded until I called Judge Williams' attention to that record and examined the book, and found that after record it had been delivered to J. D. Green. Under these circumstances I think it quite likely that I asked Mr. Secombe to make a new assignment.

X Q. 204. You now recollect of so asking him, do you not?

A. I think likely I did; I don't know as I have any doubt about it; if I did, it was some time ago.

X Q. 205. You have changed your mind, have you not, since you saw me draw this letter, which I hold in my hand, from my pocket just after you had said, in answer to question 202, "I am sure that I have no recollection of any such thing?"

A. No, I have not seen any letter in your hand, don't know that you have one, nor do I care whether you have one or not. After that answer was made I recalled to my mind the circumstances attending

311 the amendment of the original bill, and while for the moment I may have stated my recollections at that moment, yet when I came to reflect and refresh my recollections by associating the name of Jeremiah D. Green, I then recollected about that assignment, and that we had already put a certified copy of it in evidence, and that it was one of the amendments made to the original bill.

X Q. 206. Had you not been informed by somebody, in some way, that the Secombe reassignment had been recorded prior to the time you showed the record to Judge Williams?

A. I have no recollection of receiving such information from anybody, but, on the contrary, I have stated that the first knowledge I had that that assignment had been recorded was during the examination I made of the Patent Office records with reference to all the assignments on record touching this patent, and it was on that occasion that I first discovered the record of an assignment recorded in liber T^{14}, page 434; had I known it was recorded, I should have set it up in the original bill, as I did other assignments.

X Q. 207. I understand you to mean that the reason why you asked

Mr. Secombe to reassign was because you couldn't get possession of the document which had been executed originally. Is that correct?

A. That is one of the reasons.

X Q. 208. State all the other reasons.

A. I supposed that that paper had been lost or destroyed, and that I would never see it again, and have never seen it, to my knowledge, and have never had it in my possession since the time I allowed Jeremiah D. Green to take it. Since I found it recorded in the Patent Office I found that I had no occasion to ask Mr. Secombe at the time I did for a new assignment.

X Q. 209. When was it that you asked Mr. Secombe for a new assignment?

312. A. I don't remember the time; I think it was some time before the commencement of this suit.

X Q. 210. How much before?

A. I can't say, but my impression is that it was within eight or ten months of the commencement of this suit, and perhaps less time than that.

X Q. 211. You drew the assignment from Ingalls to Campbell, didn't you?

A. I did, and I think the original is in my handwriting.

X Q. 212. Why wasn't the Secombe reassignment recited in that instrument like all the others which you rely on?

A. For the same reasons that I have stated about that paper.

X Q. 213. Look at the paper I now produce, and which purports to be a letter dated Canaan Four Corners, N. Y., November 27, 1876, from Marcus P. Norton to Jacob Shavor, and state whether the signature, which alone I show you, is in your handwriting?

A. I cannot look at the letter under any such condition, unless advised to do so by Judge Williams, now present; but if allowed to examine the entire letter, I will answer as to the handwriting of the letter and the signature thereto; the paper proposed to be shown to me seems to be in several sheets. Under the advice of Mr. Williams I look at the paper under cover, except the signature, and that signature looks like my handwriting.

X Q. 214. Have you any doubt about it?

A. The only doubt I have is the mysterious manner in which the paper is shown me; my signature is not at all times the same; could I examine the letter, all doubts I have would be removed; if it were made by anybody else, it shows a close resemblance to my signature as sometimes made by me. I don't want to be positive as to my signature to a paper that I am not permitted to examine.

313 (Paper offered in evidence, and is marked Def't's Ex. Marcus P. Norton, A & B—I. B., Ex., May 18, 1878.)

X Q. 215. All your testimony on this examination has been as true, and no more true, than your testimony in regard to the Shavor and Corse reassignment, and to the Secombe reassignment; such is the fact, is it not?

A. My testimony with reference to the Shavor and Corse reassignment, as well as to the Secombe reassignment, is, so far as given, correct and true; my other testimony is also correct and true, but upon reading it over I may desire to make some correction in the language used; can't tell about that till I hear it read.

Redirect examination:

By Mr. WILLIAMS:

R. D. 216. You refer to a letter written to Mr. Secombe in the Exhibit

A & B; was that letter written under the same impression which you have heretofore given in your testimony as to the reassignment of July 10, 1873?

A. It was.

R. D. 217. Are the statements made in this letter, Exhibit A & B, as to the nature of the conveyance to Mr. Secombe and his failure to execute and carry out the terms of that agreement correct?

(Objected to because complainant, having introduced no evidence in support of the allegations in the bill as to his failure to perform certain alleged trusts before he rested his prima facie case, it is now too late for him to take that position; and, second, because the alleged trusts are not in evidence, and it isn't proper to ask a witness about them
314 until they are put in evidence; and, third, because Mr. Norton is not the proper person to testify as to whether or not Mr. Secombe fulfilled an agreement with Miss Ingalls.)

A. They are; and for those and other reasons, and his entire inability to perform according to his agreement, he made that reconveyance of July 10th, 1873, about which I have testified.

R. D. 218. You have referred to a suit against Mr. Secombe; what was that suit for?

(Objected to as not proper on this redirect examination, as it goes into new matter.)

A. It was because of his inability to pay royalties upon internal revenue canceling stamps, which he had made, under some of the patents granted to me, on such kind of stamps; there were some other matters that I don't now remember. I claimed in that suit that he was owing me $30,000——

(Defendant's counsel interrupts, and objects to this as not the best evidence.)

(Witness continues)—and that led to a settlement between us, by which he made the reconveyance, dated July 10, 1873, about which I have testified; that included and was intended to include all patents upon postmarking, postage canceling, and internal revenue cancelling stamps that had been granted to me on my inventions, and assigned to him or the Secombe Manufacturing Company, either by myself or Miss Ingalls.

R. D. 219. When you wrote to Mr. Secombe for a reassignment, as referred to in Exhibit A B, did you propose any consideration for the reassignment, or did you expect him to make it on your request?

(Objected to, as asking for secondary evidence.)

315 A. I expected him to make good the one that I supposed had been lost or destroyed, and without any further consideration.

R. D. 220. Have you heard of known of Mr. Secombe making a claim against the government, or any person, for or on account of the patent in this suit, since the reassignment of July 10th, 1873?

(Objected to as immaterial and not proper on this redirect examination.)

A. I never have.

R. D. 221. Your letter, Exhibit A B, appears to be in answer to a letter from Mr. Shavor, and refers to papers that you have prepared, and states that you will be in Troy in one week from the writing of the letter; explain what the correspondence was about?

A. Mr. Shavor's letter, referred to in this exhibit, was a letter requesting me——

(Defendant's counsel objects, that it is not the best evidence.)

(Witness continues)—to enter into an arrangement with him, Mr. Corse, and Mr. Eddy, similar to the one that was made between Miss Ingalls

and Mr. Campbell in her assignment to him, and he stated in that letter that Mr. Eddy would join in and furnish the necessary means to obtain compensation for the use of the invention and patent in this suit; subsequently, and while in Troy, I saw Mr. Eddy and he told me that he would not put another dollar into this stamp business, and the arrangement proposed by Mr. Shavor was never consummated. His letter to me I burned after the failure to consummate the arrangement.

(The deposition being read over to the witness, he states that
316 he disires to correct the answer to question 46 by saying that the machine there referred to was not the one first made by Sherwood, but was the one made by Mr. Richardson, and being substantially like the one described by the witness Sherwood, with reference to the devices for postmarking and postage-stamp cancelling letters.

MARCUS P. NORTON.

Subscribed and sworn to before me this 18th day of May, 1878.

IRVING BROWNE,
Special Examiner.

And I further certify that each of the witnesses above named was, at the time of his examination, of full lawful age and of sound mind, and was carefully examined and cautioned, and sworn to testify the whole truth, and that his deposition was by me reduced to writing in the presence of said witness, who subscribed his name thereto in my presence.

And I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption hereto named, or in any way interested in the event of said cause.

In witness whereof I have hereunto subscribed my name this 22d day of June, 1878.

IRVING BROWNE,
Special Examiner.

317 In the circuit court of the United States for the southern district of New York. In equity.

C. C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

Ordered, by agreement of parties, that Irving Browne, of Troy, N. Y., and J. G. Pomerene, of Cleveland, Ohio, be, and they are hereby, appointed special examiners of this court, to take testimony in the above-entitled case on behalf of or for complainant, under the 67th rule and its amendments of the rules of practice in equity.

SAMUEL BLATCHFORD.

APRIL 26, 1878.

It is agreed that the above order may be entered.

GEO. H. WILLIAMS,
Of Counsel for Complainant.
STEWART L. WOODFORD,
U. S. District Attorney, for Defendant,
By S. B. C.

A copy.
[SEAL.] JOHN I. DAVENPORT, *Clerk.*

318 (Endorsed:) U. S. circuit court, S. D. of N. Y. Campbell vs. James. Certified copy. Order appointing special examiner. Original marked U. S. circuit court. Filed April 27, 1878. John I. Davenport, clerk.

(Original.)

In the circuit court of the United States, second circuit, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT, AND assignee in trust,
versus
THOMAS L. JAMES, DEFENDANT, AND U. S. POSTmaster at the city of New York.

To STEWART L. WOODFORD,
United States Attorney, and
Defendant's Solicitor, New York:

SIR: You will please take due notice, and notice is hereby given to you, that in pursuance of an order made in this cause by the
319 honorable Samuel Blatchford, one of the judges of this court, dated the 26th day of April, A. D. 1878, and filed in the office of the clerk thereof April 27th, 1878, I shall commence to take proofs on the part and behalf of complainant in this cause, as rebuttal evidence, before Hon. J. G. Pomerene, at his office, No. 19½ Public Square, in the city of Cleveland, State of Ohio, on Wednesday, the 29th day of May, A. D. 1878, at 9 o'clock in the forenoon of that day; and shall continue the same from day to day until completed.

You are further notified that the said J. G. Pomerene, special examiner, duly appointed by this court by the order aforesaid, has fixed on the said 29th day instant as the time, and his office as the place, for the taking of proofs on the part and behalf of complainant, so as aforesaid.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

Dated this 24th day of May, A. D. 1878.

(Endorsed:) In the circuit court of the United States, southern district of New York. In equity. Christopher C. Campbell, complainant, etc., vs. Thomas L. James, defendant, etc., etc. Original notice of proofs, etc., to be taken at Cleveland, Ohio. Marcus P. Norton, complainant's solicitor, Troy, N. Y.

Due and personal notice by copy hereof is, on this 25th day of May, 1878, admitted.

STEWART L. WOODFORD,
U. S. Attorney and Defendant's Solicitor,
C.

320 In the circuit court of the United States, in and for the southern district of New York.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, POSTMASTER AT THE city of New York.

Proofs for and on behalf of the complainant taken at the office of J. G.

Pomerene, special examiner, in the city of Cleveland, Ohio, on the 29th day of May, and the following days, pursuant to notice by complainant's counsel and an order by the court hereto annexed.

Present, Marcus P. Norton, of Troy, N. Y., counsel for complainant; Samuel B. Clarke, assistant U. S. district attorney for the southern district of New York, counsel for defendant.

The respective counsel above named met at the time and place stated in the notice served on defendant's counsel, and hereto annexed, and hereupon called

A. L. BASSETT, a witness on the part of and on behalf of the complainant, who, being first duly sworn by me, testified as follows:

Q. 1. State your name, age, residence, and occupation.

321 A. Asen Lewis Bassett; age, forty-seven; residence, Cleveland, Ohio; occupation, a merchant.

Q. 2. Do you know personally Charles E. Wheeler, of the city of Cleveland, Ohio? and, if you do, about how long have you known him, and state whether he has ever been employed in the United States post-office in this city.

A. I do know him; I have known him since 1853; and I know of his being employed in the post-office.

Q. 3. At what time did you first know of his being employed in the post-office in this city? At about what time?

A. I knew of it in 1853.

Q. 4. State whether you yourself have ever been employed as a clerk in the post-office in this city? and, if you answer yea, state the time you were first so employed.

A. I have, and during the greater part of 1855.

Q. 5. About how long were you so employed at the time mentioned in your last answer?

A. I was employed there about one year; a part of that year ran into 1856.

Q. 6. During that time did you know Mr. Wheeler as a clerk in that post-office? I mean Mr. Charles E. Wheeler, of Cleveland.

A. I can't say that I did.

Q. 7. During that time state how the letters were postmarked and the postage-stamps canceled, if you know?

A. The postage stamps were canceled with what we called a dating stamp.

Q. 8. What do you mean to be understood by dating stamp? Describe it as near as you can.

A. A circular stamp with the name "Cleveland, O.," in the circle, the month, day of the month, and year in the centre.

Q. 9. You mean to be understood that postage-stamps at that time used upon letters for payment of postage were canceled by the

322 device or substantially such device as you have described in your last answer, do you not?

A. I do.

Q. 10. During the time you were in that post-office in 1855 and 1856, did you see or know of a double-stamping device, consisting of a post-marking instrument and a postage-stamp canceling device, so combined as to be operated by one handle, to give the impression of the post-marking upon the letter and the impression of cancellation upon the postage-stamp on the upper surface thereof by one blow of such combined devices, being used in that post office?

(Objected to as leading.)

ing letters was a separate room from those named in the last answer.

A. No, sir; it was not.

Q. 37. In which of the two rooms you have named was the stamping table?

A. In the D. P. O. room.

Q. 38. Where Wheeler was at work?

A. Yes, sir.

Q. 39. During that time, I mean the time between the first combined device which you constructed after the issuing of the Post Office Department order, as you have stated, and the time when you left the post-office, about February, 1863, and while the second combined instrument you have described was in use in that office, did Mr. Wheeler claim, or pretend to claim, to you that that combined instrument was his invention?

A. No, sir.

Q. 40. To your personal knowledge was there any necessity in the Cleveland post-office for the use of such combined instrument as you have testified about, prior to the issuing of the order by the Post Office Department, of which you have spoken?

A. No, sir.

Q. 41. Previous to your combining the two devices, namely, the post marking and canceling devices, by means of the twine, of which you have spoken, had you ever seen or known of an instrument containing such devices, and so arranged that by one blow a letter would be postmarked on the envelope and at the same time cancel the postage stamp thereon?

A. No, sir.

Q. 42. How many devices of the combined instruments were constructed and used in the Cleveland post-office during that time, if you know?

A. I don't know how many there were.

327 Q. 43. The postmarking stamp and the postage canceling stamp, which you say were brazed or soldered together by Jacob Schwartzenberg, do you know where they came from, or who made them?

A. It was said that they came from the Post Office Department.

Q. 44. Where did you get them for the purpose of having them so combined?

A. They were stamps we had formerly used in the Cleveland post-office.

Cross-examination:

By Mr. CLARKE.

X Q. 45. When you tied the canceler and postmarker together, as you have described, both handles were retained, were they not?

A. They were.

X Q. 46. What were your duties when you were in the post-office in 1855 and 1856?

A. Assisting in making up mails in the D. P. O. room?

X Q. 47. What did you do?

A. Distribute letters; the duties there were quite numerous; I being a pretty rapid writer they used to put me on what they called "entering on the sheets." It was not an uncommon thing for me to go into the front office and pick up the letters, stamp them, and distribute them in the route case.

X Q. 48. What were you principally occupied with?
A. Writing, and distributing letters.
X Q. 49. Did you do your writing in the D. P. O. room?
A. Yes, sir.
X Q. 50. The post-office was then on Water street, was it not?
A. It was.
X Q. 51. Was the stamping done in the D. P. O. room?
A. It was.
X Q. 52. That was a back room, was it not?
328 A. It was.
X Q. 53. Do you swear that a combined instrument for post-marking and canceling was not used in the Cleveland post-office while you were employed there, in 1855 and 1856?
A. Not to my knowledge was there any used there at that time.
X Q. 54. Who was stamper then?
A. Mr. Wright.
X Q. 55. Any one else?
A. It was not an uncommon thing for any of the boys to run out and gather up the letters in the front office, and stamp them previous to closing the mail.
X Q. 56. Where is Mr. Wright now, if you know?
A. I do not know.
X Q. 57. Is he living or dead?
A. I heard he was dead.
X Q. 58. Was there a man by the name of Hodges then employed there?
A. No, sir; not to my knowledge.
X Q. 59. A man by the name of Beardsley?
A. There was.
X Q. 60. A man by the name of Albinger?
A. I can't tell.
X Q. 61. Why can't you tell?
A. He was in the post-office a long time; all the time I was in the new post-office, and he might have been there when I was in the post-office on Water street. He did not work in the D. P. O. room in either office to my knowledge.
X Q. 62. Do you swear that the combined instrument was not used in the Cleveland post-office while you were in the office, in 1855 and 1856, by any of the persons whom I have just named?
A. I swear they were not used to my knowledge.
X Q. 63. Might you not have forgotten it?
A. It is hardly possible.
X Q. 64. Why is it hardly possible?
329 A. I should have had something to assist me to comply with the order from Washington without resorting to wrapping twine and the rude material I had there to make the combined instrument.
X Q. 65. Might you not have forgotten it before you returned to the office in January, 1859?
A. If I had, there were those who had been in the office during my absence who I should think would have reminded me of it. It is hardly possible that I should have forgotten it.
X Q. 66. Why hardly possible that you should have forgotten it before you returned to the office in 1859?
A. Because I considered it of too much importance.
X Q. 67. Please describe the lock which was used on mailbags in 1855 and 1856.

(Objected to as immaterial, incompetent and improper.)

A. It would lock without a key.

X Q. 68. Is that all the description you can give?

(Same objection.)

A. No, sir.

X Q. 69. Give some more description.

(Same objection.)

A. It was flat, about a half an inch thick.

X Q. 70. What were you doing between 1856 and 1859?

A. I was keeping books a part of the time for a wool merchant; a part of the time I was farming, and a part of the time I was teaching school.

X Q. 71. Do you swear Mr. Wheeler was not employed in the post-office in 1855 and 1856 while you were there?

A. To the best of my knowledge, he was not.

330 X Q. 72. Who had charge of the distribution department at that time?

A. If there was any information wanted we went to the deputy post-master, Mr. Gray.

X Q. 73. Was there no one under the deputy who was in charge of that department?

A. No, sir.

X Q. 74. Where were you between 1856 and 1859?

A. A part of the time here in Cleveland, a part of the time in Iowa, a part of the time in New York State.

X Q. 75. Why did you leave the post-office in 1856?

A. Because I would not vote the Democratic ticket.

X Q. 76. What election?

A. One of our city elections.

X Q. 77. When was that election?

A. In the spring of 1856, I think.

X Q. 78. Are you positive?

A. No, I am not.

X Q. 79. Why not?

A. Because I made no memorandum of it.

X Q. 80. Can't you remember things without making a memorandum of them?

A. Some things.

X Q. 81 You are very positive, however, that it was in 1856 you left the office, are you not?

A. Yes.

X Q. 82. Did you make any memorandum of the clerks who were employed there in 1855 and 1856?

A. I did not.

X Q. 83. You are very positive, however, that Mr. Wheeler was not so employed, are you not?

A. I am quite positive.

X Q. 84. How well did you know Mr. Wheeler in 1853?

A. Well enough to visit at his house.

331 X Q. 85. In 1855 and 1856 was there a man by the name of G. B. Lester employed in the Cleveland post-office?

A. I think he came in the post-office soon after I left.

X Q. 86. Was James McGaugh?

A. He comes under the same category as John Albinger; he was out in the bagging room if he was there.

X Q. 89. Did you vote for Fremont in 1856?

A. Yes, sir; I did.

X Q. 88. Where were you then?

A. Cleveland.

X Q. 89. Were you a clerk in the post-office then?

A. No, sir.

X Q. 90. Fix the date when you went into the post-office the first time, and when you left it, as precisely as you can.

A. About April, 1855, when I went in, and about April, 1856, when I went out.

X Q. 91. Have you any way of fixing these dates precisely?

A. I don't know that I have.

X Q. 92. Have you any means of refreshing your recollection as to whether Mr. Wheeler was then a clerk in the post-office?

A. To the best of my remembrance he was not there.

X Q. 93. Have you any means of refreshing your recollection on that point?

A. Well, sir, I would not know how to go to work to refresh myself on that point. I am satisfied in my own mind that he was not there.

Adjourned by consent to May 30th, 9.30 a. m.

332 Met pursuant to adjournment.
Same counsel present as before.

Cross-examination by Mr. CLARKE resumed as follows:

X Q. 94. You have heard that Mr. Wheeler claimed to have invented this combination, have you not?

(Objected to on the ground of it being immaterial what the witness may have heard about the witness Wheeler.)

A. I have.

X Q. 95. When did you first hear that?

A. Some time after I left the post-office in 1863.

X Q. 96. Was L. L. Deming employed in the post-office in 1855 and 1856 when you were there?

A. Not to my knowledge.

X Q. 97. Do you know of his ever having been employed in the post-office?

A. Only from hearsay.

X Q. 98. Was Percy Rice employed there at that time?

A. I think not.

X Q. 99. Who was employed, if anybody, to assist you in doing the writing—"entering on the sheets?"

A. There was a young fellow by the name of Everett, Mr. Osborne, Mr. Curry, Mr. Wilson.

X Q. 100. Where are these gentlemen now?

A. I don't know.

X Q. 101. While you were in the post-office at that time, did it often happen that there were a sort of social suppers given at the office late in the evening?

A. No, sir.

333 X Q. 102. Do you remember a poem written by Deacon Gray, the deputy, taking off the characteristics of the clerks in the office?

(Objected to as irrelevant, irreverent as to Deacon Gray, and incompetent and improper.)

A. I never saw the poem. I remember hearing it spoken of.

X Q. 103. Spoken of as written while you were in the office at that time?

A. No, sir.

X Q. 104. When did you understand it to have been written—before or after you were in the office at that time?

A. My impressions are it was written before I was in the office.

X Q. 105. Do you know what Mr. Wheeler was doing at that time?

A. He was at work for a lottery firm.

X Q. 106. What was the firm-name, and where did they do business?

A. I don't remember the name of the firm. I know the name of the principal party connected with it. Their office was over the post office.

X Q. 107. What was the name of that principal party?

A. S. B. Kendig.

X Q. 108. Did Postmaster Gray have anything to do with the business in which Wheeler was engaged?

A. Not that I know of.

X Q. 109. What did Wheeler do in that business?

A. I never was in their office to see what he did do.

X Q. 110. What did you understand that he did?

A. I understood his duties were writing.

X Q. 111. What sort of writing?

A. Answering letters and directing circulars in the interest of the lottery.

334 X Q. 112. When did Wheeler go into that business, and when did he leave it?

A. I don't know.

X Q. 113. State as nearly as you can.

A. My impressions are he was employed there about two years, beginning about January, '55.

X Q. 114. Was the concern in the same building of the post office all those two years?

A. I think not.

X Q. 115. State where it was and the dates, as near as you can?

A. For a time it was on Bank street, near the Herald buildings, I think.

X Q. 116. Then did it go to Water street, into the post-office building?

A. It did.

X Q. 117. Was there any printing establishment in the post-office building on Water street?

A. I never saw any there.

X Q. 118. Did you understand there was any?

A. No, sir.

X Q. 119. Did you ever know of Wheeler's being employed in a printing establishment?

A. I have heard he was a printer by trade, but do not know where he worked.

X Q. 120. Did Postmaster Gray run any printing establishment while you were in the office at that time?

A. He was editor of the Plain Dealer.

X Q. 121. Where was the printing done for that paper?

A. In the Plain Dealer building, near the foot of Superior street.

X Q. 122. It was not done in Postmaster Gray's building on Water street?

A. No, sir.

X Q. 123. Where were the stamps kept in the post-office at that time—in what part of the office?

A. In the D. P. O. room.

X Q. 124. Whereabouts in the D. P. O. room?

335 A. Near the northwest corner.

X Q. 125. On the stamping-table?

A. Some of them were on the stamping-table and some were on shelves in the corner of the room.

X Q. 126. These shelves over the stamping-table?

A. The shelves were against the wall.

X Q. 127. How near the stamping-table?

A. About three feet from it.

X Q. 128. About how many stamps for all purposes—for postmarking, for canceling, for imprinting such words as "free," "paid," "advertised," "due 3," "due 6," "forwarded," etc., etc., were there at that time on the shelves and stamping-table?

A. I should think there was a couple of dozen. I never had occasion to count them. I believe there was a place in the delivery where they stamped the advertised letters.

X Q. 129. Do you recollect of ever examining each of those twenty-four stamps?

A. I recollect of looking them over. I might not have examined every one of them.

X Q. 130. Can you now say that among them there was not a stamp consisting of an ordinary dating stamp and a canceling stamp, from which the handle had been removed, the two being attached together by cord and wire?

A. I saw nothing of the kind there.

X Q. 131. Might there not have been such a stamp there, known to the regular stamper, without your knowledge?

A. There might have been such a stamp there known to the stamper, and I not know of it.

X Q. 132. Where were newspapers and circulars stamped?

A. In the D. P. O. room.

X Q. 133. On the same table?

A. Yes.

X Q. 134. How much time each day, on an average, were you occupied in writing?

336 A. I should think five or six hours a day.

X Q. 135. How much time on an average in distributing?

A. A couple of hours.

X Q. 136. What part of the day were you employed; day time or night?

A. Day time.

X Q. 137. What were your hours?

A. I used to go to the office about seven o'clock in the morning, and assist in making up the morning mails, and then I would go home to breakfast. It usually took about an hour. Then I would go back to the office, and work until about noon, and then went home to dinner. In the afternoon I assisted in making up mails. Sometimes went after supper, and sometimes did not.

X Q. 138. Did you usually go in the evening?

A. No, sir. It was not necessary.

X Q. 139. What time in the afternoon did your duties cease?

A. I sometimes quit at four o'clock, and sometimes staid later to assist others do their work.

X Q. 140. What was the usual hour?

A. In the summer time I would usually do my work before going to

supper. When the days were shorter, I used to go around after supper and do a little work.

X Q. 141. What was the usual hour for knocking off work in the afternoon?

A. I think our Eastern mail used to close about seven o'clock p. m., and that was the last mail, I think; that mail did not require the whole force of the D. P. O. room.

X Q. 142. That doesn't quite answer my question; I want to know at what hour you usually knocked off your work in the afternoon?

A. There was no definite time set to quit work.

X Q. 143. What hour on the average, was it four o'clock or seven?

337 A. If I staid to help make up the New York or Eastern mail, I usually staid until seven o'clock. If it was understood that other parties were to make it up, I quit about four o'clock. It was understood among ourselves there at the office that the mail should be made up on time by those connected with the D. P. O. room.

X Q. 144. About how often, on the average, did you help to make up that last Eastern mail?

A. Two or three times a week.

X Q. 145. How much time did you take for dinner?

A. About an hour and a half; we were not limited.

X Q. 146. About how many hours did you usually spend in the office?

A. From eight to ten hours.

X Q. 147. You have stated you usually spent eight to ten hours a day in the office; that you were occupied with writing five or six hours, in distributing about two hours; how much time did you usually give to stamping?

A. It was not customary for me to do the stamping; I used to do it, though, occasionally, to accommodate the stamper.

X Q. 148. About how often did those occasions come around?

A. Two or three times a week.

X Q. 149. About how long were you occupied at each of those times?

A. From five to ten minutes. The mail was usually held open until a certain time; then the letters were picked up from the front office, and all letters going in that mail were stamped and distributed. This was done sometimes by others than the stamping clerk.

X Q. 150. I understand you to mean that the regular stamper, Mr. Wright, usually did most of the stamping for each mail, but that if he wished to be away for half an hour or an hour before the mail closed, some one of the young men in the D. P. O. room would gather

338 up the letters deposited during that time and stamp and distribute them, taking for that purpose five or ten or fifteen minutes; is that correct?

A. Yes; that is as I wish to be understood.

Redirect examination:

By Mr. NORTON:

R. D. 151. You were asked in cross-question 94 whether you had heard that Mr. Charles E. Wheeler claimed to have invented the combined post-marking and postage-canceling instrument as his invention; under objections you answered "I have." From whom did you hear that?

A. I don't remember who I heard it from first.

R. D. 152. Did you ever hear Mr. Wheeler say anything about it, and, if so, when and where was it?

A. He never claimed to me it was his invention.

R. D. 153. He has had some conversation with you within the last six months about it, has he not?

A. He has.

R. D. 154. Did he have a conversation with you about it previous to the time stated in the last question?

A. Yes, sir.

R. D. 155. About how many times, if you remember, since 1863 to the present time?

A. Oh, three or four times.

R. D. 156. Since the commencement of this suit, about one year ago, has Mr. Wheeler had conversation with you about your being a witness in this case or any other case?

(Objected to as immaterial and not proper on redirect examination.)

A. He has talked with me about a suit pending, but said nothing about my being a witness.

339 R. D. 157. During that conversation did he claim to you, or pretend to claim, that he was the real inventor of this combined instrument about which you have testified?

(Same objection.)

A. He told me he had made application for a patent on this combined instrument.

R. D. 158. What reply did you make to him upon receiving that information?

A. I told him the first I ever knew of it I tied the two stamps together myself, when I was stamping clerk, soon after the issuing of an order from the Post Office Department that the postage-stamp on the letter must be canceled by a separate instrument from the dating stamp; this is the substance of what I said.

R. D. 159. While you was stamping clerk where?

A. In the present post-office building in this city.

R. D. 160. Can you name the several persons employed in the D. P. O. room while you were there as stamping clerk, between January, 1859, and about February, 1863, when you left the service in the Cleveland post-office?

A. I can, the most of them.

R. D. 161. Please state them as near as you remember them.

A. C. E. Wheeler, J. N. Hoyt, S. L. Everett, James McGaugh, Charles Aiken, Ithiel Stone, Henry C. Cooke, Mr. Stevens; these were not all there all the while I was there; there were changes made while I was there, as I was there under Democratic and Republican administrations.

R. D. 162. In cross question No. 128 you were inquired as to the number of the various kinds of stamps used in the Cleveland post-office, and you answered substantially that you should think there were two 340 dozen; did you see or know of a combined post-marking and postage-canceling instrument among those two dozen stamps during the first time you were employed in that post office, namely, 1855 and 1856?

(Objected to as improper on his redirect examination.)

A. I did not see any.

R. D. 163. Had there been one there of that kind at that time, and in use in that post office, would you not have been likely to see it or to know of its use?

(Same objection.)

A. I would.

R D. 164. In cross question 131 you were asked "Might there not have been such a stamp there, known to the regular stamper, without

your knowledge?" and you answered "There might have been such a stamp there, known to the stamper, and I not know of it." Where could such a stamp have been in that office and you not have known of it?

A. It might have been in the deputy postmaster's private office, or in some of the private drawers of some of the post-office officials where I did not have access.

R. D. 165. Do you think it possible for Mr. Charles E. Wheeler to have had one of those combined instruments in a pocket in his shirt, coat, vest, pantaloons, or boot legs, or in his hat during that time while he was in the post-office, during these years, in 1855 and 1856, or at any other time previous to the time when you say you combined the postmarking and canceling-stamp soon after the issuing of the order by the Postmaster-General prohibiting the use of the dating stamp for canceling purposes?

341 A. I think it possible, but not at all probable. He was not there in 1855 and 1856.

Adjourned to 2.30 p. m.

Met pursuant to adjournment.

Same counsel present as before.

Redirect examination by Mr. NORTON resumed, as follows:

R. D. 166. In answer to cross-question 147 you state "It was not customary for me to do this stamping." To what time do you refer in that answer?

A. In 1855 and 1856, during my first term in the post office.

R. D. 167. At that time how many men were required to postmark letters and to cancel the postage stamps on the same?

A. It was expected one man could do that work.

R. D. 168. You mean in your last answer that that work at that time was the work of one man continuous'y, and without the aid of any other person?

(Objected to as leading.)

A. One man could do it easily; that includes all kinds of postmarking and canceling done at that time.

R. D. 169. Was there enough of such kind of labor as your last answer contemplates, in the Cleveland post office at that time, to require the continued labor of one man for the day or night service to enable mails to be started regularly in transportation?

A. No, sir; there was not, with the exception of one or two days in a month.

R. D. 170. At the time that the order was made by the Postmaster-General prohibiting the use of the postmarking stamp for canceling postage-stamps, and you had notice of that order during your second term in the Cleveland post office as you have stated, could one man do the work of postmarking and canceling all kinds of mail matter, and follow the instructions of that order?

342

A. Yes, sir; I did it and a great deal of other work besides.

R. D. 171. Explain how and by what means you did it.

(Objected to as not proper on this redirect examination.)

A. By the ordinary method and being supple in my labors, and combining the two stamps as I have already stated, facilitated the work; I mean the combination of the postmarking and canceling stamp.

R. D. 172. Had you not at that time combined the postmarking and

postage canceling devices, as you have already stated you did, could you have complied with that order, and at the same time made ready the letters for the regular outgoing mails by first postmarking the letters with the postmarking stamp, and then going over the same letters again for the purpose of canceling the postage-stamp on the letters?

(Same objection.)

A. I could not and perform other labors I was expected to do.

R. D. 173. For about what length of time were you the stamping clerk in that office?

(Same objection.)

A. For about three years.

R. D. 174. During that three years was Wheeler employed in that same office?

343 (Same objection.)

A. Yes, sir.

R. D. 175. Was Wheeler frequently in and out or about the room where the letters and other matter were postmarked and the postage-stamps on the same were canceled by you during that time?

(Same objection.)

A. He was.

R. D. 176. Suppose thirty thousand circulars were in one day to be sent from the Cleveland post-office (at any time), how many mail bags of the ordinary size would be required to receive those circulars for transportation in the cars, in a wagon, or on horseback?

(Same objection.)

A. That would depend upon size of the circulars.

R. D. 177. I mean circulars enveloped by the ordinary letter envelope, with a single or double sheet.

A. Not having bagged any mail, I could not tell you; it was not my business.

R. D. 188. What became of the stamp combined with the postage canceling device by means of twine, which you have described?

(Same objection.)

A. The handle was taken off, and it was soldered on to the dating stamp by Jacob Swartzenberg.

R. D. 179. Do you know where the combined stamp now is to which you refer in your last answer?

(Same objection.)

344 A. I do not.

R. D. 180. When did you last see it?

(Same objection.)

A. About 1863.

R. D. 181. Where was that?

(Same objection.)

A. In the Cleveland post-office; in the D. P. O. room.

R. D. 182. Did you ever apply for a patent on either of the two combined devices described by you on this examination, and as having been gotten up by you soon after the issuing of the order by the Postmaster-General, that has been spoken of during this examination?

A. I never did.

Recross-examination:

By Mr. CLARKE:

R. C. 183. How do you fix the years 1855 and 1856 as being the years you first went into the post-office?

A. It was the year 1855, it being the year I was married.

R. C. 184. Are you sure that Mr. Wheeler was connected with the lottery business while it was carried on in the post-office building on Water street?

A. I am quite positive he was.

R. C. 185. When did this lottery business move down to Water street?

A. I think it was in the year 1855.

R. C. 186. When did it begin?

A. I don't know; the office was running when I came to Cleveland, in the spring of 1853.

R. C. 187. Who was the postmaster?

345 A. I think Mr. Dan Haskell.

R. C. 188. When was the post-office moved to Water street?

A. I can't tell exactly; I think it was in 1854; it might have been in 1853, though.

R. C. 189. When was Gray made postmaster?

A. After Pierce was elected President.

R. C. 190. About when?

A. I can't tell you when Mr. Gray was appointed postmaster.

R. C. 191. How do you know Wheeler was connected with the lottery business while it was carried on in the post-office building on Water street?

A. His employer, S. B. Kendig, was my brother-in-law.

R. C. 192. Do you know of your own knowledge?

A. I never saw him in the office.

R. C. 193. You don't know of your own knowledge of his being in the lottery business at all, do you?

A. Only from Wheeler's saying that he was, and also heard it from others.

R. C. 194. When did Wheeler tell you that?

A. When he was at work with me in the post-office he used to refer to the time when he was in this lottery business.

R. C. 195. You mean the second time you were employed in the post-office?

A. I do.

R. C. 196. Do you recollect his telling the year?

A. I do not; during his work for the lottery concern his family and mine used to visit back and forth quite often.

Redirect examination resumed as follows:

R. D. 197. Counsel for the defendant having inquired of you concerning Mr. Charles E. Wheeler's connection with the lottery establishment in this city, I desire to inquire of you to state, if you
346 know, the character of the business carried on by that establishment?

(Objected to as immaterial.)

A. I don't know the character of the business, never having been in their office.

R. D. 198. Did you ever see one of their circulars?

(Same objection.)

A. I have.

R. D. 199. State what those circulars contained, if you remember.

(Same objection, and also as asking for secondary evidence.)

A. The principal part of them were lottery schemes.

R. D. 200. Inviting people in the country to invest money in some scheme in that concern, is that it?

(Same objections, and also as being leading.)

A. Yes, sir.

R. D. 201. Did that lottery send away large quantities of such circulars during the time they carried on business?

(Same objection.)

A. They did.

R. D. 202. Do you know whether or not Wheeler was at that time a member of the Baptist Church in this city?

A. His wife said he was.

347 R. D. 203. Did you ever hear or know of the Baptist Church censuring Wheeler or calling him to account for his connection with this lottery business?

(Same objection.)

Under the objection of the defendant's counsel the question is withdrawn.

The deposition having been read over to the witness, he states he desires to correct his answer to cross-question 86 by saying that James McGaugh did work in the D. P. O. room during my first term in the post-office, and occasionally helped in the bagging room.

By Mr. NORTON:

Q. What were the duties of Mr. McGaugh in the D. P. O. room during the time you have referred to in your correction?

A. It was his work to assist in making up the mail.

Q. Did he have anything to do with the stamping of the letters?

A. Only occasionally; it was not his regular duty.

Q. Where is Mr. McGaugh at this time, if you know?

A. I don't know where he is.

A. L. BASSETT.

Sworn to and subscribed before me, this 30th day of May, 1878.

J. G. POMERENE,
Special Examiner.

Adjourned by consent to May 31, at 10 o'clock a. m.

348 MAY 31*st*—10 a. m.

Met and adjourned to 9 a. m., June 1, 1878.

Met pursuant to adjournment above.

Same counsel present as before.

Complainant's counsel here proceeds to offer in evidence several records from the Post Office Department, purporting to be certified by the then Postmaster-General in one certificate, and containing six different papers, and the same being severally numbered from 1 to 6 inclusive.

No. 1 being dated post-office, New York, 8th August, 1860, addressed to Hon. Horatio King, First Assistant Postmaster-General, and signed John A. Dix.

No. 2 being dated Post-Office Department, Washington, D. C., Aug. 10th, 1860, addressed to the postmaster in New York, and signed St. John B. L. Skinner, Acting First Assistant Postmaster General.

No. 3 being dated post-office, New York, January 3, 1863, addressed to A. N. Zevely, esq., Third Assistant Postmaster-General, Washington, D. C., and signed Abram Wakeman.

No. 4 being dated Post Office Department, Washington, March 1, 1865, addressed Hon. J. Collamer, chairman Committee on Post-Offices and Post Roads, U. S. Senate, signed W. Dennison, P. M. G.

No. 5 being dated Post-Office Department, January 15, 1867, addressed to Hon. T. W. Ferry, of Committee of Post Offices and Post Roads, and signed Alex. W. Randall, P. M. General.

349 No. 6 being dated Post Office Department, March 13th, 1867, addressed Hon. Alex. Ramsey, chairman of Committee on Post-Offices and Post Roads, and signed Alex. W. Randall, P. M. General.

The certificate attached to the above-named papers, being dated Post-Office Department, city of Washington, 29th day of October, 1867, and signed Alex. W. Randall, Postmaster General.

(Objected to—

1st. Because there is nothing to show that the papers numbered 1 to 6 inclusive, now attached to the certificate, are the papers that were originally so attached.

2d. Because the written declarations of the parties who wrote the several letters being ex parte and not under oath, are not evidence.

3d. As to No. 2, because it is not relevant or material.

4th. Same as to No. 3.

5th. As to No. 4, same as to No. 2 and No. 3.

6th. As to No. 5, same objection as to Nos. 2, 3, and 4.

7th. As to No. 6, the same objection as to Nos. 2, 3, 4, and 5.)

Papers received in evidence and marked Exhibits Nos. 1, 2, 3, 4, 5, and 6, Post-Office Department, June 1, 1878. J. G. Pomereme, special examiner.

Complainant's counsel here offers in evidence a certified copy of a letter dated Post-Office Department, Appointment Office, Wash-
350 ington, May 4, 1859, addressed postmaster, Troy, N. Y., signed Horatio King, First Assistant Postmaster-General, and certified to March 23, 1868, Alex. W. Randall, Postmaster-General, and the same is marked Complainant's Exhibit No. 7. Post Office Department, J. G. Pomerene, special examiner, June 1, 1878.

(Objected to on the same grounds as stated above, except the first.)

Complainant's counsel here offers in evidence a certified copy of a letter dated Post-Office Department, Finance Office, October 7, 1862, addressed Marcus P. Norton, attorney-at-law, Troy, N. Y., and signed A. N. Zevely, Third Assistant P. M. General; marked, certified March 31st, 1868, and signed Alex. W. Randall, Postmaster-General, and the same is marked Complainant's Exhibit No. 8, Post Office Department, J. G. Pomerene, special examiner, June 1, 1878.

(Same objections.)

Complainant's counsel here offers in evidence a certified copy of letter dated Post-Office Appointment Office, Washington, July 25, 1862, addressed Marcus P. Norton, Troy, N. Y., and signed John A. Kasson, First Assistant P. M. General, and certified to March 12, 1868, and signed Alex. W. Randall, Postmaster-General, and the same is here marked Complainant's Exhibit No. 7, Post Office Department, J. G. Pomerene, special examiner, June 1, 1878.

(Same objections.)

Complainant's counsel here offers in evidence a certified copy
351 of a letter dated Post-Office Department, Appointment Office, Washington, April 29th, 1862, addressed Marcus P. Norton, Troy, N. Y., signed John A. Kasson, First Assistant P. M. General, and certified to March 23, 1868, and signed Alex. W. Randall, Postmaster-General, and the same is here marked Complainant's Exhibit No. 10, Post-Office Department, J. G. Pomerene, special examiner, June 1, 1878.

(Same objections.)

Adjourned by consent until June 3, at 9.30 a. m.

JUNE 3, 1878.

Met pursuant to adjournment of June 1, 1878.

Present, same counsel as before.

Complainant's counsel calls as a witness on the part and behalf of the complainant—

JAMES MCGOUGH, who, being duly sworn by me, doth depose and testify as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is James McGough; my age is thirty-eight years; residence, No. 380 Detroit street, Cleveland, Ohio; occupation, grocery store.

Q. 2. Were you employed in the post office in Cleveland while it was located in the Herald building, on Bank street?

A. Yes, sir.

Q. 3. While the post-office was in the Herald building, on Bank street, where was the D. P. O. room, if you remember?

A. Upstairs.

Q. 4. Where was the stamping or the postmarking of letters done while the post-office was in the Herald building, on Bank street, if you can remember?

352 A. Upstairs, in the D. P. O. room.

Q. 5. While the post-office was on Water street were you employed in that post-office?

A. Yes, sir.

Q. 6. While the post-office was in the Herald building, on Bank street, and while the same post-office was located on Water street, in this city, did you see or know of any combined postmarking and canceling instrument in use in either of those places by anybody?

A. No, sir.

Q. 7. Were you ever employed in the post-office in the new building where it is now located; and, if so, for about how long?

A. About sixteen years.

Q. 8. What do you mean by the sixteen years' time stated in the last answer; do you mean to be understood that you were sixteen years in the new building, or that sixteen years covered the time—Bank street, Water street, and the new building?

(Objected to as leading.)

A. I was a year and a half in Bank street, five years on Water street; I mean that.

Q. 9. You mean that the sixteen years covered the year and a half you were in Bank street, the five years you were in Water street, and that the balance of the time you were in the new building?

(Objected to as leading.)

A. Yes, sir.

Q. 10. When did you, if at all, for the first time see or know of a combined postmarking and postage canceling instrument in use in the Cleveland post-office, this city?

A. When we got to the new post-office. I could not give you the date. It was after we got in that new office.

353 Q. 11. Do you know Mr. Charles E. Wheeler, of this city?

A. Yes, sir.

Q. 12. Was he employed in the Cleveland post-office during the time you were there?

A. Yes, sir.

Q. 13. Has he been to see you within three or four months?

A. Yes.

Q. 14. State, if you remember, what he came to you about at that time.

(Objected to as immaterial.)

A. He came the first time, and the only time, to talk about that stamp.

Q. 15. What stamp?

(Objected to as immaterial.)

A. The combined stamp.

Cross-examination:

By Mr. CLARKE:

X Q. 16. What did Mr. Norton just say to you about me?

A. He didn't mention your name to me.

X Q. 17. Did he say anything, without mentioning my name, about me?

A. No, sir.

X Q. 18. Did he say anything about my swelling up like a toad, in your hearing just now, before I began to ask you questions?

A. I have nothing to do with what you or he say here.

X Q. 19. Did you hear him say anything of the kind mentioned in the last question?

A. No, sir; not a word.

354 X Q. 20. In what year were you born, Mr. McGough?

A. Well, I was a young man when I came here. Well, I was only fourteen when I came here.

X Q. 21. In what year were you born, Mr. McGough?

A. I couldn't tell, because I was only a small boy.

X Q. 22. In what year were you born, Mr. McGough?

A. I don't know.

X Q. 23. How old are you?

A. Thirty-six.

X Q. 24. State who were clerks in the post-office when it was in the Herald building on Bank street.

A. Well, the postmaster was Dan. W. Haskell—was postmaster, and he had a brother deputy, James Haskell, and a George Haskell, another brother, a clerk; and that's all that I remember of.

X Q. 25. What did George Haskell do?

A. He was a clerk there.

X Q. 26. What did he do?

A. I didn't know what he done, because I wasn't in the same room with him.

X Q. 27. What room was he in?

A. He was inside, where I had no access to him at all.

X Q. 28. Were you ever in the same room where he was?

A. No, sir; not in that building.

X Q. 29. Where was that room?

A. I didn't know where it was; I had no access to it at all.

X Q. 30. What rooms did you have access to?

A. One room, where the mail was taken in and out.

X Q. 31. Where was that room?

A. It was on the alley beside the building.

X Q. 32. Did you have access to any other room?

A. No, sir.

355 X Q. 33. Is anything the matter with your health Mr. McGough?

A. Yes; I was sick about a year last year.
X Q. 34. Who delivered letters to the public in that office?
A. I had no chance to know.
X Q. 35. What was the matter with you when you was sick?
A. That is my business.
X Q. 36. What was the matter with you when you was sick?
A. Well, I won't answer no such question.
X Q. 37. Didn't you have access to the room from which letters were delivered to the public in the Bank street office?
A. No, sir.
X Q. 38. Are you sure of that?
A. Why, of course I am.
X Q 39. Do you swear to it positively?
A. Yes, sir.
X Q. 40. Why won't you tell me what the matter was with you when you was sick?
A. Well, I won't because that's private business.
X Q. 41. How long were you sick?
A. I was sick a year.
X Q. 42. When did you first begin to be sick?
A. A year ago last fall.
X Q. 43. Who is your doctor?
A. Well, that you won't know.
X Q. 44. Why won't you tell me?
A. Well, that's my business.
X Q. 45. Why won't you tell me who your doctor was?
A. Well, that's my own private business.
X Q. 46. Who distributed letters in the Bank street office?
A. The clerk that tended the general delivery; and I don't know who he was; I don't remember his name.
356 X Q 47. What was the matter with you when you was sick?
A. Well, I told you that's my own private business.
X Q. 48. Did Mr. Norton just say that's a very proper answer?
A. I won't answer such a question.
(Counsel for complainant here interrupts and says that he did make that statement.)
X Q. 49. You had the rheumatism, didn't you?
A. No.
X Q. 50. You're perfectly well now, are you not?
A. No, sir.
X Q. 51. Did you say that the letters were delivered by the man who had charge of the general delivery in the Bank street office?
A. I told you that two or three times.
X Q. 52. In what room did he do it?
A. In the front room, I suppose.
X Q. 53. In the same room where he delivered the letters to the public?
A. Yes.
X Q. 54. Are you sure of that?
A. Certainly I am.
X Q. 55. Do you swear to it positively?
A. Yes, sir.
X Q. 56. You say you're not perfectly well now?
A. No.
X Q. 57. Is your sight good?
A. No.

X Q. 58. Is your hearing good?

A. Yes.

X Q. 59. Did the man who delivered letters to the public also distribute them in any other place than in the room where he delivered letters to the public?

A. No, sir; that's all.

357 X Q. 60. When you were sick, did you have paralysis?

(Objected to on the ground that it is not the counsel's business to inquire into the illness of the witness any further than he has done, which the record will show he has done over and over again, something less than a thousand times.)

A. No, sir.

X Q. 61. What did you have, if you didn't have paralysis?

(Objected to as being none of counsel's business at this point of cross-examination, and the answers of the witness showing the nature of his illness was of that character which he prefers not to make known, as he has repeatedly stated.)

A. Well, I won't tell you.

X Q. 62. Did any other person distribute the letters besides the one who delivered them to the public in the Bank street office?

A. No, sir.

X Q. 63. Are you sure of that?

A. Why, of course I am.

X Q. 64. Do you swear to it positively?

A. Yes, sir.

X Q. 65. You say that you're not perfectly well now; what's the matter with you now?

A. None of your business.

X Q. 66. Why won't you tell me, are you ashamed of it?

(Objected to as an insult to the witness, and intended to be such, as has been the greater part of the cross-examination, the evidence of
358 which is found in the questions themselves, not one of which touches, directly or indirectly, the examination in chief of the witness.)

A. I am not ashamed of it.

X Q. 67. Who did the stamping in the Bank street office?

A. I don't know; it was done up stairs.

X Q. 68. Who told you it was done up stairs.

A. I didn't say it was done up stairs.

X Q. 69. Where did you say it was done?

A. Up stairs.

X Q. 70. Who told you the stamping was done up stairs?

A. I seen the letters go up and saw them come down.

X Q. 71. Is that all you know about it?

A. They wrapped them up in bags.

X Q. 72. Is that all you know about the letters being stamped upstairs?

A. Well, that's enough; that's all I have to say about it.

X Q. 73. How do you know that these letters were stamped upstairs?

A. I won't answer; you got an answer a half a dozen times.

X Q. 74 Tell me how you know that the letters were stamped upstairs?

A. I won't do it; I have told you often enough so that you ought to understand.

X Q. 75. Do you know anything more about it except what you have told me?

A. No.
X Q. 76. Are you sure of that?
A. Why certainly.
X Q. 77. You swear to it positively, do you not?
A, Yes, sir.
X Q. 78. Who carried the letters up stairs?
A. They were pulled up by a rope; I don't know who pulled them.
X Q. 79. What business do you carry on now?
359 A. That's the man that carries on the business, and I live with him (pointing to his brother).
X Q. 80. You don't carry on the business now, then?
A. No.
X Q. 81. Why don't you carry on the business?
A. Well, that I won't answer.
X Q. 82. Because you've been sick, isn't it?
A. That was the cause of it.
X Q. 83. You recollect things that happened twenty to thirty years ago first rate, don't you?
A. Yes.
X Q. 84. Your memory's perfect, isn't it?
A. Well, its good enough.
X Q. 85. Is the reason why you won't tell me what your sickness was because you don't know?
A. I won't answer that question. It's nothing to do about this affair.
X Q. 86. Did any one tell you you needn't answer such questions before you came here?
A. No, sir.
X Q. 87. Do you know Mr. Norton, complainant's counsel here?
A. No, sir.
X Q. 88. You never saw him before to-day, did you?
A. Yes; once before.
X Q. 89. When was that?
A. Well, 't was Saturday.
X Q. 90. Last Saturday?
A. Yes.
X Q. 91. What did Mr. Norton say to you then?
A. Well, he didn't say much of anything.
X Q. 92. Tell all you remember.
A. Well, he told me to come over here this morning; that's all.
X Q. 93. Was anybody else present when he told you that?
A. No, sir.
X Q. 94. Do you know the nature of an oath?
360 A. Yes, sir.
X Q. 95. What is an oath?
A. Well, it 's an instrument that the citizens swear to when they take any responsible position in State or government.
X Q. 96. Have you taken any oath to-day?
(Objected to on the ground that the special examiner is at his home attending a sick wife, and the agreement was that the witness might be sworn after his testimony was taken; and the question is a violation of that agreement and of professional honor.)
A. No.
X Q. 97. Are you going to?
A. If it's necessary.
X Q. 98. Do you know what will happen to you if you swear falsely?
A. I know the effect.

X Q. 99. What is that?

A. Well, write what you want, the form of an oath.

X Q. 100. Do you know what will happen to you if you swear falsely?

A. Yes, sir.

X Q. 101. What is it?

A. Well, I'd have to suffer for it.

Redirect examination:

R. D. 102. You have been asked on your cross-examination a great many questions about your illness during the last two or three years; to all those questions you made an answer substantially that you did not desire to answer such questions, or to give any information concerning the nature of your illness; your answers were so made, were they not, because you believed the questions put to you to annoy you,
361 while you are still suffering to some degree from that illness, and because you deemed such things your own personal matters, and as having no reference to the matters you have testified to on your direct examination—is or is that not the fact?

(Objected to as leading.)

A. Yes; it is the fact.

R. D. 103. On your cross-examination you were asked a great many questions about whether you understood the nature of an oath or not; what kind of an oath did you understand the counsel to have reference to—was it or was it not such an oath as persons take entering upon an official position when you first answered it.

(Objected to as leading.)

A. Yes, sir; it was.

R. D. 104. The nature of an oath applied to a witness testifying, was it or was it not the oath you had reference to when you answered that, if you did not tell the truth you'd have to suffer for it?

(Objected to as leading.)

A. Yes, sir; it was that oath.

R. D. 105. Cross-question 75 is, "Do you know anything more about it, except what you told me?" You answered, "No." Did you mean by that answer all that you had stated on your cross-examination, or that on your direct examination, when you testified about the combined stamp, or both the cross and direct examination?

A. I meant that I didn't ever see that stamp 'till we got into the new post-office; well, that's the fact.

R. D. 106. Do you wish to correct or alter any statement you have made on your direct examination?

A. No, sir.

362 R. D. 107. On your cross-examination you were asked about distributing and delivering letters in the room below; was or was not that distribution of letters the putting of the same into boxes and pigeon holes for persons to whom they belonged?

(Objected to as leading.)

A. Yes, sir; it was.

R. D. 108. With that part of the post-office business you had nothing to do, did you?

A. No, sir.

R. D. 109. To what part of that office were your duties or labors generally confined?

A. To loading the wagons and carrying the mails away from there.

R. D. 110. Did you have anything to do with the locking of the mail bags?

A. No, sir.

R. D. 111. The mail bags, when they came into the post-office, were taken where?

(Objected to as not proper or important on redirect examination. Question waived by complainant's counsel.)

R. D. 112. In answer to cross question 78, you say that letters were pulled upstairs with a rope; what was attached to the end of that rope, if anything;

A. A basket.

R. D. 113. What were those letters taken upstairs for—I mean, for what purpose?

(Objected to as not proper on redirect examination.)

A. For distribution outside of Cleveland post-office—for the country.

363 R. D. 114. In your answer to cross-question 68, you say: "I didn't say it was done upstairs." Did you mean by that that the stamping of letters was not done up there?

(Objected to as leading.)

A. Upstairs, yes.

R. D. 115. Yes, what.

A. They were stamped upstairs.

R. D. 116. You meant in that answer, then, that you had not stated on this examination that you had testified that you had been told so. Is that correct?

(Objected to as leading.)

A. Yes.

R. D. 117. Have you any written record of the date when you were born?

A. No, sir.

R. D. 118. Your parents dead?

A. Yes, sir; they died soon after we left Ireland.

R. D. 119. Was Ireland your native land and the place where you were born?

A. Yes, sir.

R. D. 120. You were asked, in your cross-examination, what George Haskell did on Bank street. You answered: "I didn't know what he done." Do you mean by that that you did not know at the time, or that you do not now remember.

A. I didn't know at any time what his business was.

R. D. 121. Did the postmaster, Haskell, have a separate room in that building?

(Objected to as not proper on redirect examination.)

A. Yes, sir.

364 R. D. 122. James Haskell and George Haskell were brothers to the postmaster, were they?

(Objected to as not proper on redirect examination.)

A. Yes, sir.

R. D. 123. The principal duties of James and George were in the room with the postmaster, were they not?

A. No; James was upstairs; I didn't know where George was.

R. D. 124. How many rooms, if you remember, had the post-office on Bank street?

(Objected to as not a proper redirect question. Question withdrawn by complainant's counsel.)

R. D. 125. Do you remember what other clerks were employed at

that time, besides yourself and Wheeler and the official force which you have named, the Haskells?

A. That's all.

R. D. 126. You were also inquired of, on your cross-examination, as to the present condition of your health, and you answered that you had been sick about a year within the last two years. Do you consider that that has had anything whatever to do with the recollection of things stated on your direct examination this morning?

(Objected to on the ground that it is immaterial what the witness considers.)

A. Well, it had no effect on my evidence at all.

R. D. 127. In cross-question 37, you were asked: "Didn't you have access to the room from which letters were delivered to the public
365 in the Bank street office?" and you answered "No, sir." Do you mean to be understood that you never was in that room?

(Objected to as leading.)

A. Yes; I never was in that room.

R. D. 128. Where was that room?

(Objected to as improper redirect question.)

A. In front of the office.

R. D. 129. Was that a large or small room?

A. It was a good-sized room; it was the largest they had. They were all small.

R. D. 130. Do you remember what Mr. Wheeler's duties were in the Bank street post-office?

A. No, sir.

R. D. 131. Do you, or do you not, regard your cross-examination by Mr. Clark, defendant's counsel, now present, as an attempt to mislead you, and as an attempt to take advantage of you, on account of your recent illness, and on account of your not having yet fully recovered from it?

(Objected to as immaterial.)

A. I do.

R. D. 132. And that is the reason, is it not, why you gave him the answers you did on your cross-examination?

(Objected to as immaterial.)

A. Yes, sir; it is.

JAMES McGOUGH.

On account of the absence of the special examiner, attending a sick wife, this witness has not yet been sworn, nor has the deposition
366 been read over to him by any one. This examination, therefore, is adjourned until June 4th, at 9½ o'clock a m., for the purpose of having this deposition read to the witness by the special examiner, and that he may administer the usual oath to the witness at that time.

JUNE 4TH, 1878—9.30 a. m.

The deposition having been read over to the witness by the special examiner, the witness states that he desires to make no corrections; whereupon I, J. G. Pomerene, the special examiner, inquired of the witness as to the signature to the deposition, and he acknowledged that it was his signature; whereupon I duly administered to the witness the usual oath as to each and every part of his testimony appearing over said signature, to which proceeding both counsel assent.

J. G. POMERENE,
Special Examiner.

Defendant's counsel here gives notice that he shall move to suppress the deposition of the witness McGough, on the ground of his persistent refusal to answer questions, a course in which he was aided and abetted by complainant's counsel, as appears by the note on the record after the answer to cross-question 48.

JUNE 4TH—9 a. m.

Same counsel present as before.

Complainant's counsel calls as a witness, for and on behalf of complainant—

367 HENRY C. COOK, who, being by me first duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is H. C. Cook; my age is about thirty-seven years and nine months; residence, Cleveland; occupation, merchant.

Q. 2. Were you ever employed in Cleveland post-office, this city?

A. Yes, sir.

Q. 3. About when?

A. Well, I was employed several times—will have to explain that. I was conversant with work in the D. P. O. room, and at various times on what they call the team; the force of men on the team would often be short, and I would get a temporary job of two or three months at a time.

Q. 4. Were you employed in the Cleveland post-office previous to the year 1860?

A. Yes; the winter before.

Q. 5. Do you know Mr. A. L. Bassett of this city; and, if you do, about how long have you known him?

A. Since 1856.

Q. 6. Were you in the Cleveland post-office during the summer or fall of the year 1860?

A. I was not employed there; yes, I was in the office.

Q. 7. About how frequently?

A. Oh, two or three times a week.

Q. 8. During the summer and fall of that year?

A. Yes.

Q. 9. If you know, state who was the stamping clerk in that office at that time, in the post-marking of letters and the cancellation of postage-stamps upon them.

A. A. L. Bassett.

Q. 10. Of Cleveland?

A. Of Cleveland.

368 Q. 11. State what you then and there saw, if anything, in use by him for stamping letters with a post-mark, and the cancellation of postage-stamps, and state all you remember about it, generally, if anything.

A. My attention was first drawn to the fact that Bassett was stamping the letters with a very clumsy contrivance, in my opinion, consisting of two stamps bound together with common wrapping twine; well, that's the end of it, unless there's something more—that's what I observed.

Q. 12. About what time of the year was that?

A. It was in August, 1860.

Q. 13. The stamps referred to in your answer to question 11 were of what use without the tying of twine; I mean for what purpose was each stamp separately used before the tying together by twine?

A. One was the Cleveland dating stamp, and one was the canceling or defacing stamp.

Q. 14. After you saw those two stamps combined and tied together by twine, as you have stated in your answer to question 11 and preceding questions, did you see any other combined stamp in use in that office that did not have twine tied around the dating and post-marking instruments to hold them together?

A. No, I did not, until later.

Q. 15. Describe the other kind you saw at a later date, as near as you can remember, stating the manner or means by which they were fastened together, as near as you can recollect.

A. They were put together in the same shape as at first, with the exception that they were soldered together instead of being tied with a string.

Q. 16. Did you personally ever stamp any letters in the Cleveland post-office, and if you did, about what year was it?

A. In the winter of 1859.

Q. 17. What sort of an instrument did you use for that purpose, at that time, if any?

369 A. The Cleveland dating-stamp.

Q. 18. How was the postage-stamp on letters canceled by you, at that time, if at all?

A. By striking the Cleveland post-office stamp on the postage-stamp in the corner of the letter.

Q. 19. You mean, then, to be understood that the dating-stamp, having the word "Cleveland" in a circle surrounding the date, was used for the purpose of canceling postage-stamps, do you; and that the word "Cleveland," and the month, and the day of the month were impressed, in part or whole, on the postage-stamp upon the letter?

(Objected to as leading.)

A. I do.

Cross-examination:

By Mr. CLARKE:

X Q. 20. You are a partner of Mr. Bassett's in the hat business, are you not?

A. I am.

X Q. 21. Mr. Bassett was a stamper in the post-office before 1860, wasn't he?

A. Well, that I don't remember, as I would only come up to town here on a visit; I didn't live here.

X Q. 22. What was Mr. Bassett doing, if you know, in 1859, at the time you say you did some stamping in the post-office?

A. I think he was working in the D. P. O. room; whether stamping clerk or not, I don't know.

X Q. 23. How long did you do stamping at that time?

A. For a few days only, as I mashed my hand up so in the work?

X Q. 24. Where was the post-office at that time?

A. On the public square, in the government building.

370 X Q. 25. Were you employed in the post-office at all, while it was on Water street, before it moved to the government building?

A. I was.

X Q. 26. Was Mr. Bassett?

A. I do not remember; I think he was.

X Q. 27. Was he there just before the removal to the government building?

A. I was not in town at the time—I was in Iowa; but think he was.

X Q. 28. How long had you been in Iowa at the time of the removal, saying that the removal was about Christmas, 1858?

A. About fifteen months.

X Q. 29. Was Mr. Bassett employed in the Cleveland post-office at the time you left for Iowa, in the fall of 1857?

A. I think he was.

X Q. 30. That is your best recollection?

A. Best recollection.

X Q. 31. How long did he continue to be so employed, if you know?

A. I think he came out West the next year; whether he was in employment in the post-office or not, I don't know, immediately before he left; I don't know whether he was in employment in the post-office when he left Cleveland or not; but naturally suppose so.

X Q. 32. How long did Mr. Bassett stay out West, if you know?

A. I think about a year.

X Q. 33. How do you fix the date August, 1860, as the time when you saw Mr. Bassett use the stamp combined with twine?

A. Because I came out of the Confederacy in the fore part of July, and not being in very good health, did not get around town much for two or three weeks, and that would place the time in August that I was in such health as to be around.

X Q. 34. What Confederacy do you mean?

371 A. The Southern Confederacy, so called.

X Q. 35. Was there a Southern Confederacy in 1860?

A. They talked that thing some time before that date down there; I use the expression as I heard it there.

X Q. 36. What State were you in?

A. Arkansas.

X Q. 37. Had that State seceded before you left?

A. To the best of my belief, no.

X Q. 38. Had any of the Southen States?

(Question is objected to on the ground that there is higher and better evidence on that subject, and that if counsel is anxious with reference thereto it is suggested by complainant's counsel that he call Jefferson Davis, esq. The higher evidence referred to are the records of the collapsed Confederacy, so called.).

A. I paid no attention to such things, being more concerned about my personal safety.

X Q. 39. State your best recollection.

A. I paid no attention to such things, my only object being to leave the State.

X Q. 40. Had the war then begun?

A. It had not.

X Q. 41. Had Lincoln been inaugurated or elected?

A. That I don't remember.

X Q. 42. How long had you been in Arkansas before you came up?

A. About two years.

X Q. 43. Continuously?

A. Not continuously; I came up here once a year every year.

X Q. 44. How long did you stop here?

A. Generally three or four months at a time.

X Q. 45. What part of the year?

372 A. Generally in the summer time, on account of low water in the Arkansas River.

X Q. 46. Did you have any vacation in the winter during those two years?

A. Sometimes, when the boats would come up to Cincinnati for repairs.

X Q. 47. Was the time that you did stamping in the post-office for two or three days, and then left off because your hand was mashed, before or after you went to Arkansas?

A. Oh, I had been up from there two or three times during my stay down there.

X Q. 48. You recollect that your employment at that time was during one of the vacations, during which you had come up here from Arkansas; do you recollect that?

A. Yes, it was after I had been working down there.

X Q. 49. How long were you here at that time, and how long in the post-office?

A. Two or three months.

X Q. 50. Who was postmaster then?

A. When I stamped those letters Mr. Cowles was postmaster, to the best of my recollection.

X Q. 51. And also, when you saw the combined stamp used by Bassett, in 1860?

A. That I don't recollect, as I had no interest, being merely a visitor.

X Q. 52. You do recollect that he was postmaster before 1860, in the winter of 1859, when you did stamping?

(Objected to, as the witness has stated no such thing, and has stated that he recollected nothing about that.)

A. I simply state that the last time I worked there Mr. Cowles was postmaster—the last time I received wages there.

373 X Q. 53. Was the last time the time when you did stamping for two or three days in the winter of 1859?

A. I think it was, but am not certain, as I was in there two or three times in all—for wages.

X Q. 54. Do you recollect any later employment than that?

A. I do not; think that was the last time.

X Q. 55. Were you employed after you saw Mr. Bassett use the combination stamp, in August, 1860?

A. I believe not.

X Q. 56. Wasn't Mr. Cowles a Republican postmaster, appointed by President Lincoln?

A. He was a Republican postmaster, so called; he edited the Leader here. I don't know of my own knowledge who he was appointed by.

X Q. 57. Harrington, who preceded Cowles, was a Democrat, wasn't he?

A. You can't prove it by me.

Redirect examination:

By Mr. NORTON.

R. D. 58. Previous to August, 1860, did you ever see or know of a doubled or combined postmarking and postage-canceling instrument being in use in the Cleveland post-office, for the purpose of postmarking letters on the envelope, and canceling postage-stamps thereon, with one blow of the instrument?

(Objected to as immaterial, and as not proper on this redirect examination.)

A. I did not.

R. D. 59. How much time have you spent in ascertaining who were the various and different postmasters in Cleveland during the last twenty years?

374 A. No time.

R. D. 60. Do you know, or pretend to know positively, whether Mr. Cowles was postmaster during the Democratic administration of James Buchanan, which ended the 4th day of March, 1861?

A. I do not; I had been in the post-office several times; was in once after the war began, to the best of my belief, but paid no attention to the political complexion of the postmasters; I would also state that the last time that I was employed in the post office that I wrote up cases; I think at that time Mr. Cowles was postmaster, as I had had some angry words with him the last time I worked in the office.

R. D. 61. Do you know, or pretend to know positively, when or by whom Mr. Cowles was appointed postmaster at the Cleveland post-office?

A. I do not.

The deposition being read to the witness by the examiner, the witness states that he desires to correct his answer to cross-question 52, and, as a correction, he now states: That I had employment with Mr. Cowles, postmaster, after the war had broken out; that was the time I last worked there; Cowles was postmaster there after the war started.

HENRY C. COOK.

Sworn to before me and subscribed in my presence this 5th day of June, 1878.

J. G. POMERENE,
Special Examiner.

Adjourned by consent until June 5th, 1878, at 9½ o'clock a. m.

375 Met in pursuance of the adjournment of June 4th.
Same counsel present as before.

Adjourned by consent until 2 o'clock p. m. same day.

Met pursuant to the adjournment last above.
Same counsel present as before.
Complainant's counsel calls—

HENRY A. MASTICK, as a witness on the part and behalf of complainant in this cause, who, being by me first duly sworn, testifies as follows:

Q. 1. State your name, age, occupation, and place of residence.

A. My name is Henry A. Mastick; my age forty-nine years; occupation a farmer; and residence Rockport, Ohio.

Q. 2. State whether you ever have been employed in the Cleveland post-office in this city.

A. I have.

Q. 3. State the time when you were first employed as clerk in the Cleveland post-office.

A. In 1849 or 1850; it was in the winter; whether it was before New Year's or not, I cannot tell.

Q. 4. How long did you continue to be employed as a clerk in that post-office? State the years, as near as you remember them.

A. I staid until 1851; then I left for a little over a year—a year and a half, perhaps; then I was there until July of 1854; then I commenced

again in 1861, until the spring of 1863; then I was there two years with Mr. Benedict; also, later.

Q. 5. When you were first employed in the Cleveland post-office, where was the post-office located?

A. On Superior street, in what is now known as the Johnson House.

376 Q. 6. If at all, when was the post-office changed from that place, and where was it changed to?

A. I can't tell the date it was changed, but it was changed to Bank street.

Q. 7. Was it changed from Bank street, and if so, where to?

A. It was changed to Water street.

Q. 8. From Water street, where did it go, if anywhere?

A. To the public square, to the post-office building, where it now is.

Q. 9. And while the post-office was located on Bank street, were you employed as a clerk in that office?

A. I was.

Q. 10. Were you in that office as a clerk until it was moved to Water street?

A. I was.

Q. 11. Do you know C. Clifford Nott, the witness who has been examined here for the defendant?

A. I do.

Q. 12. Were you in the post-office, on Bank street, during the time and all the time he was there as a clerk, namely, between October, 1852, and March, 1853?

A. No, I think not; I came there in the fall of 1852 and was there when he left; I think he may have come in the fall of 1852, a few days before I came.

Q. 13. What were his duties there, if you know, during that time?

A. He was delivery clerk.

Q. 14. Delivery clerk at what part of the office?

A. Box delivery.

Q. 15. What were the duties there, at that time, in that office?

A. In the general delivery in the day-time, and the D. P. O. room at night.

Q. 16. You were also a delivery clerk, then, in that office at that time?

377 A. Yes, sir.

Q. 17. About how far apart were you and Mr. Nott when on duty delivering letters to the public?

A. Well, I hardly know how to get at that; about ten feet, I should think; he at the box delivery and I at the general delivery windows.

Q. 18. And those windows were about ten or twelve feet apart, were they?

A. I think they were.

Q. 19. How far from either of those windows was the distributing and stamping table that was used in that room, if any such table was used there during that time, and in what part of the room?

A. There was a table called a stamping table, but not used as a distributing table, that I was aware of, about ten or twelve feet from the back of the boxes, and against or near the wall on the opposite side of the room, and near the back end.

Q. 20. Was that stamping-table so situated that you frequently saw it during the day while on duty?

A. Yes, sir; it was.

Q. 21. Did you ever perform any service or work on that table of any kind?

A. Yes, sir; often.

Q. 22. What?

A. Stamping letters and papers when the other clerk, the regular stamping clerk, was absent.

Q. 23. State whether during that time you saw or knew of a combined stamp of any description whatever for the postmarking of letters, and for the canceling of the postage-stamp at the same impression or blow of the instrument, and separate from the postmark, being used in that post-office by anybody?

A. No, sir; I never did; not to my knowledge.

Q. 24. Did you during that time see or know of combined instruments for the purpose indicated in the last question on that stamping-table, or in any other part of that post-office?

378 A. No, sir.

Q. 25. Had there been any such combined instrument on that stamping-table during that time, were you so situated as to your duties that you would have been apt to have known of it?

A. I think I should.

Q. 26. Did you ever hear anybody during that time, and in that office, say anything about such kind of a combined stamp as being there, or as being used for any purpose whatever?

A. No, sir.

Q. 27. Whenever you postmarked letters during that time and in that office, what kind of an instrument, if any, did you use for that purpose?

A. I used what is called the date stamp.

Q. 28. Did that date stamp have engraved within a circle around the date the word "Cleveland" and the letter "O,"?

A. Yes, sir.

Q. 29. How did you operate that postmarking device for postmarking letters?

A. By hand—took the handle in my hand and struck it down on the letter.

Q. 30. On what part of the letter did you leave the impression from that dating and postmarking stamp?

A. On the postage-stamp, so as to cancel it by the dating stamp.

Q. 31. Was that postmarking done in or with ink?

A. Printers' ink.

Q. 32. Do you remember whether James McGough was employed in that office during that time and place?

A. I don't remember that he was; he might have come in the last part of it, but I don't recollect it.

Q. 33. Where was the D. P. O. room for the distribution of letters situated at that time?

A. Over what is called the round-table room, and upstairs.

379 Q. 34. How were letters and other mail matter transmitted to that room upstairs from the rooms below, if you know?

A. By basket, pulled up with a rope.

Q. 35. The letters were first placed in the basket, and then the basket was drawn up by a rope; is that correct?

A. Yes, sir.

Q. 36. Where was the newspaper distributing room situated in that building at that time, if you know?

A. Immediately back of what is called the general delivery, at the back part of the building.

Q. 37. What sort of a table was used in that room, if any?

A. A circular table, with boxes built on the back side for receiving papers.

Q. 38. Do you remember whether the openings for the delivery of mail matter to the public had any covering, either hung by hinges or sliding in grooves?

A. The top was glass, the bottom was wood, with a catch in it, and this slid in a groove to open it; and in the bottom of the wood there was a little circular slit cut for shoving out letters and papers to the public; this was the general delivery window.

Q. 39. What was the difference, if any, in the covering to the box delivery window, as compared with that of the general delivery window, which you have described?

A. I think in the box delivery window there were doors hung on hinges, and they were fastened by a sliding catch inside.

Q. 40. Could either of those doors covering those delivery openings be opened from the outside?

A. No, sir; could not.

Q. 41. From your experience in that office from delivering letters to the public, about how much time would usually be required to
380 deliver a letter to a person calling for one, through the general delivery window?

A. Just long enough to examine the alphabets, and the box in which the letter called for might be found; there were two alphabets, one vertical and the other horizontal, to designate the pigeon holes, one for the first name, and one for the last name of the person calling for the letter.

Q. 42. Apply the same question to a person calling for letters at the box delivery widow, and then answer as to that delivery, whether it would take more time or less than at the general delivery window.

A. Less—because you would not have to stop to read the alphabets, as you would go by the number of the box, and you would not have to stop to look at the name on the letter.

Q. 43. During that time and place, was it the custom of that post-office to so neglect the duty of delivering letters promptly as to detain a person outside for any considerable length of time, or to allow a person to stick his head into or through a box delivery window, and to peek about and examine the affairs of that establishment, before his letter or letters should be delivered to him?

(Objected to as immaterial.)

A. I have seen persons come up and stick their heads through the window, whether for the purpose of talking with the clerk, or for what purpose, I don't know. I made a mistake in my answer, as I did not understand the question; my answer now is, that it was not the custom; the opening was not large enough for a man to get his head through far, and the postmaster would not allow it.

Q. 44. About how high from the floor were those delivery openings?

A. Between four and five feet—a little over four feet any way:

381 Q. 45. Were the delivery clerks generally on duty so as promptly to deliver letters, and not detain persons calling for them at that time and place?

(Same objection.)

A. Well, most always; there were times when they were in the back room for a few moments after mail, or something of that kind.

Q. 46. Any person calling there during that time for "love letters," would there be any greater delay in his case than in anybody else's in delivering his letters?

A. Well, I think not; as we had no lady clerks in the office, he would have no occasion for any unusual delay.

Q. 47. Suppose a man by the name of Cottrell residing in the city of Cleveland during the time the post office was on Bank street, and while you were in that post-office, should come there crawling and smiling about, and asking for love letters, would there be any occasion or necessity for his tarrying there for any length of time?

A. Not for me; I shouldn't hinder him.

Q. 48. During the time you were in the post-office, on Bank street, was Charles E. Wheeler there?

A. He was, I think.

Q. 49. About how much time would be required to do the entire postmarking and the canceling of postage stamps during each day while you were in that office on Bank street?

A. Taking letters and papers, too, I should think it might be done in two hours during each day.

Q. 50. Was there ever any necessity for a double or combined postmarking and postage-canceling instrument for use in the post-office while it was on Bank street, and while you were there; I ask for
382 your opinion on that subject founded upon your experience in that kind of business, in that office, while you were there?

A. Not that I know of.

Q. 51. You never knew of any, did you?

A. No, sir.

Adjourned by consent to June 6, at 9 o'clock a. m.

JUNE 6—9 a. m.

Met pursuant to adjournment.

Same counsel present as before.

The direct examination of the witness resumed by the complainant's counsel:

Q. 52. We will now go from the post-office on Bank street to the post office on Water street, in this city, and I desire you to state whether your employment in the post-office there was continuous or from time to time, while the post-office was located there?

A. It was continuous while I was there, until I left that office.

Q. 53. About what time was that?

A. July, 1854.

Q. 54. About how long after the post-office was moved on Water street?

A. About a year after it was moved on Water street.

Q. 55. After you left the post-office on Water street, as an employee there, were you after that employed in that office on Water street?

A. I was not.

Q. 56. While you were in the post-office there, what were your duties in the office?

A. I was in what is called the D. P. O. room, distributing room.

383 Q. 57. In what part of that post-office, if you know, was the postmarking of letters done?

A. It was in the distributing room.

Q. 58. Which distributing room do you mean?

A. It was what was called the D. P. O. room—the room that I was employed in.

Q. 59. Who was the stamping clerk there at that time, if you remember?

A. Mr. Wright.

Q. 60. During the time you were there, did you stamp any letters in that room; and, if you did, about how frequently?

A. Sometimes when the stamping clerk was gone I did, and that might happen sometimes every day for a few minutes, sometimes once a week.

Q. 61. While you were in that department did you see or know of a postmarking and a postage-stamp canceling device combined into one instrument, with one operating handle, so as to postmark the letter on the envelope and at the same operation or blow of the instrument cancel the postage-stamp near by the postmark, and yet independent of that postmark, being used in that office, by anybody for the purposes indicated in this question?

A. To my knowledge I never did.

Q. 62. Had there been an instrument of that kind in use in that office at that time, for the purposes indicated in my last question, would or would you not have been apt to see it?

A. I think I should.

Q. 63. Have you any doubt about it?

A. No.

Q. 64. Well, did you see one there of that description during that time?

A. I can't remember as I ever did.

Q. 65. The stamping table was in the D. P. O. room where your duties were during that time, was it not?

A. It was.

384 Q. 66. About how large was that room, if you remember; I mean about how many feet in length or width, or square, as the case may be?

A. About twenty-four by thirty, I should think. I can't give the exact size.

Q. 67. About how far was the stamping table from the table or place where you did your work?

A. Nearly opposite, back of me, on the side of the room, about eighteen or twenty feet distant. There was a table for doing up mails between us running lengthwise along the centre of the room.

Q. 68. Was Mr. C. E. Wheeler employed in that post-office at that time, if you know?

A. I don't think he was. I think he went into a lottery business with a man by the name of Kendig.

Q. 69. Was that lottery business carried on in this city, if you know, or was it an agency for an outside concern?

(Objected to as irrelevant and immaterial.)

A. I think an agency for a general office in Cincinnati.

Q. 70. I now show you a letter envelope, being addressed to a lady at Newark, Ohio, with a postmark "Cleveland, O., March 8—3 paid;" take it, examine it, and state if you have ever seen that envelope before to-day.

A. I have.

Q. 71. Look at it, and state if you know the person to whom that envelope was addressed?

A. I do.

Q. 72. Read from that envelope that person's name and the place where that envelope was directed?

A. Miss Angie C. Moull, Newark, Licking Co., Ohio.

Q. 73. The address you have just given, is that written in ink on that envelope?

A. Yes, sir.

Q. 74. In whose handwriting is that address, if you know?

385 A. My own.

Q. 75. When did you write that, if you remember?

A. March 4, 1854, the letter inside of the envelope was dated. I wrote the letter in Rockport, and brought it to Cleveland and mailed it March 8, 1854.

Q. 76. State whether subsequent to the date of that letter you married the lady to whom that letter was addressed?

A. I did.

Q. 77. State whether she is now living, and where, if you know?

A. At Rockport, as my wife.

Q. 78. State, if you know, where this letter envelope has been since March, 1854, till the present time?

A. In a package of letters we had in our house, which she had laid away. She handed it to me last evening at my house in Rockport.

Complainant's counsel now offers the envelope in evidence, and asks to have it marked as Complainant's Exhibit H. A. Mastick, June 6, 1878, J. G. P., special examiner; and it is so marked by me.

J. G. POMERENE,
Special Examiner.

(Objected to as not properly proved, and as irrelevant and immaterial.)

Q. 79. I observe on this envelope some marks in pencil; who put those there, and for what purpose, if you know?

A. I put "1854" there, a date I took from the letter which was inside, last night, to show that this envelope was the one that letter was enclosed in. The balance of writing in pencil is in my wife's handwriting.

386 Q. 80. State whether you know your wife's handwriting.

A. I do.

Q. 81. State, if you know, whether, while you were in the post-office on Water street, postage was required to be prepaid by postage-stamps or whether it was optional with the sender.

A. I think optional with the sender. I know it was.

Q. 82. What size stamps were used at that time in the payment of postage on letters—I mean the value of the postage-stamp—on domestic letters, excluding letters sent west of the Rocky Mountains?

A. Three cents.

Q. 83. State, if you know, whether it was a frequent occurrence at the time you were in the post-office on Water street to postmark letters like, or substantially like, Complainant's Exhibit H. A. Mastick, June 6, 1878, J. G. P., special examiner, which I now show you.

A. I think it was; I have no doubt of it; nearly all country letters coming into the Cleveland post-office came without a stamp and marked paid.

Q. 84. Look at exhibit referred to in the last question and state whether you paid the postage on that letter; and if you did, was it paid by postage-stamp or in money?

A. I suppose it was paid in money; if it had not been there would have been five cents to pay at the other end of the route, and that would have appeared on the envelope in connection with the postmark.

Q. 85. State whether the postmark on the exhibit last above referred

to corresponds in letters and figures and size with the postmark that was used in the Cleveland post-office at that time.

A. It does; it is the same.

Q. 86. How did that postmark differ, if at all, from the post-
387 mark which was used when the post-office was on Bank street while you was there as clerk?

A. This is the same stamp that was used there.

Q. 87. We will now go from the Water street post-office to the post-office on Bank street, and I ask you to state, if, you remember, where the stamping clerk stood or sat while postmarking letters with reference to the delivery-boxes and the stamping-table.

A. He sat on a stool, with his back to the delivery windows, and facing the wall.

Q. 88. If I understand you correctly, in your last answer, he was between the box delivery window and the table on which the stamping was done?

A. Yes; he was.

Q. 89. State whether you have ever been employed in any other post-office than the Cleveland post-office, and, if so, when, where, and in what capacity.

A. I was in the office at Wellington, O., from the winter of 1858 until the fall of 1860; then in the office at Newark, O., in the fall of 1862, and was there about one year, and was assistant postmaster in both places.

Q. 90. While in the post-office at Newark, what kind of a device was used there, if you know, for postmarking letters and canceling postage-stamps?

A. They had what is called a dating stamp, and a canceling stamp with a cork fixed into the lower end of it; these were separate when I first went there; having seen the combined stamp used in the Cleveland post-office, I tied them together there as I had the stamping to do, and a good deal of it.

Q. 91. About what time was it that you first saw the combined stamp referred to in your last answer, in use in the Cleveland post-office, and where was that post-office situated at the time?

388 A. When I came into the office in 1861, with Mr. Cowles, the postmaster, the office was situated on the public square, where it now is.

Cross-examination:

By Mr. CLARKE:

X Q. 92. During the year that you were in the Water street office your employment was that of distributing clerk in the D. P. O. room, I understand?

A. Yes, sir.

X Q. 93. When did you begin to be distributing clerk?

A. I stated yesterday, when I was in the office on Bank street; I was in the delivery in the daytime, and in the D. P. O. room at night; that was with Haskell; when postmaster Gray took the office I went to the D. P. O. room, and only went to the general delivery to spell other clerks while they were away at dinner, or at some such time as that.

X Q. 94. Who succeeded you as delivery clerk?

A. That I can't tell; he brought in a good many new clerks with him, and I can't tell who that was.

X Q. 95. Do you recollect when Mr. Nott left the office—before or after Mr. Gray was appointed?

A. I am not positive; I think it was while Mr. Haskell was postmaster.

X Q. 96. Had you left the delivery room for the D. P. O. room before Mr. Nott went away?

A. No, sir.

X Q. 97. State about how frequently you did any stamping in the Bank street office.

A. I hardly could tell that, for sometimes I would do it every day, sometimes not for a week.

X Q. 98. Mr. Wheeler was stamping clerk then, wasn't he?

389 A. Yes, I think he was; he stamped, and attended box delivery too, a part of the time.

X Q. 99. I think you refer to a regular stamping clerk on your direct examination. Who was that?

A. At that time there was not business enough in the office to keep a man busy stamping all the time; at other times, when not stamping, he worked in the delivery; I think he run one part of the delivery—a certain number of boxes.

X Q. 100. Well, whose regular duty was it to attend to what stamping there was?

A. Mr. Wheeler's.

X Q. 101. When you stamped you did it when Mr. Wheeler happened to be away?

A. Yes, or was busy at something else.

X Q. 102. For how long at a time, on an average, did you do stamping?

A. Only for a short time, when a mail had to be closed—when we had to get the stamps to close it.

X Q. 103. A few minutes at a time?

A. Yes, sir; that's all.

Redirect examination:

By Mr. NORTON.

R. D. 104. When letters came into the Cleveland post-office, on Water street, while you were there in the year 1854, to be sent away in the mails with postage paid by a postage-stamp (three cents or of other value), how or by what means was that postage-stamp canceled?

(Objected to as not a proper redirect question.)

A. By striking the date stamp on to the postage-stamp, which gave the name of the office and canceled the stamp at the same time.

390 R. D. 105. State whether the postmark would or would not, in whole or in part, be upon the printed or exposed surface of the postage-stamp?

(Same objection.)

A. Yes, it would.

H. A. MASTICK.

Sworn to before me, and subscribed in my presence, this 6th day of June, A. D. 1878.

J. G. POMERENE,
Special Examiner.

Recess until 3 o'clock p. m.

The complainant's counsel produces—

Mr. ASEM L. BASSETT, as a witness on the part and behalf of complainant, who, being by me first duly sworn, testifies as follows, to wit:

Q. 1. State your name, age, occupation, and residence.

A. My name is Asem L. Bassett; my age, forty-seven years; occupation, merchant; and residence, Cleveland, Ohio.

Q. 2. State whether you were employed in the post-office at Cleveland during the years 1857 and 1858.

(Objected to on the ground that the witness has already been examined on the same point.)

A. I was not in 1857. I was in December, 1858.

391 Q. 3. State the time you left that post-office and the time you went into business on Water street.

(Same objection.)

A. February, 1863, I left the post-office, and immediately went into the hat business the same month.

Q. 4. State whether you were employed in the post-office at Cleveland at any time while Mr. Edwin Cowles was postmaster.

A. I was.

Q. 5. State, if you remember, who was his assistant or deputy postmaster.

A. Mr. E. B. Chamberlain.

Q. 6. State, if you remember, who was postmaster here during President Buchanan's administration.

A. Benjamin Harrington.

Q. 7. State, if you know, who his assistant or deputy postmaster was during that time.

A. Mr. L. A. Kelsey.

Q. 8. State whether you were stamping-clerk during any part of that time; and, if so, what part—I mean while Mr. Harrington was postmaster here.

(Same objection.)

A. From December, 1858, until he was succeeded by Mr. Cowles.

Q. 9. State, if you remember, whether during the time named in your last answer Mr. L. A. Kelsey handed to you any order or orders purporting to be from the Postmaster-General, or from the Post-Office Department at Washington.

A. He did.

Q. 10. State, if you remember, the nature of that order, and what it was about.

(Objected to as asking for secondary evidence.)

392 A. It was to the effect that all postage-stamps should be canceled with a canceler other than the dating stamp.

Q. 11. State whether the order prohibited the use of the post-dating stamp for canceling postage-stamps and requiring the postmark to be on the letter envelope away from the postage-stamp, if you know.

(Objected to as leading.)

A. That was the intention of the order, I understood.

Q. 12. On receiving that order from Mr. L. A. Kelsey, what did you do, if anything, with reference to postmarking letters, and canceling postage-stamps upon them?

A. To economize in time I tied the dating and canceling stamps together, that one blow might comply with the order from the department.

Q. 13. And after that was done, what, if anything, did you next do with reference to the same matter?

(Objected to on the ground that the witness has once been examined on the point.)

A. Those same stamps that were tied together with a string were taken to a locksmith, and brazed or soldered together, and I used them in that manner as long as I did the stamping in that office.

Q. 14. State whether the wooden handle was taken off previous to the soldering together of the two.

(Same objection.)

A. It was taken off from the canceling stamp, and then they were soldered together and used with one handle, belonging to the dating-stamp.

393 Q. 15. When did you last see the order from the Post-Office Department which, you say, was handed to you by Mr. L. A. Kelsey while you were stamping clerk in the new post-office building?

A. I never saw it but the one time, and that was when he first showed it to me.

Q. 16. Do you know where that order is at this time?

A. I do not.

Q. 17. Do you remember the exact wording of that order?

A. I do not.

Q. 18. What you have stated about it are your recollections as to what it required, and what you did after receiving it in order to comply with it. Is that correct?

A. It is.

Cross-examination:

By Mr. CLARKE:

X Q. 19. You are the same A. L. Bassett who was examined as a witness for the complainant in this case a few days ago, are you not?

A. I am.

A. L. BASSETT.

Sworn to and subscribed before me this 6th day of June, A. D. 1878.

J. G. POMERENE,
Special Examiner.

Complainant's counsel here offers in evidence an extract from a letter dated "Post-office, Cleveland, O., Nov. 28, 1863," addressed "Hon. A. N. Zevely," and signed "C. E. Wheeler," and which has heretofore been marked for identification "Complainant's Exhibit B B (C. E.
394 Wheeler), Feb. 23, 1878, J. G. Pomerene, special examiner," and the same is here marked Complainant's Exhibit B B (C. E. Wheeler), June 6, 1878.

J. G. POMERENE,
Special Examiner.

Defendant's counsel takes the objection that the paper is not properly proved; and also to several objections that were taken at the time this paper was before offered in evidence, to wit, after cross-examination 286 was put to defendant's witness, Charles E. Wheeler.

Adjourned to June 7, at 9 o'clock a. m.

JUNE 7TH—9 a. m.

Met pursuant to adjournment.

Same counsel present as before.

Complainant's counsel offers in evidence a certified package of papers from the Patent Office of the United States, consisting, first, of a paper addressed to the Commissioner of Patents, dated Tinmouth, Vt., August 7th, 1854, signed Marcus P. Norton, and known as an additional paper to a "subjoined description for mailing and folding letters" to a "caveat," dated Oct. 20th, 1853; and consisting, second, of a paper addressed to the Commissioner of Patents, dated Troy Conference Academy, West Poultney, Vt., Oct. 13th, 1853, signed Marcus P. Norton, and

the same being a petition to the Commissioner of Patents; and also consisting. third, of a paper entitled "Subjoined description," the
395 same being the original caveat paper filed October 20th, 1853; and, further, of a paper purporting to be a certified copy of the "file wrapper" of the above named original caveat—the same being certified to by Samuel A. Duncan, Acting Commissioner of Patents, on the 18th day of January, A. D. 1871, and under the seal of the United States Patent Office; and the same is here marked and filed Complainant's Exhibit U. S. Patent Office, June 7, 1878, J. G. Pomerene, special examiner.

Defendant's counsel takes the same objections to the admission in evidence of each of the papers contained in this package as have already been taken to the same when heretofore offered in evidence.

Complainant's counsel also offers in evidence an original affidavit, signed J. D. Green, and dated the 11th day of September, A. D. 1871, and purporting to have been subscribed and sworn to by him on that day before Chas. Cons. Callan, a notary public in and for the District of Columbia, having the seal of said notary, and the same being attached to the package of papers last above named by red tape, under the notary seal of said notary public; and the same is here marked Complainant's Exhibit J. D. Green, Norton's Caveat, June 7, 1878, J. G. Pomerene, special examiner.

(Objected to, first, that it is not properly proved; second, as irrelevant and immaterial; third, because, if the facts contained in the alleged affidavit are of any materiality, they should be proved by a witness sworn in this case and subjected to a cross-examination.)

396 Complainant's counsel recalls—

HENRY A. MASTICK, a witness heretofore called and examined for and on behalf of complainant in this cause, who, having been heretofore duly sworn by me, further testifies as follows:

Q. 1. Look at an envelope which I now hand you, and state if you have ever seen that before to-day; and, if so, state all you remember about it as to the time when it was postmarked, and what postmark it bears.

A. It is addressed to Miss Angie C. Moull, Newark, Ohio, and postmarked Marion, Ind. The letter inside, which came in this envelope, is dated March 29th, 1854, and the postmark is dated March 31st, 1854.

(Complainant's counsel offers the same in evidence, and the same is marked Complainant's Exhibit Letter Envelope Number 1, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 2. I hand you another envelope, and to it I apply question No. 1, and request you to answer.

A. It is addressed to Angie C. Moull, Newark, Ohio, postmarked Columbia City, Ind., August 30th; and the letter inside is dated the 23d of August, 1854.

(Complainant's counsel offers the same in evidence, and is marked Complainant's Exhibit Letter Envelope Number 2, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 3. I now hand you another letter-envelope, and to it I apply the same question as to the last two exhibits, and ask you to answer.

397 A. It is addressed to Col. B. Mastick, Rockport, Ohio, postmarked San Francisco, Cal., May 21st. The letter contained in it is dated May 12th, 1856.

(Complainant's counsel offers the same in evidence, and the same is marked Complainant's Exhibit Letter Envelope Number 3, June 7, 1878, J. G. Pomerene, special examiner.

Q. 4. I hand you also another letter-envelope, and apply the same question to it as I have to all others about which you have been examined today, and request you to answer.

A. Yes, sir. It is addressed to Col. Benjamin Mastick, Rockport, Cuyahoga County, Ohio, postmarked Girard, Pa., dated August 25th. The letter enclosed in the envelope is dated August 24th, 1856.

(And complainant's counsel offers the same in evidence, and the same is marked Complainant's Exhibit Letter Envelope Number 4, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 3. I hand you another letter-envelope, and to it I apply the same question as last above, and ask you to answer.

A. Yes, sir. One addressed to Henry A. Mastick, Newark, Licking Co., Ohio, postmarked St. Charles, Mo.; I can't tell the date. The letter inside is dated December 4th, 1856.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit Letter Envelope Number 5, June 7, 1878, J. G. Pomerene, special examiner.)

398 Q. 6. I hand you another envelope and apply the same question as to the above numbered envelopes, and ask you to make answer to it.

A. Yes, sir; one addressed to Col. Benj. Mastick, Rockport, Cuyahoga Co., Ohio, postmarked San Francisco, Cal., dated January 5th; the letter enclosed in the envelope is dated January 4th, 1857.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit Letter Envelope Number 6, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 7. I now hand you another envelope, and to it apply the same question as last above, and desire you to answer it.

A. Yes, sir; one addressed to Mrs. H. A. Mastick, Newark, Licking County, Ohio, postmarked Chicago, Ill., February 19th, 1857.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit Letter Envelope Number 7, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 8. I now hand you another letter-envelope and apply to it the same question as last above, and request your answer.

A. Yes, sir; one addressed Miss Angie C. Moull, Newark, Ohio, postmarked Muncie Town, Ind., dated April 26th; the letter enclosed is dated April 25th, 1855.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit Letter Envelope Number 8, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 9. I now hand you another letter-envelope, and to it I apply the same question as the last one, and ask you to answer it.

399 A. Yes, sir; one addressed Mrs. H. A. Mastick, Rockport, Cuyahoga County, Ohio, postmarked Chicago, Ill., Aug. 11th; the letter enclosed is dated Aug. 10th, 1855.

(Complainant's counsel offers the same in evidence, and it is marked Complainant's Exhibit Letter Envelope Number 9, June 7, 1878, J. G. Pomerene, special examiner.)

Q. 10. I now hand you another letter-envelope, and to it apply the same question, and ask you to answer with reference to it.

A. Yes, sir; one addressed to Benjamin Mastick, Rockport, Cuyahoga County, Ohio, postmarked New York, June 9, 1858; the letter enclosed is dated June 8, 1858.

(Complainant's counsel offers the same in evidence, and it is marked

Complainant's Exhibit Letter Envelope Number 10, June 7, 1878, J. G. Pomerene, special examiner.

Defendant's counsel objects to each of complainant's exhibits, the letter-envelopes above offered, as being irrelevant and immaterial.)

Q. 11. The several letter-envelopes heretofore introduced as exhibits, from No. 1 to No. 10 inclusive, have been where, since the dates you have stated until the present time, if you know?

A. All of them have been in the house where I now reside; a part of them did not come into my possession until about five years ago, when I became executor of my father's estate.

Q. 12. You may state, if you know, whether you have other letter-envelopes having postmarks of various places and of various dates between 1851 and the present time.

400 A. I have.

(Same objection to both question and answer.)

Q. 13. About how many have you, if you remember? I do not mean to inquire of you the exact number, but ask you to approximate as to quantity.

A. I have quite a number.

Q. 14. State whether it has been your habit and the habit of your family to retain letters for a number of years.

A. Yes, sir.

Q. 15. You may state, if you remember, about how much stamping Charles E. Wheeler did while the post-office was on Bank street in this city.

A. I think he did the most of it until Capt. David L. Wood came in the office, then I think he did the largest share of it; I mean David L. Wood.

Q. 16. Did you, on any occasion in that office, or in any other post office in this city, ever see C. E. Wheeler use, in the postmarking of letters, an instrument to postmark the letter envelope near the postage-stamp, and at the same time cancel the postage-stamp by a separate device constructed for that purpose, and so combined with the postmarking device as to be operated by one handle, and to give both impressions by the same downward blow of such combined instrument?

(Objected to, because it should have been asked on Mr. Mastick's former direct examination.)

A. Never, to my remembrance.

Q. 17. Had you seen him doing such business would you be apt to remember it?

(Same objection.)

A. I think I should.

401 Q. 18. When, if at all, did you first learn that Mr. Charles E. Wheeler claimed to be the inventor of the invention mentioned in question 16 of this examination?

(Same objection.)

A. I can't fix the exact date, but think it was about two months ago, while he was riding with me from the west side of the Cuyahoga River to the east side; he rode with me a short distance at that time.

Q. 19. You have known Mr. Wheeler for a good many years, have you not?

A. Yes, sir; I have known him since about 1852.

Q. 20. When, for the first time, if at all, did you see in use in the Cleveland post-office an instrument of the kind mentioned in question 16 of this examination?

A. When I was employed under Mr. Cowles, in 1861, in the Cleveland post-office.

Q. 21. State whether Mr. Wheeler was employed in that post-office at that time.

(Same objection.)

A. I can't remember positively about that.

H. A. MASTICK.

Sworn to and subscribed before me this 7th day of June, 1878.

J. G. POMERENE,
Special Examiner.

Complainant's counsel here offers in evidence three envelopes postmarked Cincinnati, June 5th, each having the postage-stamp thereon canceled, one containing figure 2, one containing figure 7, and
402 the other figure 8, with other devices upon the postage-stamp, for the purpose of illustrating to the court the manner in which postmarking and postage-stamp canceling is done by the device or invention described in the bill in this suit, and the same are here marked Complainant's Exhibit Letter Envelope No. 11, No. 12, No. 13, July 7, 1878, J. G. Pomerene, special examiner.

The special examiner states that the three envelopes above were received the 6th or 7th day of June, A. D. 1878.

On motion of complainant's counsel, these proceedings are adjourned sine die.

J. G. POMERENE,
Special Examiner.

I, J. G. Pomerene, special examiner, do hereby certify that the above-named A. L. Bassett, James McGough, Henry C. Cooke, and H. A. Mastick were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above set forth, were reduced to writing by myself in part, and in part by H. W. Bill, who is not interested in the suit, in the presence of the witnesses, respectively, and were subscribed by said witnesses in my presence, and were taken at my office, at Cleveland, O., on the 29th day of May, 1878, and following days; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

J. G. POMERENE,
Special Examiner.

403 United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, UNITED STATES POSTmaster, New York.

Testimony taken on the part of the complainant, in rebuttal, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, esq., standing examiner of said court.

NEW YORK, *June 17th*, 1878—10 o'clock a. m.

Present, Marcus P. Norton, esq., of counsel for complainant, and Samuel B. Clarke, esq., of counsel for defendant.

JAMES R. HASKELL, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

404 A. James R. Haskell; I am 52 years of age; I reside at Passaic, New Jersey, and I am in the army cannon business, and an inventor also.

Q. 2. Were you ever employed at the post-office in Cleveland, Ohio, and if you were, state the time as near as you remember it?

A. I was employed there; I went into the office in the spring of 1849—I forget the exact date—and I remained there until April, 1853.

Q. 3. State who was postmaster at the time you were employed at the Cleveland, Ohio, post-office; state what your official position was, if any, and also your duties while you were employed in that post-office.

A. Daniel M. Haskell was postmaster, my brother; I was assistant postmaster at that place; I had general charge of the post-office, the usual duties of an assistant postmaster; in the absence of the postmaster I was acting postmaster; I had charge of the money and giving receipts and taking receipts, paying government drafts when he wasn't there. When I first went into the post-office—it was not a distributing post-office—I worked in all departments and learned the duties of the office and worked in all the other departments until I understood it all; and after the office was made a distributing office I took particular charge of the distribution in making up the mails, with five or six assistants; at the same time I had general charge of the office, and was in the delivery and various departments to see that things were properly done. In regard to the time I staid there, I think it was in April when I turned over the office to Mr. Gray, my brother's successor, whatever date that might be.

Q. 4. State whether, during the time you were in the post-office at Cleveland, Ohio, you postmarked any letters or canceled any postage-stamps for transmission in the United States mails.

A. Yes; I did myself.

405 Q. 5. Where was the post-office in Cleveland located when your brother was postmaster there; I mean what street or streets?

A. It was in Johnson building, in Superior street, and afterwards was removed to the Herald building, on Bank street.

Q. 6. Do you recollect the construction of the post-office on Bank street; I mean the room or rooms where the business of that office was conducted?

A. I do.

Q. 7. Have you recently prepared a ground or floor plan of that office?

A. I have.

Q. 8. Have you it with you; and if you have, will you produce it, to be used in evidence here?

A. I have it with me, and will and do produce it as a part of my answer.

(Witness here produces the plan, which is marked Complainant's Exhibit No. 1, Haskell—J. A. S., ex'r, June 17th, 1878.)

Q. 9. I now show you the exhibit referred to in the last question and answer, and ask you to state the different rooms, the purposes for which they were used, the construction of the partitions for delivery of mail matter to the public, the location of the stamping table where letters were postmarked, and also to state whether there were one or more D. P. O. rooms, their location, and the use of the same.

A. As you come into the post-office from Bank street you come into

the vestibule or corridor for the general public for mailing and receiving letters; the general alphabet delivery is immediately in front of the main entrance, with a semicircular railing in front; to the left of this is the ladies' window, separated from the general delivery by a short partition; and the left-hand front corner in entering the building was a news depot; the boxes fronted northerly, at right angles to the
406 street, with drawers underneath the boxes; the boxes had two delivery windows; passing down by the boxes, the office was entered by a door near the left-hand corner of the corridor; this door entered into a small office, where my desk stood; passing through a railing into the room in rear of the boxes in general delivery, in the south side of this room was a long, narrow table where the letters and papers were stamped; the alphabet or general delivery case was V-shaped, and faced westward toward the front of the building; the boxes and drawers were on the north side of this room, opposite the stamping table; there was an iron column standing, for supporting the floor overhead, between the boxes and the stamping table; a door from the east end of this room led into the distributing room, where the mails were opened and the matter distributed, and mail bags put up for going out; on the east side of this room were stairs leading to the letter distribution room on the second floor, where all the letters were distributed and made up preparatory to sending out in the mail bags.

Q. 10. Please state the size of the openings through which mail matter was delivered to the public, and the number of such openings, and the height of each from the floor. I mean the delivery windows when I call your attention to openings for delivery of mail matter.

A. They were about a foot wide, and I suppose about eighteen or twenty inches high; they may have been two feet high; they were closed by double doors, wooden frame with glass; there were four such openings; I should judge they were about three and a half feet from the floor; they may have been four feet; I can't tell exactly.

Q. 11. Please state, if you know, the custom in that office at that time with reference to those windows while the mails were being distributed for delivery to the public in that city.

407 A. I do; the windows were closed; there was a paper curtain on the back of them to prevent people looking through; we had a card or paper printed on, "closed," "distributing mail," and stating what mail we were distributing, so that the public would know what mail we were distributing.

Q. 12. State, if you know, the general custom of the people of that city at that time with reference to the getting of their mails during the day or evening—I mean as to the time, whether it was immediately upon the final distribution of the letters, or some time after.

(Objected to as immaterial.)

A. Business men wanted to get their letters as soon as they were distributed, consequently, when a large mail was being opened, a great many people accumulated there, waiting for their letters.

Q. 13. State from your knowledge of the business transactions at that office at that time, as to whether those windows were shut during the opening and distributing of the local mail matter, and as to whether they were kept closed at all times excepting during the actual delivery of mail matter to the public.

A. They were closed during the opening of the mails and the distribution of letters, and were opened the balance of the time during the office hours.

Q. 14. From your knowledge and experience in that office at that time, was it ever necessary, or did you ever know of an instance, of a man, woman, or child coming to that office for mail matter being obliged to wait standing around in the lobby for any considerable length of time, and then to put his or her head into either of those box delivery windows and still wait for letters or other mail matter to be found for them, or delivered to them?

(The same objection.)

408 A. After a mail had opened, and the office had been closed for some time, and the crowd had accumulated, parties had to wait to get their turn at the box windows; when they got there all they had to do was to give the number of the box and get its contents, and pass on for the next.

Q. 15. How would it be in the single case of one person calling for the contents of the box by giving its number?

(The same objection.)

A. The delivery clerk would have nothing to do but hear the number of the box and give out the letters or papers in that box.

Q. 16. About how much time would be required by a delivery clerk to perform the service alluded to in the last answer—I mean in an individual case—in a single person calling for a mail with no other persons present?

(The same objection.)

A. A few seconds; the windows were about five feet apart, long enough to step from the window to the box and hand the delivery out.

Q. 17. You have stated substantially that the box-delivery windows were about one foot wide each, and about two feet high; will you please state, if you remember, the thickness of that wall or partition through which these box windows were made?

A. That partition was made by the nest of boxes themselves, in front of which was a sash containing glass; that was the partition; the boxes were, I suppose, about 8 or 9 inches deep and the sash about an inch thick; in all, that would be 9 or 10 inches.

409 Q. 18. State, if you remember, the size and height and location of the table where letters were postmarked.

A. It was the usual height of a table set down as this is, which is about 30 inches high; I think it was about 3 feet wide and about 8 feet long, as near as I can recollect; it stood on the south side of the room, against the wall.

Q. 19. In your opinion, could a person standing in the lobby outside, and looking through either of those box-delivery windows, see and know the kind of postmarking of letters or of the cancellation of postage stamps thereon, if there were any such stamps at that time?

(The same objection.)

A. No; I don't think he could.

Q. 20. If you remember, will you state whether letters were postmarked in that office at that time during the distribution and delivery of mail matter to the public, or just before the preparation of mail matter to go out in mail bags.

A. Letters were not postmarked during the distribution of mail matter for delivery, as the force was busily engaged at that time in distributing the mail for delivery; neither were they postmarked when there was a crowd waiting for their mail, but during the slack times of the day, when few parties called for mail matter, the delivery clerks would take the letters out of the letter-boxes and postmark them.

Q. 21. How many such delivery clerks were then employed in that post-office, if you remember?

A. Well, sometimes there were two; one in the general delivery and one in the boxes; sometimes there were two in the boxes; and sometimes, when we were very busy, the postmaster and myself also assisted.

410 Q. 22. Did that office during that time have any particular person designated whose duty it was to postmark letters?

A. The box delivery clerks did the principal part of it; sometimes I did some of it and sometimes the porter did and the general box delivery clerks.

Q. 23. Was the stamping table so situated in that office that you frequently saw it during the time you were assistant postmaster there?

A. It was; I saw it frequently every day.

Q. 24. And did you so see it as to enable you to know what sort of instruments were being used there during your term as assistant postmaster for the postmarking of letters and other mail matter?

A. I did.

Q. 25. Look at the thirteen instruments (Defendant's Exhibits) now on the table before you and which I show you, and from that number, if you can, show to the examiner and designate by the card attached thereto an instrument for the postmarking of letters in that office during the time you were there as assistant postmaster.

A. The witness produces Defendant's Exhibit No. 4, and states that this is similar to the stamp that we used at that time; that the "Cleveland, Ohio," was embraced within a circle, the date being in the centre in movable type, secured by a set screw; the stamp was larger than this.

Q. 26. I now hand you three several letter-envelopes postmarked at Cleveland, Ohio; I ask you to look at them and then state whether the postmarks on those envelopes correspond with the acting face of the postmarking instrument referred to in the last question and answer.

A. Yes, they do; it is the same stamp we used there.

(Complainant's counsel asks the examiner to mark, for identification only, the several letter-envelopes referred to in the last question
411 and answer "Complainant's Exhibits Nos. 2, 3, and 4, Haskell—J. A. S., ex'r," and they are so marked and put in, June 17, 1878.)

Q. 27. I now show you Defendant's Exhibit No. 137, Wheeler—J. J. P., ex'r, February 19, 1878;" take it, examine it, and then state whether while you were assistant postmaster at Cleveland, Ohio, any instrument of that kind or substantially like that was ever to your knowledge used in the Cleveland post-office while your brother, D. M. Haskell, was postmaster there, and while the post-office was located on Bank street?

A. I never saw anything of this kind used there; we had a date stamp and a canceling stamp furnished us separately, which we used; we never had them attached in this way to my knowledge.

Q. 28. Did you ever hear, or in any way or manner know, of any instrument of this kind as represented by said exhibit, ever having been used in the Cleveland post-office by anybody during the term you were assistant postmaster at that office?

A. I never knew of any such being used; I never heard of any.

Q. 29. Had there been any such instrument used there during that time, would you have been likely to have known of it?

A. I would, as I frequently used the stamps myself.

(Question and answer objected to on the ground that the opinion of the witness is immaterial.)

Q. 30. I now show you Defendant's Exhibit No. 138, Wheeler—J. J. P., ex'r, February 19, 1878;" take it and examine it, and then state whether while your brother, D. M. Haskell, was postmaster and while you were assistant postmaster at the Cleveland post-office in the
412 State of Ohio, any instrument like or substantially like that was ever used by anybody in that post-office, and during that time and within your knowledge?

A. No; there never was any instrument with this double attachment used in that office; I never saw such a stamp until Saturday last.

Q. 31. Had there been an instrument of the character represented by the said exhibit used in that post-office during the time stated in the last question, would or would you not have been apt to have known of it?

(The same objection.)

A. I should certainly have known it had such a stamp been used there, unless it should have been brought in privately, secretly, when I was not there, and taken away again.

Q. 32. Had there been an instrument or instruments like, or substantially like, those represented by Defendant's Exhibits Nos. 137 and 138 (Wheeler), mentioned in the last previous questions, lying upon the stamping table in that post-office for the purpose of use, while you were assistant postmaster there, would or would you not have seen them. or either of them?

(The same objection.)

A. I should certainly have seen them, for I have a great curiosity for new contrivances or inventions.

Q. 33. You have stated something about a separate instrument for canceling postage-stamps in the Cleveland post-office while you were assistant postmaster there; describe, as near as you can, the construction of that instrument and its use either on letters or newspapers?

A. The stamps that we used were furnished by the Post-Office
413 Department; the one for canceling postage-stamps was a round stamp having a ring on the face and cross bars for its acting surface; this was used on newspapers and letters to a certain extent until we changed the practice.

Q. 34. State the change of practice referred to in your last answer, if you remember it?

A. When the business increased, we canceled the postage-stamps by stamping the Cleveland, Ohio, and date stamp over the postage-stamp.

Q. 35. And in doing that what kind of an instrument did you use for that purpose?

A. One like Defendant's Exhibit No. 4, only larger in diameter, as I previously stated, and contained the words "Cleveland, O," and the date on its acting surface.

Q. 36. What became of the separate canceling device after you began to postmark and cancel postage-stamps in the manner described in your last answer?

A. Oh, it remained on the table, and was used for newspapers and periodicals; the clerks were at liberty to use it for letters if they chose, but it saved work to use the post-dating stamp for canceling postage-stamps; the canceler was there, and they could use it if they chose.

Q. 37. When you used the postmarking or postdating stamp for canceling the postage-stamp, how was the impression with reference to the envelope and the postage-stamp?

A. In position, it was part on the postage-stamp and part on the envelope.

Q. 38. If you remember, you may state whether during the time you were assistant postmaster at Cleveland, Ohio, it was customary to prepay postage on letters by postage-stamps or in money, at the option of the person sending a letter or other mail matter?

A. The last part of the time that I was there the postage was reduced; if it was prepaid, either by stamps or money, it was three cents a
414 single rate for domestic letters, and five cents a single rate if not prepaid by stamp or money; the Canada and foreign rates were different—higher rates.

Q. 39. If you know, you may state the manner of preparing letters, after they were postmarked, for transportation in the mails, during the time you were assistant postmaster in Cleveland, Ohio.

(Objected to as immaterial.)

A. They were distributed in pigeon-holes for the different places of destination, and a post-bill made out for which the Post-Office Department furnished blanks; on this post-bill the number of letters, the rates of postage, whether unpaid or paid, distributed or paid in Cleveland, by stamps or in money, with the amounts added up and the number of free letters; the package of letters with this post-bill were then wrapped up in wrapping paper, and directed to the place of destination; if the packet was large it was tied up with twine. I have in my hand a printed form of post-bill, such as we used, and I give it as a part of my answer, and ask the examiner to mark it "Complainant's Exhibit No. 5, Haskell."

(The examiner, at the request of the witness, marks and files the same as requested in the answer. J. A. S., examiner.)

Q. 40. You may state whether, during your administration as assistant postmaster at Cleveland, Ohio, and while that office was situated on Bank street in that city, there was employed in that post-office a person by the name of Beardsley?

A. Not to my recollection. I don't think there was; to the best of my recollection there was no such person there; I am quite positive there was no such person there.

415 Q. 41. State whether, during the time you were assistant postmaster at Cleveland, Ohio, and while the post-office was situated on Bank street in that city, there was employed in that post-office a person by the name of Nott?

A. There was not.

Q. 42. Did you ever have any personal acquaintance with a person named Eri S. Beardsley, or Chancey Clifford Nott, said to reside at Cleveland, Ohio?

A. No; I never knew or heard of any such men, as I remember.

Q. 43. Who, if anybody, was cashier at the Cleveland post-office, during the time your brother was postmaster, while the post-office was situated on Bank street in that city?

A. The postmaster, or myself, either one of us, was the only cashier.

Q. 44. Whenever bills were presented against the post-office at Cleveland, were any bills presented to the cashier and by him referred to the head of the department to which the work was done, for any purpose whatever?

A. There was nobody at the head of the department there except myself and the postmaster; we had no separate departments with heads.

Q. 45. You may state whether you ever paid any bill to Jacob Schwartzenberg, for work done upon a post-office stamp of any kind or

description whatever, while you were assistant postmaster at Cleveland, Ohio?

A. No; none that I can recollect; I am positive that I never did anything of the kind; the only thing that I recollect was, that we sometimes got a wood engraver to cut "rate" stamp on wood, but he was not Schwartzenberg.

Q. 46. You may state if you recollect the various kinds of post stamps used in the Cleveland post-office while you were assistant postmaster there?

416 A. Yes; the post and date stamp containing the name of the post-office and the date, the several rating stamps 3, 5, 10, 15, 20, and 24 and 48, and such others as were necessary, and then a stamp with the word "paid" on it, and a canceling stamp for canceling postage-stamps, and a stamp for free letters.

Q. 47. While you were assistant postmaster at Cleveland, Ohio, was there a person employed in that office by the name of Henry S. Bishop?

A. Not to my recollection.

Q. 48. Had there been such a person upon pay-rolls of that office would you not have been apt to have seen it while you were assistant postmaster there?

A. I would; because I made up all the quarterly returns while I was in the office; and all receipts from employees for their salaries, and all money expended for repairs, or anything purchased for the office, was put into those accounts, such as repairs of mail-bags, etc.; all these receipts were sent on to the Post-Office Department; these receipts were for clerk hire, etc.

Q. 49. Who succeeded your brother as postmaster, if you remember, at Cleveland, Ohio?

A. J. W. Gray.

Q. 50. About what time was that?

A. That was, I think, in the month of April, 1853.

Q. 51. Who, if anybody, if you know, turned over to Mr. Gray, as postmaster, the books, papers, and the property of that post-office?

A. I did it; my brother was away at New York at that time; he left me to close up the business and turn it over.

Cross-examined:

By SAMUEL B. CLARKE, Esq., of counsel for defendant:

X Q. 52. What was done with the receipts which the clerks gave for their salary?

417 A. They were sent to the Post-Office Department in quarterly returns.

X Q. 53. Can you give the names now of all persons who were employed in the Cleveland post-office while your brother was postmaster?

A. I think I can.

X Q. 54. Who were delivery clerks from the month of April, 1851, to the month of April, 1852?

A. There was Mr. Charles E. Wheeler and Duncan B. Beeby for the regular delivery clerks at the boxes; there were several in the general delivery; Mr. Hepburn was there, but he didn't answer the purpose; he was discharged; he was afterwards mail-agent; Mr. T. G. Turner, Myles L. Rose; I used to go in there myself sometimes, and my brother while he was postmaster; sometimes Mr. Beeby would go in the general delivery.

X Q. 55. Who were delivery clerks from April, 1852, to April, 1853?

A. The same, except Mr. Hepburn and Mr. Rose; I don't remember

whether Mr. Turner remained there at that time or not, but I think he did; but I won't be positive about that; Mr. Beeby was a part of the time in the delivery box and part of the time in the distributing department during that year.

X Q. 56. Give the names, and a distinct answer, of all the delivery clerks during April, 1852, to April, 1853, or any part of that year.

A. Mr. Wheeler and Mr. Beeby, which names I have given before; the others I don't recollect for a particular period of time.

X Q. 57. Give the names of the delivery clerks from April, 1849, to April, 1851.

A. Charles E. Wheeler and W. F. Reeve; Mr. Reeve was in the general delivery, and Mr. Wheeler was in the boxes; I was there a part of the time also.

X Q. 58. Have you now given the names of all the persons who were delivery clerks while your brother was postmaster?

418 No; not all of them.

X Q. 59. Give all the rest, and the dates.

A. Well, I can't give the dates—not exactly; there was Mastick—two brothers; one was Henry, I think, and the other, I have forgotten his initials; they both were in the delivery part of the time.

X Q. 60. Was either of them in the delivery from April, 1852, to April, 1853?

A. I don't think they were; I think they left before that time; the younger may have been; I forget—I haven't thought of it in twenty-five years.

X Q. 61. You are sure you have not forgotten the name of any of the delivery clerks, are you?

A. I am not positively sure that I have stated all of them; I don't recollect at this moment.

X Q. 62. How many clerks were there from April, 1852, to April, 1853, whose regular post of duty was in the delivery room?

A. We had one in the box delivery, and one in the general delivery, with assistance when required.

X Q. 63. Did nobody have his regular post of duty in that room, except those two delivery clerks?

A. No, not all the time.

X Q. 64. While your brother was postmaster, were you away from the office at all?

A. Yes, a short time.

X Q. 65. How long?

A. Well, I came to New York on a trip, I think it was in 1851, for two weeks, the first time I had seen the city; I was away for a couple of days at a time on two or three occasions; I went out in the country; and I was sick once for two or three weeks; I believe that comprises all; any other time that I was away didn't run over two or three days; it was pretty hard work when I was there; it was pretty steady.

X Q. 66. Mr. Harry or Henry Mastick has been examined by
419 Mr. Norton for the complainant in this case, and, if I recollect aright, he stated that one C. Clifford Nott was a box delivery clerk in the Cleveland post office during the last part of the year 1852, while he, Mastick, was the general delivery clerk; have you any reason to suppose that Mr. Mastick didn't state the truth about that?

A. I have no recollection of such a person as C. Clifford Nott; I never saw the man in my life; Mr. Mastick was a clerk there, as I stated before; Henry Mastick remained there longer than his brother did.

X Q. 67. Did you have any other brother employed in the post-office besides the postmaster?

A. Yes, sir; my brother G. H. Haskell, was employed in the distributing department during the latter part of the term.

X Q. 68. Where is G. H. Haskell now?

A. He is in Cleveland, Ohio.

X Q. 69. What was the shape of the rating stamps which you have mentioned?

A. It was the same shape as Defendant's Exhibit No. 4, only it was smaller, with a figure on, whatever figure was used, without a border.

X Q. 70. What material were they?

A. Wood, generally.

X Q. 71. Was there any metal about them?

A. I think some of them that were sent on by the Post-Office Department had metal on at the lower end.

X Q. 72. You mean a metal cylinder, such as appears in Defendant's Exhibit No. 4?

A. I don't necessarily mean a cylinder, but a metal end with a figure engraved; it may have been a cylinder, a square, or any other shape.

X Q. 73. Did those stamps which had the letters engraved in wood have any metal about them?

A. No; not unless they might have had a ferrule put on.

X Q. 74. What was the ferrule for?

A. I didn't positively say that the ferrule was put on; I say
420 they might have had one put on; if so, it was to make a border, or to prevent it splitting.

X Q. 75. Do you recollect whether any of the various sorts of stamps used in the Bank street post-office, or in the Superior street post-office, had such a metal ferrule?

A. I don't.

X Q. 76. What is your best recollection about that?

A. I have no recollection about that.

X Q. 77. Give the size, shape, and material of the several cancelers that you have spoken of.

A. They were round, about five-eighths of an inch, I should think, in diameter, the face being a ring, with parallel bars crossed; they were like Defendant's Exhibit 4, but not so large in diameter; the same general shape, I mean by that; they were made with a wooden handle and a metal face, similar to Exhibit 4, only smaller in diameter, as I said before; and I think we had some made of wood; I am not so positive of that, but I think so.

X Q. 78. Were these cancelers, and those wooden rating stamps, which you have described, used when your brother first became postmaster?

A. They were; the rate of postage was sometimes changed by law, and then the rating stamps were changed to correspond.

Redirect:

By Mr. NORTON:

R. D. 79. Was there any rule prevailing during the time you were assistant postmaster at Cleveland requiring the postage stamp to be canceled by any other instrument than the postmarker?

(Objected to as not a proper redirect question.)

421 A. Not that I am aware of; there may have been some rule given out when the stamps were first sent out; it was the general custom in the post-office to cancel the stamp with the postmarking

stamp; I mean by that, not only in our office, but at other post-offices.

R. D. 80. During the time you were assistant postmaster at Cleveland, about what proportion of postage on letters was prepaid by postage stamps, if you recollect?

(The same objection.)

A. Up to the time that the law was changed reducing the postage to three cents on prepaid matter, I think the great proportion of letters were mailed without prepayment; after that time the great majority of the letters were prepaid, some in money, some by postage stamps; I think more by stamps than in money; the proportion I couldn't tell.

R. D. 81. On letters having no postage paid, how many times was it necessary to handle over letters to get them ready for the post-bills?

A. We had to put the post and date stamp on, and then the rate stamp, and that requires two separate operations of stamping; one to postmark and the other to give the rate of postage.

R. D. 82. In giving the names of certain employees in the Cleveland post-office at Cleveland, as stated in your cross-examination, did you give them in the order of their employment, or merely as you remembered them at the present time?

A. I gave them as their names occurred to me at this time.

R. D. 83. If it should appear that Mr. Nott was employed in that post-office while you were assistant postmaster there, would it be for a long or a short period?

A. It would be for a short period, and that would be the reason that I would not recollect it.

422 R. D. 84. If a man were employed in that office while you were there, and it appeared from his labor that he was unsuitable for the business, what did you do with him in reference to that employment?

(The same objection; also as being irrelevant.)

A. We discharged him; that was the case with Mr. Hepburn, and Mr. Rose, and several others.

Adjourned to Tuesday, June 18th, 1878, at 10 o'clock a. m.

NEW YORK, *Tuesday, June* 18, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Redirect examination of the witness JAMES R. HASKELL resumed by MARCUS P. NORTON, Esq., counsel for complainant:

R. D. 85. State, if you remember, whether Mr. Henry Mastick was in the post-office at Cleveland, as a clerk, when you turned the post-office and its property over to Mr. Gray, as immediate successor to your brother, as postmaster?

A. Yes; he was.

R. D. 86. You have stated that you do not think that C. Clifford Nott was employed in the post-office while you were deputy postmaster there; if you have any reasons or circumstances why you think he was not, you may state them.

A. I don't remember any person by the name of C. Clifford Nott; I remember parties by the name of Nott were block and spar makers;

423 I don't remember their ever being connected with the post-office while I was there; a person would be of no use in the box department for a short time; my impression is he was a Democrat, and for that reason we would not employ him.

R. D. 87. Counsel for the defendant, in cross-question 66, among other things, asked you the following: "Have you any reason to suppose that Mr. Mastick did not state the truth about that," and in your answer you made no reply to that part of his question; you may state whether you were at that time sufficiently well acquainted with Mr. Mastick as to enable you now to answer that part of the question I have before stated.

A. Yes; I was very well acquainted with Mr. Henry Mastick; he was in the post-office at Cleveland two or three years while I was there, and his brother Seabury was also in the post-office; he was a man of excellent character, truthful and honorable, and of good family; I knew them all well.

(The latter part of the answer objected to as not responsive.)

R. D. 88. Defendant's counsel in cross-question 68 inquires of you as to the present residence of your brother G. H. Haskell; you stated his residence to be Cleveland, Ohio; for the express benefit of defendant's counsel I ask you to state the street and the number thereof, if you know that residence.

A. I have it at home; he did live at 161 Prospect street; he had a house in another part of the city, which I forget, but I have it in a letter at home.

R. D. 89. When you correspond with him, how do you address your letters to him?

A. Sometimes I addressed them simply to G. H. Haskell, Cleveland, Ohio; if I was at home I could get the street address from my wife.

424 R. D. 90. In giving the names to the defendant's counsel, on your cross-examination, of clerks employed in the Cleveland post-office while you were assistant postmaster, did you pretend to give the names of each and every person employed there as a clerk during that time?

A. No; the question asked was who were the delivery clerks, simply.

R. D. 91. You may state, if you remember, whether, during the time you were assistant postmaster at Cleveland, there was any order issued by the Postmaster-General, or any other officer of the Post-Office Department, and received at the post-office at Cleveland, in substance requiring the postmark to be upon the letter envelope by the postmarking device, and that the postage stamp should thereafter be canceled by a separate and distinct instrument.

(Objected to as not a proper redirect question, and as having been asked on this redirect.)

A. There was no such order received there during that time.

R. D. 92. Was there a person employed in or about that post-office during that time by the name of James McGough?

(Objected to as not a proper redirect question.)

A. There was.

R. D. 93. If you remember, state whether he was in that post-office at the close of your brother's term as postmaster.

(The same objection.)

A. I think he was.

R. D. 94. The examiner having just read to you your entire evidence, you stated when he read you the answer to cross-question 60, that

425 you desired to correct that answer; you now have the opportunity to make such corrections you please with reference to that question.

A. Henry Mastick, the younger brother, remained in the office during

that time; Seabury Mastick, the older brother, I think, left the office before that time.

JAMES R. HASKELL.

Subscribed and sworn to before me this June 18, 1878.

JOHN A. SHIELDS,
Examiner, etc.

DAVID L. WOOD, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. David L. Wood; I am sixty years of age; I reside at East New York, Long Island, and I have no special occupation just now.

Q. 2. State whether you ever resided in the city of Cleveland, Ohio; and, if you answer yea, give the time as near as you remember it.

A. I have resided in Cleveland, Ohio; my first residence commenced there the 16th day of September, 1839; I resided there from that time until about two years ago, except a temporary absence in an official ca-capacty.

Q. 3. Please state whether, while you resided at the city of Cleveland, Ohio, you held official place in civil or military positions; and if you did, name those, and give the time as near as you remember the same.

A. I held both civil and military positions during that time; the first civil position that I held was in 1846, and was a member of the common council of the city of Cleveland, as councilman for the sec-
426 ond ward; the next civil position that I held was that of city marshal, which was for two years, in the years 1855 and 1856; the next civil position that I held was that of justice of the peace, which was for three years, which was from the 8th day of April, 1870; the next civil position that I held was that of deputy United States marshal for the northern district of Ohio, which I held from the 22d day of August, 1873, until three years ago; the first military position I held was that of a captain of a volunteer artillery company, which was from about 1840 to 1855, and during which time I held several staff offices; in 1857 I was appointed engineer-in-chief on the staff of S. P. Chase, governor of Ohio; on the 17th day of January, 1859, I was appointed quartermaster-general of the State of Ohio, which office I held until the 16th day of November, 1861; on the 12th day of May, 1861, I was appointed a captain in the eighteenth regiment infantry, United States Army, which office I held until I was retired about two years thereafter; and in addition thereto, I held the office of local mail agent at Cleveland, Ohio, from the early part of the year 1853 until the latter part of the year 1854.

Q. 4. State whether you were ever employed in the Cleveland post-office, Ohio, or performed any service in or about that post-office; and, if you answer yea, please state the time and the nature of such service as near as you recollect it.

A. I never was regularly employed in the post-office, that is, to receive any pay; but, while I was local mail agent a large proportion of my time was spent in the post-office, when I used to assist in doing any of the work that was to be done about the office, such as stamping letters, attending the general delivery and box delivery.

Q. 5. You may state the location of the post-office at Cleveland during the time referred to in your last answer, giving the street and the name of the building in which it was located.

427 A. The first part of the time it was in the Herald building, on

Bank street; during the latter part of the time it was in Gray's building, on Water street.

Q. 6. In what year was that post-office in the Herald building, on Bank street?

A. In 1853, up to some time in the early part of July.

Q. 7. Where next was it located, and in what year or years did it remain so located?

A. It was next located in Gray's building, on Water street, and remained there until I left the department.

Q. 8. If you remember, when was it removed, if at all, from Water street, and to what place? I do not care for the exact time.

A. I have no recollection of the time when it was removed from Water street, but was removed from there to the government building, on Monumental square, generally known as public square.

Q. 9. Do you know Charles E. Wheeler, of Cleveland, Ohio; and, if you do, for about what length of time have you known him?

A. I do; about thirty years.

Q. 10. About how well have you known him during that time?

A. I have known him as well as men generally know people who associate with them in an office.

Q. 11. Was Wheeler employed in the Cleveland post-office, at Cleveland, Ohio, during the year 1853.

A. He was, during that portion of the time that I was there.

Q. 12. When did you first commence to assist in doing any of the work that was to be done about the post-office, as stated in your answer to question 4?

A. I think it was in January, 1853?

Q. 13. Was Wheeler employed at the post-office in Cleveland while it was on Water street?

A. I think he was.

428 Q. 14. Do you know for what portion of that time?

A. I think it was for all the time that I was there.

Q. 15. What year, if you remember, was it that you left the service at the Cleveland post office?

A. 1854.

Q. 16. Do you remember what part of the year it was?

A. I think it was in November or December of that year.

Q. 17. Were you familiar with the internal construction of the post-office while it was situated on Bank street?

A. I was.

Q. 18. Look at a drawing which I now show you, marked "Complainant's Exhibit, No. 1, Haskell, June 17, 1878—J. A. S., Ex'r," examine it, and then state whether that drawing, in your judgment, correctly represents the internal construction of the post-office while on Bank street?

A. I have examined the drawing; it represents a ground floor of the post-office on Bank street, as near as my recollection goes.

Q. 19. You may state the names of persons employed in that post-office while you were there, and so far as you remember them.

A. There was D. N. Haskell, postmaster, and James R. Haskell, assistant postmaster; D. V. Beeby, Henry Mastick, and Charles E. Wheeler, and George Haskell, and James Walsh, and several others that I don't recollect the names; there was a man there by the name of D. L. Stevenson.

Q. 20. State whether your opportunities were such as to enable you to know how, and by what means, letters were postmarked in that post-

office while it was situated on Water street, and also on Bank street, while you were there?

A. I used to assist in doing the stamping both on Bank street
429 and on Water street, and had the opportunity of knowing the manner and the means of doing it.

Q. 21. Had you the same opportunity to know the manner and means in which postage stamps were canceled, if at all, during the time stated in the last question and answer?

A. I had.

Q. 22. You may state whether postage stamps were used in whole or in part, so far as you know, for the payment of postage on letters, or whether the postage was prepaid, during the time you were in the post-office at Cleveland, Ohio, in part or in whole.

A. There was four ways, I think, of letters passing through the mails; one was by postage stamps, one was by being paid with money, and one was by being unpaid, and another was by being free.

Q. 23. I now present to you thirteen instruments, marked as defendant's exhibits in this case; I desire you to look at each and all of them, and select from that number, if you can, any instrument that resembles in form or construction the instrument used in the Cleveland post-office while you were there, both while it was on Bank and Water streets, for the postmarking of letters and other mail matter in that post office.

A. I have examined the exhibits presented to me, only one of which has any resemblance to those that we used to use in the Cleveland post-office; this is marked "Defendant's Exhibit No. 4—J. A. S., Ex'r., January 7, 1878"; this is similar, with the exception that it is not so large in diameter and the lettering on it; the one in use in the Cleveland post-office had the work Cleveland, O., in a circle on the outer rim, with the date in the centre, which was put in by movable type and fastened with a set screw, the same as this exhibit, having New York engraved in place of Cleveland.

Q. 24. When a letter came into that post office having its post-
430 age prepaid by a stamp, how, if you know, and by what means was that postage stamp canceled?

A. It was canceled by the post-dating stamp being stamped on the face of the postage stamp; I did lots of them myself at that time, in that way and in that office.

Q. 25. When a letter came into that post-office during that time, having no postage stamp upon it, how, and by what means, was the matter of payment or non-payment of postage determined on the face of the letter envelope, if at all?

A. In determining the question of postage upon a letter, it was to be determined, in the first place, whether the letter was subject to postage or not; if it was one that was subject to postage, then the rate was determined upon and a figure stamped upon the letter corresponding with the amount of rate; if the letter was free, it was stamped free accordingly.

Q. 26. And was that letter also post-marked with the post-dating stamp?

A. It was.

Q. 27. I now hand you "Defendant's Exhibit No. 137 (Wheeler), J. J. P., Examiner, Feb. 19th, 1878"; take it and examine it, and state whether you ever saw an instrument like that, or substantially represented by that, in use by anybody in the Cleveland post-office during the time you have stated you were there in that office while it was situated both on Bank and Water streets.

A. I have examined the "Defendant's Exhibit No. 137 (Wheeler), J. J. P., Examiner, Feb. 19th, 1878," and I am quite confident that I never saw anything like this in or about the post-office in Cleveland, Ohio, or in use there by anybody.

Q. 28. Did you ever hear or know from any source whatsoever of any instrument like that, or as substantially represented by that exhibit, being used in the post-office at Cleveland, Ohio, during the time you were there, either while the post-office was on Bank street or on Water street?

431 A. I did not; while I was in the office on Water street, a portion of the time I had the exclusive stamping of the letters, and keeping a book in which was registered all money letters and packages; my recollection is that I did this about two months at one time; this was when the office was first moved on Water street.

Q. 29. I now show you "Defendant's Exhibit No. 138 (Wheeler), J. J. P., Examiner, Feb. 19th, 1878"; take it and examine it, and then state whether you ever saw an instrument of that kind, or represented by that, in use in the Cleveland post-office by anybody while that post-office was on Bank or Water street.

A. I have examined the exhibit, and I never saw anything of this kind in either of the post-offices of Cleveland, whether located on Bank or Water street.

Q. 30. Did you ever hear or know from anybody, or from any source whatever, of an instrument like, or substantially like, that exhibit in form and in construction being used in that post office, either when it was situated on Bank or Water street, Cleveland, Ohio?

A. I never did.

Q. 31. Had there been such an instrument in form or in shape, and for the purposes designed by that exhibit, that is, to post-mark the envelope with the post-dating device, and to cancel the postage-stamp by the canceling device, separate and distinct from the post-mark, by one downward blow of the instrument so combined, in use in the Cleveland post office, either when it was on Bank or Water street, would you not have been apt to have heard or to have otherwise known about it?

(Objected to as leading.)

A. I think I should; I don't see how it could be otherwise, inasmuch as I had the exclusive stamping of the letters for two months of that time.

432 Q. 32. Aside from the two months referred to in your last answer, did you frequently stamp or postmark letters during the time you were in that post office?

(The same objection.)

A. I did it frequently, both before and after the two months mentioned.

Q. 33. Look at three letter-envelopes which I now show you, and which are marked respectively, Complainant's Exhibits Nos. 2, 3, and 4, Haskell—J. A. S., ex'r, June 17, 1878, and after having examined them, state, if you know, where those exhibits came from to this examination.

A. I brought them here.

Q. 34. State where you obtained those, or how they came into your possession.

A. Two of them came to me through the mail to Detroit, Michigan; the other I received from my wife, at Detroit.

Q. 35. State, if you know, where those letters were postmarked, and how you do.

A. They were postmarked at Cleveland, Ohio, in red ink, and I only know it by the postmark itself.

Q. 36. You may state whether these several exhibit letter-envelopes each contained a letter written to you upon business matters.

A. Two of them did; the other was a letter to my wife.

Q. 37. I observe written upon the back of one of these envelopes the following words, "David—I want the house bad, if it is to be had—telegraph me to-morrow, Wheeler"; take this envelope and look at that writing, and state if you know the handwriting that I have just quoted from it.

A. This is the writing of Charles E. Wheeler; I at that time knew his handwriting, and know it now.

433 Q. 38. About what length of time had you had these envelopes in your possession before producing them here?

A. About twenty-five years.

(Complainant's counsel offers in evidence the three several letter-envelopes above referred to, and asks that they shall stand marked, as they are now marked, Complainant's Exhibits, on June 17, 1878.

The said three several letter-envelopes are received in evidence, and stand marked as they were marked by the examiner on yesterday.

Defendant's counsel objects, on the ground that they are not shown to be material.)

Q. 39. You may state whether Mr. Wheeler ever had any conversation with you on the subject of postmarking stamps, and if you answer yea, state when, where, and what it was, as near as you recollect it.

(Objected to as immaterial and asking for hearsay.)

A. Some time since 1864 I met Mr. Charles E. Wheeler on the streets of Cleveland, which time he told me something in reference to a patent right for a canceling stamp which he had got or was going to get, which was a good thing, and he was going to make some money out of it; the exact date and particulars of the conversation I cannot now recollect, for I deemed it then entirely visionary on his part.

Q. 40. Previous to the time stated in your last answer, did Charles E. Wheeler claim, or pretend to claim to you, that in 1853, or any other time previous to the time of your meeting him on the streets of

434 Cleveland, as stated in your last answer, he had made an invention for postmarking letters and canceling the postage-stamps thereon, by an instrument like, or substantially like, those represented by "Defendant's Exhibits 137, 138—Wheeler, J. J. P., ex'r, February 19, 1878," or any device or instrument substantially the same as these, or either of them, which I now hand to you for your examination?

(The same objection.)

A. I have no recollection of Mr. Wheeler ever making any such claim.

Q. 41. You may state whether you know C. Clifford Nott, a person said to reside in Cleveland, Ohio, and who claims in his testimony in this case to have been employed in the Cleveland post-office while it was on Bank street; and, if you do, state whether you remember of his being employed in that post office at that time, and generally anything you may know about him in connection with that post-office.

(The last part of the question objected to as too broad.)

A. I know such a person as C. Clifford Nott; he was not connected with the Bank street post-office while I was there, while Haskell was postmaster, but was connected with the post-office for a short time after J. W. Gray became postmaster.

Cross examination:

By Mr. CLARKE.

X Q. 42. When were you in Detroit to receive the letters contained in the envelopes that you have testified about?

435 A. I was there in 1850 and 1851, about a year, and I was there at another time, in 1853, for a short time on a visit; I was there at another time, in 1858, for ninety days.

X Q. 43. Can you tell at which of those times you received the letters?

A. Only one of them.

X Q. 44. Which one?

A. The one containing the memorandum on the back of it "Complainant's Exhibit No. 4, Haskell."

X Q. 45. When did you receive that, and how can you tell?

A. I received that in the spring; I think in April, 1851; I tell it from my recollection of having a house to rent at that time, which Mr. Wheeler wanted to rent of me.

X Q. 46. Do you recollect distinctly that it was in the spring of 1851?

A. I am not positive about it.

X Q. 47. You can't tell when you did receive it?

A. I can't tell the date; all I know about it, I was up there at that time, and I had a house to rent there at that time.

X Q. 48. It is your best recollection, is it, that you received the letter in the spring of 1851?

A. That is my best present recollection.

X Q. 49. Is your recollection good of things that happened so long ago?

A. Much better than they are of things that happened ten years ago.

X Q. 50. Well, do you call it good of things that happened in 1851 and 1854?

A. I call it good.

X Q. 51. This envelope, "Complainant's Exhibit No. 4, Haskell," has a postmark on it, containing the words "Cleveland, O., Oct. 10"; please explain how you reconcile that date with the time when you say you received the letter, according to your best recollection, to wit, in the spring of 1851?

436 A. I cannot reconcile it; if I testified positively that I received this letter in the spring, I must have been mistaken; I did not intend so to testify.

X Q. 52. The various dates that you have given in your direct examination you took from papers you have in your pocket, on this examination, and not from a distinct, independent recollection; did you not?

A. I did.

X Q. 53. Look at the faint red mark on the right hand upper corner of the envelope "Complainant's Exhibit No. 4," and state what it is, and what it means?

A. I understand it to be a figure 5 in red; it signifies that there were 5 cents due on the delivery of the letter.

X Q. 54. Wheeler didn't write the letter that went in that envelope, did he?

A. No, sir; he did not write the letter.

Adjourned to Wednesday, June 19, 1878, at 10 a. m.

NEW YORK, *June 19th*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of the witness DAVID L. WOOD continued by SAMUEL B. CLARKE, Esq., of counsel for defendant:

X Q. 43. How long were you in Detroit in 1853?

A. I was there only one day.

X Q. 44. What part of the year?

A. I think it was in the fall of the year.

X Q. 45. Then "Complainant's Exhibits Nos. 2 and 3, Haskell,"
437 couldn't have been received by you in 1853, could they, they being postmarked in July of same year?

A. I don't think they were received in 1853.

X Q. 46. What were your duties as mail agent?

A. To be at the railroad depot when the trains arrived with the mails on, and attend to the dispatch of them to the post office at Cleveland, and the trains going out carrying mails.

X Q. 47. By whom were you employed?

A. The Post-Office Department; the appointment was by the Postmaster-General; the pay was through the Cleveland postmaster.

X Q. 48. Were you subject to the orders of the postmaster?

A. I was.

X Q. 49. About how many mail trains came into Cleveland a day while you were mail agent?

A. Seven.

X Q. 50. How many mail trains left Cleveland a day?

A. The same number.

X Q. 51. When were you mail agent in Cleveland, without reference to any papers?

A. Part of 1854, and part of 1853.

X Q. 52. How much time each day, on an average, did you spend in the post-office?

A. About six hours.

X Q. 53. What did you do during these six hours?

A. Some portion of the time I attended the box delivery, and also the general delivery, to relieve the regular clerks; the greater portion of the time I spent there was in stamping letters, during two months, or about two months of the time particularly.

X Q. 54. When were those two months; where was the post-office; and who was postmaster?

A. The early part of 1854; J. W. Gray was postmaster; the post-office was in Water street, in Cleveland, Ohio.

438 Redirect:

By Mr. NORTON:

R. D. 55. Defendant's counsel, in cross-question 52, inquired of you whether you had not in your direct examination taken certain dates which you there stated from papers in your pocket; you answered "I did"; state what those papers are from which you took those dates, as stated in that answer.

(Objected to as not a proper redirect question, and as asking for secondary evidence.)

A. They were letters of appointment and commission in the civil and military service.

R. D. 56. In cross-question 44 you were asked what part of the year

1853 you were in Detroit, Michigan; you answered that you thought it was in the fall of that year; do you know what month—whether September, October, or November of that fall?

(The same objection as first above.)

A. I have no positive recollection of the month.

R. D. 57. It might have been October of the fall of that year, might it not?

(Objected to as leading, and because the witness has stated he has no positive knowledge of it.)

A. It might.

R. D. 58. The prepayment of postage was optional during the year 1853, was it not, so far as you remember?

(Objected to as leading.)

A. Yes, sir.

439 R. D. 59. In cross question 49 you were asked as to the number of mail trains that came into Cleveland daily while you were mail agent there; you answered seven; state whether those were by railway trains, or coaches moved by horse power, and whether that number includes mails from all directions then coming to Cleveland.

A. My answer only had reference to trains arriving on the railroad; other mails did arrive in Cleveland by stages and steamboat.

R. D. 60. Do you know how many mails by railway trains now come to Cleveland and depart therefrom daily?

(Objected to as immaterial and as not proper redirect examination.)

A. I do not, only that there are a good many of them.

R. D. 61. In cross-question 54, you were asked who was postmaster at Cleveland at the time you spent two months at one time in the business of stamping letters, or substantially so; you answered that J. W. Gray was postmaster at that time, and that that time was in the early part of 1854, and that the post-office was then on Water street; state whether you had, previous to going into employment by the Post-Office Department, any personal or business relations with Mr. J. W. Gray.

(Objected to as not a proper redirect question.)

A. A short time previous to my going into the Post-Office Department employ I was a business partner of J. W. Gray in the job and book printing business.

R. D. 62. While Gray was postmaster there, or at any other time subsequent, did you ever hear him say anything concerning an alleged invention claimed by Charles E. Wheeler, for postmarking letters

440 on envelopes at one side of the postage-stamp, and at the same time and blow of the instrument to cancel the postage-stamp by the application of ink to the exposed surface of the postage-stamp?

(Objected to as immaterial, hearsay, etc.)

A. No, sir.

R. D. 63. If you know, state about how much larger the business at the Cleveland post-office was during the years 1863 and 1873 than it was while you were mail agent there and connected with the post-office in that place.

(Objected to as immaterial and not proper redirect examination.)

A. I have no means of knowing the exact amount, but I should think that it had increased over one hundred per cent.

D. L. WOOD.

Subscribed and sworn to before me, this June 19th, 1878.

JOHN A. SHIELDS,
Examiner, etc.

Complainant's counsel here produces two envelopes postmarked New York, one on February 26 and the other May 11, for the purpose of showing the court the manner of postmarking and of canceling postage stamps in the New York City post-office at the present time, and asks the examiner to mark them "Complainant's Exhibit No. 1, New York; J. A. S., examiner, June 19, 1878," and "Complainant's Exhibit No. 2, New York, J. A. S., examiner, June 19, 1878"; and also another envelope, postmarked Cincinnati, March 15th, and marked "Com-
441 plainant's Exhibit, Cincinnati, No. 3; J. A. S., examiner, June 19, 1878."

(Objected to because no proof is given concerning them.)

Adjourned to Thursday, June 20th, 1878, at 10 o'clock a. m.

NEW YORK, *Thursday, June 20th*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

SAMUEL P. KITTLE, a witness recalled and examined by MARCUS P. NORTON, esq., of counsel for complainant, deposes and says:

Q. 1. Have you been examined as an expert witness in this case on the part and behalf of the complainant, and, if you answer yea, were you sworn on that occasion?

A. Yes; I have been examined and was sworn.

Q. 2. Look at "Defendant's Exhibit No. 147, April 1st, 1878—J. A. S., ex'r," which I now hand you; examine it, and then state whether you have read that paper or not, and if you have, do you understand it?

A. I have read the paper, which is a certified copy of a patent issued to Marcus P. Norton from the United States Patent Office, bearing date the 16th day of December, 1862, and I understand it.

Q. 3 Look at "Defendant's Exhibit No. 148, April 1, 1848—J. A. S., ex'r," which I now hand you, and state what it is, if you know,
442 and whether it has any relation to defendant's exhibit named in the last question.

A. It is a certified Patent Office model purporting to represent the model that accompanied the original of the Exhibit 147, referred to in the last question and answer.

Q. 4. How many canceling devices are now attached to that exhibit—the last above referred to?

A. Two.

Q. 5. Upon the face of each of those you will observe grooves cut in various directions across the surface; state what those grooves are for if you know.

(Objected to as being a matter to be determined by the court from the specifications.)

A. Evidently the intention of the grooves is to prevent the postage stamp from being cut entirely away in such a manner that the part being cut might separate from the part not cut; that is to say the circular edges, if applied with force sufficient to drive them through the paper or other stamp, were they continuous in circles and without the grooves running crossed might cut the postage stamp through and into separate rings of different sizes, and carry away that portion so cut; these grooves, however, running out from the centre across the same and cutting edges, would leave portions that would not be cut, and therefore would be held together by these bar-like strips running out from the centre.

Q. 6. You observe on the acting face of each of these cancelers a series of circular sharp edges; please state, if you know, what those are for, and the purposes to which they are applied when in use.

(The same objection.)

443 A. From the description of the patent, Exhibit 147, and the illustrations accompanying and making part of the specification of that patent, and from the evidence of the certified model, it is clear that they are for the purpose of cutting the postage stamp, and that would be their effect and operation when applied with force on to a postage stamp.

Q. 7. Please examine those canceling devices and state how you find the acting surface in form of construction; I mean the surface only.

A. The cutting edges stand up from the main surface or face of the postage canceling device about the thirty-second part of an inch, the inner and smaller circular edges rising above the outer or adjacent edges in the form of a flattened cone.

Q. 8. You will observe surrounding the cutting edges referred to in your last previous answers, a band divided into segments by means of grooves running from the centre of the canceling device to its periphery; please state, if you know, what those are and for what purposes they are used when the canceling device is in active operation.

(The same objection.)

A. They are described in the patent, Defendant's Exhibit 147, as guides or a gauge to prevent the cutting edges from passing through the envelope or other wrapper, to an extent that would be injurious to the contents; if practical, I should say they would be an effectual stop to deep or damaging cutting; that is evidently why the circular zone or belt is formed on the acting face of this device; the cross-grooves sink below this band or face.

Q. 9. I desire you to carefully examine the drawings attached to Exhibit 147, as well as the model, Exhibit 148, about which you have just testified, and then state whatever you may observe with reference to the guide or guides referred to in your last answer as compared with the acting surface of the postmarking device.

444 A. The drawings, fig. 1 (showing a side elevation), illustrates proportionately a broader band or guide or guage surface running around the cutting edges on the outside of same; fig. 2 of the drawings shows no guide or guage face rim running around or outside of the circular cutting edges to speak of (fig. 2 is a transverse central vertical section); fig. 3 of the drawings, being a face view, shows a much broader guage or belt running around the circular cutting edges than is indicated in the model, Defendant's Exhibit 148; I think the inner belt or guage rim in the model which stands below the cutting edges is fairly represented in the drawings of the patent, Defendant's Exhibit 147; I would further state that the grooves represented in the model as running across the centre and through the ring and circular edges, and which extend out to the periphery of the canceler, cutting also the band or guage in the certified model, does not appear to correspond with the drawings illustrating the invention described in Defendant's Exhibit 147; such grooves stop at the inner periphery of the band or guage represented in the drawings of the patent (see face view, fig. 3, of the same).

Q. 10. Compare the acting surface of the post-marking device with knife or cutting part of the canceling device, and also with the face surface of the segmental guards, and state how they compare as to an air-line surface or a right angle to the vertical centre of the operating

handle; I call your attention to this matter both in the drawings of Defendant's Exhibit 147, and also in the Defendant's Exhibit, Model 148, about which you have testified to-day.

A. In the drawings of Exhibit 147, the circular knife or cutting edges are represented on a line at right angles with the vertical centre of the operating handle, or level with the post-marker, so that when struck on a plane surface the edges would penetrate about the same as the
445 type would be impressed or indented; in the model, Exhibit 148, I find that feature the same; in the drawings referred to, I find the guage or guard running around the cutting edges short or standing back of such line by about the thirty-second part of an inch, so that the whole metal face of the post-marker, when struck in a vertical direction on a level surface, would have to be imbedded about a thirty-second part of an inch before the guage or guard face would bear or rest upon such level surface; now I wish to state further, that with the construction illustrated in the drawings of Exhibit 147, or the Model Exhibit 148, in my opinion, the cancellation could not be perfectly done when the postmarking was perfectly done; in other words, that the instrument described is not a practical instrument without some modifications of construction.

(Defendant's counsel objects to the last part of the answer as irresponsive.)

Q. 11. From your examination of the patent Defendant's Exhibit 147, and from your observation of the model Defendant's Exhibit 148, what is your opinion, as an expert, as to the several canceling devices connected with those two exhibits, and about which you have testified? I now have reference to the success or non-success of those devices for use in the postal service.

(Objected to on the ground that the witness is not competent to speak about the active service, and is immaterial.)

A. I don't believe, as I have said before, that the instrument or device would postmark and cancel a postage-stamp at the same operation, successfully, when constructed as described and illustrated in the exhibits referred to.

446 Q. 12. I now show you Complainant's Exhibits U and V; take them and examine them, and state the similarity or dissimilarity of the canceling devices shown in those exhibits, and the canceling devices in Defendant's Exhibit No. 148, now shown to you.

A. The canceling devices in Complainant's Exhibits U and V are printing or blotting instruments, U having an acting face of cork, and V of metal, the flattened bars or plane bar surfaces running across crossed at the ends and on to a *by* circular projecting ring which enclose P. O. in the centre, while there are four rectangular bars, the angles pointing towards the centre of the cork face in U; there is no cutting surface in Complainant's Exhibit U or V, in the canceling device, but a printing or stamping face or surface; whereas, in Defendant's Exhibit 148, the canceling device consists of circular sharp edges, for the purpose of cutting, in contradistinction to printing or stamping; and the broad face surfaces are above or back of the cutting surfaces, and are intended to prevent too deep cutting by the edges of circular form as before described; that is to say, Defendant's Exhibit 148 represents an instrument for canceling the postage stamp by cutting the same by a series of sharp edges at the same operation that imparts or puts the post-office and date on the envelope, while the Complainant's Exhibit U and V represents a construction for printing a postmark and canceling the postage stamp with ink at one and the same operation.

Q. 13. Apply the last question to Complainant's Exhibit B, now shown to you, and Defendant's Exhibit 148, and make answer thereto.

A. Complainant's Exhibit B, as regards the acting face, is the same as Complainant's Exhibit V and U, with this distinction: it is not of the same material nor of the same configuration, and is not identical in mechanical form or combination with the other part or parts of the instrument; but these differences, in view of the state of the art—
447 as I understand it—are only mechanical or colorable variations or modifications of the instrument; Complainant's Exhibit B, as an instrument, is for imprinting with ink a postage mark, and canceling the post-office stamp with ink at one and the same operation or blow, the post office mark being at the side of the postage-stamp canceler, the same as in Complainant's Exhibits U, V, and B; whereas the post office marker and the postage stamp canceler in Defendant's Exhibit 148 stand in like relation to each other, and are to be operated by the handle in a similar manner as the three other exhibits just above spoken of; nevertheless, the cancellation is of a different kind, to wit, a cutting cancellation in distinction from a printing or ink cancellation; and the construction found in the Defendant's Exhibit 148, as regards the acting face of the postage-stamp canceler, is a construction consistent with its purpose and operation, as well as the description found in Defendant's Exhibit 147, to wit, knife edges with cross grooves, and a guard or gauge to prevent too deep cutting.

(All testimony in this answer relative to Defendant's Exhibits 147 and 148 objected to as not being responsive to this question.)

Q. 14. Suppose that the segmental guards surrounding the cutters or sharp knives in the canceling device of Defendant's Exhibit 148, about which you testified, should fail to prevent those sharp edges or knives from going through the postage stamp and the envelope and the matter therein enclosed, what would be the effect, in your opinion, upon the contents of any such envelope or letter?

(Objected to as not a question for expert testimony.)

448 A. It would be damaging, destructive, and pernicious, and I think sufficiently so to condemn the employment of such a contrivance or construction, and prevent and condemn its use.

Adjourned to Friday, June 21st, 1878, at 10 o'clock a. m.

NOTE BY EXAMINER, AT THE REQUEST OF MR. CLARKE, DEFENDANT'S COUNSEL.—It is noticed that the drawing on Defendant's Exhibit 147 has become separated from the ribbon and the seal. The drawing is therefore here reattached by mucilage, with the consent of both counsel. It is also noticed that the certificate has become entirely separated from the model Defendant's Exhibit 149; therefore, at the request of Mr. Clarke, defendant's counsel, the same is reattached by the examiner by means of a ribbon running under the commissioner's seal of said examiner, this being with the consent of both counsel.

NEW YORK, *Friday, June 21st*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Examination of SAMUEL P. KITTLE continued by MARCUS P. NORTON, esq., of counsel for complainant:

Q. 15. Look at Defendant's Exhibit 145, April 1st, 1878, J. A. S., examiner, which I now hand you, and state whether you have read

and examined that exhibit, and, if you have, state whether you understand it.

A. I have read and examined the exhibit, and understand it.

449 Q. 16. I now show you Defendant's Exhibit No. 14, April 1, 1878, J. A. S., examiner. Please examine it, and state whether you understand the construction and operation when in use; state also the purposes of the several parts thereof.

A. I understand the construction and operation of the exhibit and the combination of the different parts. There is a metal frame, having a stem extending out and above, on to which the wooden handle is secured; a brass ferrule surrounds the end of the handle, which bears upon the metal frame or case to which the handle is secured; the metal frame or case, being of hollow or cup and circular form, has its opposite sides cut away, so as to admit several rings (having letters or figures on their peripheries); to the right and left of these openings, and extending downward, are the solid parts of the frame or case, through which there is a hole to receive a bolt or shaft, the centre of which is distant from the lower edge of the frame or case equal to half the diameter of the letter and figure rings that take their bearing upon the shaft or bolt resting in these holes; at the lower extremity of the frame is an enlargement of the diameter of space in such a manner as to form a ledge or shoulder about an eighth of an inch from the lower extremity of the case; into this enlarged diameter, and resting on to the shoulder last described, is fitted a plate or ring with open centre, through which the faces, or lettered, or figured peripheries of the rings on the shaft pass, so that the letters upon the last described open ring, or plate, are on a plane with the letters and figures of the several rings on the cross-shaft, which is secured in the case and frame, back and above the open plate or ring, which plate or ring rests in the lower end of the case on a plane which is at right angles with the axis of the handle and stem of the frame or case; the shaft on which the lettered rings rest, and around which they revolve, has an elongated head at one end of

450 larger diameter than it is in its main extent, it being turned off or reduced to form a shoulder at one end, which shoulder bears against the side of one of the rings, a hole being drilled through each of the rings to correspond to the reduced size of the bolt or shaft, and at the other end of the bolt or shaft is a screw-thread cut thereon, nearly up to the frame or case through which it extends. Now, these lettered rings (which combine with the face plate or ring to complete the post-office mark) are provided with letters or figures on their peripheries, so that, by turning them on the shaft, the month in abbreviation, the day of the month, and the year in abbreviation may be given, or printed at the same time and operation that the face plate, or ring, prints the location or place, indicated by the letters thereon; there are four rings that revolve on the shaft; the first carries two letters abreast, or in line of the shaft, and twelve on the circumference; the second two rings are thinner and are provided with numerals on their periphery; the first only carrying the numerals represented in the number of tens of days in any month, the balance of the periphery being cut away or blank. The next ring is provided with the figures from 1 to 9 and 0, giving the units of days, and, when in combination with the ten rings, giving the units and tens of days in any month. The fourth ring is provided in this case with twelve segment faces, on each of which are two figures, commencing with 58 and running on to 59, 60, and so on. These two figures, with an abbreviation mark, can and are to be set in line with the letters indicating the month in the first ring, and the fig-

ures indicating the day of the month in the second and third rings, and the said two figures and abbreviations represent the year exclusive of the hundreds of years, all being in line and immediately under the shaft, and having been adjusted to the month and date desired. By turning the same upon the shaft they are fixed and compressed
451 together against one side of the case, the face of the lettered ring bearing on and against the case, while the shoulder at the head of the bolt bears upon the face or side of the year ring, and by means of the screw, and a nut thereon, they are compressed and held together firmly by the friction of the faces of the several rings resting against each other, and the shoulder of the bolt at its head, and the opposite side of the case or frames; the horizontal or open plate, having its axis at right angles with the lettered and figured rings just described, is secured into the frame or case (resting up against the ledge or flange before described) by means of little pins which are screwed into the same, passing through the case from opposite sides. On the right-hand side of the case is a rectangular piece of metal, having a pin-hole at its lower extremity, resting over one of the screws, which secures the plate as last described above. The circular form of the plate is slightly reduced on this right-hand side, to form a seat for this rectangular piece of metal, and at this point the ring-shaft or bolt extends out from the frame or case with its threaded end, and this angular piece of metal having a hole drilled through it so that it may be placed over the threaded end of the shaft, while a little below rests over the little screw head which holds the face plate or ring of the instrument on as before described, is the pin-hole for the screw head. Now, this angular piece of metal is provided on its lower face with a series of sharp edges formed thereon, and running out from the centre of the face plate, and at right angles with the axis of the instrument as a whole, which, when the angular piece is in place, as before described, are found to extend downward, or below the frame or case, and below the face of the plate or ring which bears the letters indicating the location or post-office, and below the type and figures on the rings that revolve on the shaft as before described, so that, when the instrument is set on a plane or level surface, with
452 the handle at a perpendicular line, the instrument rests on these sharp edges, and on to the opposite side of the frame or case, or the face-ring thereon. This angular piece, having sharp edges, is held and secured on the outside of the frame or case and in proper position by a milled nut being turned down upon the screw of the bolt or shaft before described; and on the angular piece, I would state that, in resting the instrument on a plane surface, as last described, the outer ends of the knives are not in the horizontal plane with the inner ends; this is owing doubtless to the fact of imperfect construction or of subsequent strain, changing the right-angular shape of this part of the instrument. I find attached to and forming a part of this exhibit a separate ring with centre opening like the one securely attached to the frame or case and already described, but provided with a groove somewhat dovetailed, or broader at the base than at the open top, opening with a side gate or gain cut through for inserting or taking out removable type and leads or spaces found therein. I do not find, however, in this ring any screw holes for securing the same into the frame or case, as the ring described in and secured to the frame has. The open plate or ring, with location of post-office, for instance, being in place and provided with letters indicating such location, the ring with the letters indicating the month being placed on a plane with the location, type, or letters, and the figures indicating the day of the month being turned to a line on the shaft

with the letters indicating the month and the two figures indicating the year, as stated, being on the same line on the shaft and in the same plane as the other letters and figures; and the angular piece of metal being secured on the threaded end of the bolt or shaft and over the head of the little screw-pin, and being held in position by the milled nut, which should be turned down firmly thereon, the cutting edges
453 will extend below the letters and figures, and the general face of the instrument, and the instrument will be in order and ready for use.

Q 17. State, if you know, the purpose of the knives upon the lower surface of the rectangular metallic piece of which you have spoken.

A. They are for cutting the postage-stamp while at the same time and operation of imprinting the post-office mark, so that the postage-stamp will be canceled effectually, to prevent its second use. This information I give as obtained by reading the description of the instrument and its use and operation in Defendant's Exhibit 145, April 1, 1878, J. A. S., examiner.

Q. 18. What, if anything, do you find upon the lower surface of this rectangular metallic piece to prevent those sharp-edged knives passing through both the stamp, letter-envelope, and into and through the enclosures therein?

A. I doubt whether these knife-edges, as set here, would extend through more than two or three thicknesses of paper when used in the ordinary way of imprinting the post-office mark; still they might. There is nothing to prevent their being imbedded into or through the postage-stamp, the envelope, and even into the contents of the envelope, if the edges are allowed to cut to their full extent, which is down to the plane surface surrounding them, of the horizontal part of the angular piece.

Q. 19. Having reference to the Defendant's Exhibit 145, referred to in your examination this morning, state the requirements as to the construction of the rectangular metallic step or piece, both as to the form itself as well as to the knives upon its lower surface.

(Objected to as leading—as being for the court.)

A. The knife edges shown in the drawings, particularly in Fig. 2, extend down a little below other acting parts of the face of the in-
454 strument, and by the description must be so constructed as to cut through the postage-stamp. They are described as being made of the best cast steel, and sharp and capable of being sharpened, if they get dull, by the use of a file. The inventor describes their office as that of cutting; and their value lies, according to the inventor's description, in their capacity for cutting the postage-stamp. Though he calls this part of the instrument a blotter, and describes it as carrying ink, yet he clearly depends upon the capacity for cutting and the construction for cutting the postage stamp and the actual cutting in use, as the invention. I will quote from the specification referred to in the question, to show what the thing is, and what it must do (irrespective of what you may call it, or what he may call it) to constitute the contrivance invented by him: "It also consists in attaching a blotter, hereinafter described, to the hand-stamp aforesaid upon one or two sides thereof, for the purpose of cutting, blotting, canceling, or 'effacing' 'the frank' or 'postage-stamp,' so as to prevent a second use of the same." Further on I quote: "It cuts the frank or postage-stamp in as many places as there are sharp edges projecting from the face of the said blotter, while at the same operation. The places thus cut through the said frank or postage-stamp and inked by the same means whereby

the cutting was done, thus preventing a second use of such frank or postage-stamp; for, although the ink thus put on be washed therefrom by any process, the places thus cut will show the first use, and detect and expose the second or fraudulent use of such frank or postage-stamp." In describing the construction of this part of the instrument further on, the inventor states: "This stamp may have another blotter like J, which shall be on the opposite side thereof, by the use of which the frank or postage-stamp would be cut, inked, blotted, effaced, and
455 canceled upon any part of the letter or envelope where it may be placed. One blotter like J, however, is believed to answer the required purposes. This blotter, J, may be made of any size or shape and of any material to answer the end or purpose sought to be attained. The face, which receives the ink and which comes directly on the frank or postage-stamp, is grooved or cut, thereby leaving various projections which have a sharp or knife-edge sufficient for each to cut entirely through the frank or postage-stamp." Further on I quote: "The said blotter J should be made of the best kind of cast steel, and in such shape as not to break any part thereof. The projections upon the face of said blotter may be kept sharp and in cutting order by filing and sharpening them when dull." So I can but regard the thing invented as a cutting device; and the fact that it may carry ink is wholly secondary and of little or no value, according to the description found in Defendant's Exhibit 145.

Q. 20. You have stated, concerning the rectangular metallic device with sharp-edged knives upon its lower surface, and in your last answer you used the term "blotter" to designate that device from the several other devices contained in Defendant's Exhibit 146, April 1, 1878, J. A. S., ex'r, now before you. Please state whether, in your opinion, that name in anywise affects or changes the character or the true intent of the inventor when, in his specifications in a patent for that device, he uses the term of designation, to wit, "the blotter J."

(The same objection.)

A. No; I don't regard the name as at all important. In looking for the invention, it is the thing—it is its construction and operation and the result it produces. Names are nothing. It would be folly to suppose that calling a goat a sheep would make it a sheep or any other thing by a wrong name, or any name would change its actual
456 nature. Indeed, it is very common to call things by wrong names.

Q. 21. Suppose that the sharp knives upon the lower surface of the rectangular piece referred to in your several answers, and found in Defendant's Exhibit 146, about which you have testified to-day, were entirely removed from that surface by a file or a grindstone, or any other means, what, in your opinion, would be the effect produced, if any, by such removal?

A. The nature of the construction, and the combination, and the operation, and the result would be changed; the exhibit would not represent with such change the instrument described or illustrated or claimed in Defendant's Exhibit 145.

Q. 22. Compare this rectangular step contained in Defendant's Exhibit 146 with the canceling device found in Complainant's Exhibit B, each of which are now shown you, and state the similarity or the dissimilarity between those two devices.

A. The devices, in each case, are for canceling postage stamps; the canceler in Complainant's Exhibit B is for printing ink broadly and largely over the postage stamp, for which purpose there are broad bars, a central circular line or type enclosing a figure 2, the whole face of an

elliptical form; in Defendant's Exhibit 146 there is a succession of straight projecting edges, covering a space of about one-fifth or one-sixth of that in Complainant's Exhibit B; the edges are removed farther from the post-office marker than in the case of Complainant's Exhibit B, and are not intended as ink printers or types, but as cutting edges; the edges are located upon an angular piece, which is held on the side of the postmarker by a milled nut, screwed down on the bolt, and prevented from turning around by the head of a little screw projecting into a hole for that purpose, at the lower extremity of the angular piece or canceler; whereas the canceling and marking device
457 are one and the same piece of metal, cut away so as the faces are close on a transverse line through the centre in Complainant's Exhibit B.

Q. 23. I now hand you Complainant's Exhibits U and V, and also Defendant's Exhibit No. 146, and to those exhibits I apply the last question, and desire you to state the difference, if any, between the postage-stamp canceling devices, and whether the same be substantially and materially similar or dissimilar?

A. Complainant's Exhibits U and V, as regards the canceling device, are substantially the same one with the other, though with modified construction as to form and material; they are both, however, ink-canceling devices, provided with broad faces to carry abundance of ink, and to imprint the same on to postage-stamps, canceling them by inking; whereas the corresponding device for canceling, in Defendant's Exhibit 146, is a succession of sharp or knife edges, as I have before stated, made for cutting the postage-stamp and to cancel the same by cutting it; and notwithstanding ink may adhere to such edges by their coming into contact with the ink-pad when the post-marker is inked, yet the canceling device in Exhibit 146 is clearly distinguished and distinguishable as a cutting or knife edge canceler; the fact that ink may get on to it or be borne on the edges which are to cut the postage-stamp, does not essentially change the clearly-marked design and purpose of the construction, its operation, or result at all, as it is made for a different purpose, and operates in a different manner, and produces a different result when used; it is a cutting cancellation as distinguished from a printing or stamping cancellation; it has cutting edges instead of printing surfaces, as in the case of Complainant's Exhibits U and V, whereas in U and V there are no cutting edges, and if any sharp substance should be found in the ink to adhere to those surfaces and
458 produce cutting in the postage-stamp, or through the postage stamp and the envelope, in the use of Complainant's Exhibits U and V, it would be foreign to the purpose, it not pernicious and damaging in the result.

Q. 24. Were you present during the whole or part of the examination of the learned and distinguished expert, produced on the part and behalf of the defendant in this cause—a person by the name of T. J. W. Robertson, if I am not mistaken; and if you were, did you hear him testify anything concerning the green turtle, turtle-dove, or printer's turtle?

A. I was; I don't remember his saying anything about green turtles or turtle-doves; however, I do remember hearing him say something about a "printer's turtle."

Q. 25. Do you know anything about a printer's turtle?

A. Yes.

Q. 26. You may go on and state, if you please, what you know about

a printer's turtles, what they are, and to what purposes they are applied, if to any, and generally all you know as to instruments of that kind.

(Objected to as immaterial.)

A. The thing designated as a turtle in the printer's craft, I think, was first introduced by Mr. Hoe, in the great Hoe cylinder press; the first time I ever saw it, I think, was in 1850 or 1851, in this city, in the Sun office, in the vaults under the walk, at the corner of Fulton and Nassau streets. It is a frame or jacket which carries and constitutes the form with the type, and is secured to an immense cylinder; there was a large number of those jackets secured to a very large cylinder for printing the daily edition of the Sun; I should think one of these turtles, with the type it contained, would weigh three or four hundred pounds as I first saw it; I have frequently seen the same since
459 then in different printing offices; the New York World, which I now hold in my hand, is printed on such a press, and each page represents an impression of what is termed a turtle by the printers; I hand the World as an exhibit and an illustration of my answer; each page is an impression of the type contained in the outer periphery of a printer's turtle.

(The paper is marked Complainant's Exhibit No. 1, New York World, J. A. S., Examiner.)

Q. 27. From your knowledge concerning the printer's turtle described by you in your last answer, state your opinion as to the application or adaptability of the printer's turtle for the purpose of postmarking letters and canceling the postage stamp thereon at one blow or operation of the instrument, and leaving the postmark on the letter envelope at one side of the postage-stamp at the same time as the cancellation of the postage-stamp in ink.

A. It is simply preposterous; you might as well ask a man to handle the largest-size trip-hammer to make horse nails.

Q. 28. I now produce and hand to you another wonderful device produced by the ingenious expert for the defendant in this cause, one T. J. W. Robertson, of the city of Washington; take it and examine it, and describe each and every part of it; the exhibit I hand you is marked Defendant's Exhibit 169, J. A. S., Examiner, April 2, 1878, (Robertson).

A. I recognize in this a little clothes-marker, used for marking linen, which I have seen sold by hawkers on the streets in different parts of the country during the last twenty or thirty years; it has a bulb handle with a socket at its smaller or lower end, into which a stem extends, from a lead or pewter cross-bar, the bar having an elongated cavity on its opposite side for leads or spaces and letters to place the type
460 requisite to compose the name of the person to whom the linen belongs, and a screw with thumb-piece at the end to pass through the end of the little pewter or lead box, having an inner thread to correspond with the screw, so that it can be turned and screwed up against the type and spaces or leads to hold them firmly in, pressing them against the opposite end of the little box or holder, and against each other.

Q. 29. State whether you discover any postmarking device upon the exhibit referred to in the last question and answer, or upon any of those that you have mentioned in your last answer, and so arranged as to give the postmark on the letter envelope one side of and separate from the postage stamp; and also state whether you find in that exhibit, or saw in any of those you have mentioned in your last answer, a postage-stamp

canceling device so arranged as to cancel in ink such postage stamp at the same time of the imprinting of the postmark on the letter, and by one and the same downward blow.

A. No, to all parts of the question.

Q. 30. From your familiarity with such a device as represented by Defendant's Exhibit 169, now before you, state your opinion as to the adaptability and practicability of that device to the postmarking of letters and the cancellation of the postage-stamp in ink, separate and distinct from the postmark, by one blow or operation of the instrument.

A. It was never intended for any such purpose, and could not be used successfully for the purpose of postmarking and postage-stamp canceling without very material alterations of construction and combination. You might as well think of driving railroad spikes with an ordinary tack hammer.

Q. 31. Compare that exhibit with Complainant's Exhibit B, and Complainant's Exhibit U, and Complainant's Exhibit V, and state whether you find in it any of the several devices or elements that enter
461 into the construction of the complainant's said Exhibits B, U, and V; and, if you do, state what they are and the purposes to which they are applied.

A. All of the exhibits, including the little clothes-marker, have turned handles with bulb tops, with holes in their lower ends to receive a spindle or shank extending upwards from the bar or main metal portion of the instruments. As regards the handles, I should say that they are similar. Here the similarity ends. The little clothes-marker, Defendant's Exhibit 169, is operated by this handle, in carefully placing it upon the article to be marked or printed, by pressing the type with care upon the linen or article to be marked; whereas the Complainant's Exhibits B, U, and V are to be operated by their handles in the hand of the operator by a quick, sudden, and forcible blow, with no special care, as in the case of the little clothes-marker, and not by being pressed down, as I have stated in regard to that exhibit. In that exhibit there is no provision for great solidity and strength to resist a sudden concussion or blow, such as is given and required in the constant use of the post-office marker and postage-stamp canceler in a post-office where they are used; and if it should be attempted in its present construction to use it in such manner, it would be found, in my opinion, impracticable. In the second place, the little clothes-marker has no configuration or type for the purpose of postage-stamp canceling, and it has no post-office marking type, neither did any of them ever have that I have ever seen; whereas the Complainant's Exhibits B, U, and V have distinct provisions for the post-office mark combined with distinct provisions for postage-stamp canceling, which, firmly attached to a cross-bar, upward from which extends a strong and firmly fixed spindle in the handle, all the parts arranged with a definite design in each exhibit to impart a clear and distinct post-office mark and postage-stamp cancellation, with definite and fixed relations to each other, and for strength and dura-
462 bility sufficient to withstand strain and wear in the employment of the instruments with force and rapidity, as required in continuous use.

Cross examined:

By Mr. CLARKE:

X Q. 32. How long ago did you see clothes-markers like Defendant's Exhibit 169 on sale in the streets of different cities of this country, and what cities were they?

A. I remember of having bought one and used it, I think, in 1850 or thereabouts, and I remember of having seen them used and owned by others, and having seen them sold, I think, in the city of Buffalo at first; also, I think, in the city of Rochester; I think, also, in the city of New York, and at various other places. My impression strongly is that I have seen them sold at the State fairs, and other places that I have been in, twenty-five years ago. They were generally and commonly known.

X Q. 33. Suppose that the type receptacle in Defendant's Exhibit 169 were enlarged so that it should be two or three times as large as it is now, would that be a mere formal or mechanical change, or a substantial change, in your opinion, the shape remaining the same?

A. Only formal or mechanical.

X Q. 34. Suppose that the material of the type receptacle so enlarged were to be changed to iron or steel, would that be a formal or mechanical change merely, or a substantial change, in your opinion?

A. I think only a formal or mechanical change in a general view.

X Q. 35. Suppose the enlarged steel receptacle for type were to be divided into two by a fixed partition running through the receptacle and across the longer axis, and another set screw should be added
463 at the opposite end to hold the type, would that be a formal and mechanical change merely, or a substantial change, in your opinion?

A. That looks like a substantial change to me. If it was never done before, it would indicate some new purpose, and probably would be a substantially different construction, I think.

X Q. 36. Suppose that, in the case stated in the last question, instead of a fixed partition, a printed space more than usually wide and thick, so as take the place of such partition, were used, would that be a formal or substantial change?

A. I am in a little doubt about that, whether it would or not. If there was some additional good end served by the second screw, it might or might not be.

X Q. 37. Suppose that, in the enlarged type receptacle made of steel, felt or rubber type were used at one end and steel type at the other, would that be a formal or a substantial change, in your opinion?

A. That would depend on the state of the art. If felt or rubber type had never been used before, it would constitute a substantial change.

X Q. 38. Do you know whether, at about the year 1850, when you purchased one of those clothes-markers, felt or rubber type or wooden type had been used by printers?

A. Yes, I know they had; but I do not know they had been used in combination in a clothes marker, like Exhibit 109. My impression is that they had not.

X Q. 39. Those wood, rubber, and felt type, whose use you say you knew of as early as 1850, were enclosed in a turtle or frame to prevent them from spreading apart when used, were they not?

A. I don't see how you could have understood me to have said that I knew of felt type being used as early as 1850. You asked me if I knew of felt, rubber, or wood type; I said I did. I do not wish to be made to say that I ever knew of felt type. I have known of wood type as long as I can remember. I can't remember when I first saw hard
464 rubber type or type of rubber. All the type or engraving on any substance when used, as a rule, has been held together by some device for that purpose.

X Q. 40. How far back do you refer by saying as long as I can remember—what year?

A. I am fifty-three years old, nearly; I suppose I can remember since I was five or six years old, or seven or eight; I wouldn't pretend to fix the exact date when I first saw wood type; I suppose there is no question about the use of wood type long before I was born.

X Q. 41. This wood type was used how, in reference to the grain?

A. Generally endwise, I believe, but not always, however.

X Q. 42. Suppose that in the enlarged type receptacle spoken of, and made of steel, instead of pewter or lead, wood type had been used at one end of the receptacle and steel type at the other, in place of using all steel type, in the year 1850; in your opinion, and with your knowledge of the state of the art, would that have been a mere formal or substantial change?

A. My opinion is, in view of my knowledge of the state of the art, that would be a substantial change, particularly if there was any good, new, and valuable end gained by such new combination.

X Q. 43. Suppose that wood type had been substituted wholly for steel type in that year, in the case put in last question, would that have been a formal or a substantial change?

A. I do not think that would have been a substantial change, steel type and wood type being known at that time; the use of either would be nothing more than a mechanical change, but the ground of substantiality given in my last answer was based on another consideration therein stated.

X Q. 44. Look at Defendant's Exhibit 147, and state what makes you think that Fig. 3 of the drawings shows on the acting face of the
465 canceler a much broader exterior segmental guard or gauge than is represented in the model, Defendant's Exhibit 148?

A. I offered to correct, and requested to correct, an error in my answer in regard to Fig. 3, in my direct examination, and the counsel for the defendant picked me up short, and would not allow me to do it, but said that he wished to question me and would do so when he would come to cross examine me on the error that I at the time saw, and expressed outside of the record; I remember of a quite long questioning on a similar error made in my first direct examination in this case, and I wish now to make the correction clearly and distinctly, and at the time (it seems to be) craved for my correction, that I may save the record from being encumbered at this time, as it was at the previous time, and in a manner, I hope, entirely satisfactory to the counsel and all concerned; if Fig. 1 of the drawings is observed, it will be seen that the canceling edges or rings appear to stand in a considerable distance from the extreme diameter, and the guard is represented by the letter *e* in Fig. 3, *e* being on the white or broad band like space represented in the drawing of the canceler; I took that broad space or belt running around the knife edges, instead of the narrower and dark or ink belt, to represent the guard, which was an error, and which error I desired to correct as quick as discovered, and I now make that correction to govern the answers given in which the error occurs; nevertheless, taking the size of the drawing and the size of the model, the segmental guard or gauge *e* is proportionately broader without and within the circular knife edges in the drawing, Fig. 3, than in the model, Defendant's Exhibit 148; and the same is true in regard to the outer gauge as shown in Fig. 1; in Fig. 2 the inner gauge is larger than in the model; with this statement, which I believe to be correct, I believe my direct testimony is entirely true and correct.

466 X Q. 45. When, in your direct examination, did you offer to make the correction with reference to questions and answers subquent to the answer in which the error was made? I refer to your answer to question 9 of your direct examination, where you say Fig. 3 of the drawings being a face view shows a much broader gauge * * * than is indicated in the model, Defendant's Exhibit 148.

A. Before giving my answer to the next question, and before it was read to me; that is my recollection.

X Q. 46. Did you discover your error before any suggestion about it was made to you by anybody?

A. No.

X Q. 47. Who made such suggestion, if anybody?

A. Mr. Norton, I think; and the error was in taking the broad space outside of the dark line surrounding the knife edges in Fig. 3, on which the letter *e* will be seen, which letter represents the gauge or guide.

X Q. 48 and 49. In the specifications of the patent, Defendant's Exhibit 147, Mr. Norton says that the nature of his improvements "also consists in the employment and combination of a canceling stamp *with a cutting and inking device thereon*, with a postmarking or rating stamp, etc."; look at the model of that patent, Defendant's Exhibit 148, and state what part of the canceler is the inking device; the italics in the quotation are mine.

(Complainant's counsel objects to the question on the ground that the quotations made in the question are neither correct nor truthful quotations. And second, defendant's counsel has no right to put a construction on any part of the patent by interlining or underscoring any part of it.)

467 A. Will you please to let me take the patent and read a little and look at the drawings before giving that answer; my impression is that the ink would be likely to be carried with the cutting edges; possibly it might be on the gauge or guards.

X Q. 50. I wish you to answer for the present with reference to the model alone.

A. I gave my last answer, and repeat the request.

X Q. 51. Will you tell me whether in the model, Defendant's Exhibit 148, you find any inking device in the canceler?

A. No; nevertheless if there was an ink pad on which the canceler was struck with the post-office marker, the circular knife edges would be inked, indeed the whole face of the canceler would be likely to be inked, and if it were, when struck on to the postage-stamp sufficiently to cut the same through, I think the stamp would be impregnated with ink, and in that sense it would become an inking device, though that I regard as a secondary or accidental part of the operation; my recollection of the specifications is, as I read the same, that the cancellation is a cutting cancellation.

X Q. 52. Are not the inside and outside segmental bands in that model inking devices?

A. In the sense and with the explanation given in my last answer they are, and so are the knife edges.

X Q. 53. Have you given your testimony with reference to this patent on the construction thereof, that from the specifications, drawings, and model, the inside and outside segmental bands were inking devices designed to make corresponding circular segmental ink marks on the postage-stamp?

A. The testimony will speak for itself; my recollection is that I have not, but have always spoken of these segmental guides, gauges, or bars as a protection against deep cutting.

X Q. 54. The specification also has the following words: "The nature of my improvements consists in so constructing canceling stamps that the same shall cut the postage-stamp or any stamp similar
468 thereto, without injury to the contents of the envelope or packet enclosed therein, and *at the same time cause a heavy circular mark upon the inside and one upon the outside* of that part of the stamp or letter frank canceled by the cutting device, *so that postage-stamp or letter frank shall readily show cancellation in ink.*" The italics in the quotation are mine. Please state whether that part of the specification affects the testimony you have given at all.

(Objected to, first, because the quotations said to be made in question are nowhere to be found in the patent to which counsel refers, because of the changes which counsel himself admits to have made in those quotations; second, counsel for defendant has no right in any manner to change the specifications, or any part of them; and third, were the quotations correct and truthful, they neither agree with the drawings or model, which clearly and distinctly show, as the court can see, and as the witness has testified, fall back from and above the acting surface of the post-dating device, and were therefore never intended for the purpose indicated in the question.)

A. I think not. I don't pretend to recollect all that I have said, but I know that I have regarded the instrument having the knife edges as a cutting canceler in contradistinction to an inking canceler in view of the words of the specification and the illustrations in the drawings, and that while, as I have said before (I think repeatedly), there would be ink carried with the cutting edges and with the surfaces of the gauges or guides, to a greater or less degree, probably according to the character of the ink used and the softness of the pad on which the post office marker and canceler might be pressed or struck, the whole face
469 of the instrument would be more or less inked, and, as your quotation indicates, there would doubtless be ink marks plain and distinct on the postage-stamp which was canceled by the knife edges cutting through the same; the unreliable and unsatisfactory cancellation by ink under the most favorable circumstances seem to have been fully appreciated, and I think clearly indicated by the inventor in the words of the specification from which you have quoted in your question; and I think it is evident that the inventor has put himself clearly on record that at the time when he drew that specification, that the cancellation of postage-stamps by ink was a defective cancellation, and the stamps could be fraudulently used again the second time, by simply washing off the ink or removing it by some chemical preparation, and that he proposed to give the public a post-office marker and postage stamp canceler, that would effectually stop the fraud on the Post Office Department by a second use of postage-stamps; and to accomplish that very desirable end, he proposes to make incisions into and through the postage-stamps, but not through the envelope or into the contents of the envelope, but in doing that he knew that there would be ink put on to the stamp, as a consequence of the manner of using the same in combination with the post-office marker, and that if there was any advantage in an ink cancellation he would have that to some extent as a consequence to the manner of using his combined instrument; but as I understand the invention to be set out, explained, and illustrated, these broad lines of ink, if they occur, do so wholly as a result of the manner of use of the combined instrument, and not as an essential part of the invention, which is an instrument so far as the cancellation is concerned

for cutting the postage-stamp and canceling thereby, so that it would not wash out or wash off.

Adjourned to Saturday, June 22, 1878, at 10 a. m.

470 NEW YORK, *Saturday, June 22d*, 1878—10 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before.

Cross-examination of SAMUEL P. KITTLE continued by SAMUEL B. CLARKE, esq., of counsel for defendant.

X Q. 55. The specifications of the patent, Defendant's Exhibit 147, also has the following words: "I construct the canceling stamp of steel of any size required in diameter, *and in length to correspond to and with the post-marking or rating stamp (D)*; and on the face of this canceling stamp I construct circular knives or cutters (*i, i, i,*) Figs. 2 and 3, which project somewhat below the face of the marking or rating stamp (D), Fig. 2, so as to give a somewhat harder impression, and in advance of that given by the said stamp (D), whereby the postage-stamp or frank upon which the same is used *is cut* through, *and at the same time make the bread dark lines* (*o, o,*) *on the inside, and the broad dark circular lines* (*e, e,*) *on the outside thereof, and which said circular lines are seen at Fig.* 3"; the italics in the quotation, except in the case of the words "is cut," are mine. State whether that part of the specification affects your testimony at all.

(Complainant's counsel objects to the question, and interposes the same grounds of objection to it as have been interposed by him to several questions of a similar character during the cross-examination of this witness.)

A. No; and I continue the quotation, taking it up where you leave off, as a reason for the answers given: "That part of the cancel-
471 ing stamp which makes the circular lines (*o* and *e*), Figs. 2 and 3, is made *somewhat below* the surface or the immediate edge of the said knives or cutters (*i*), and *serve as guides to prevent the said knives or cutters from cutting through* the postage stamp or frank, and the envelope containing the same, whereby *injury to the letter or contents within the envelope* or packet is prevented"; the italics are my own; so that I think the view I have taken is correct, to wit, these broad faces, as they are termed, that produce the dark lines, are gauges or guides that are absolutely necessary to prevent the most pernicious and destructive consequences, and the fact that they take up and impart ink type-like is a consequence or result of secondary or minor importance, if they do it at all practically, which, in my opinion, they do not with the construction described; that is to say, I do not believe that the invention described can be worked practically according to that description, for were those cutters to be driven through to the extent that the dark lines would be clearly and positively imprinted from contact with the guides or gauges heavily impressed or struck thereon, then the sharp edges or knife-cutters, in my opinion, would be driven through the postage-stamp, the envelope, and into or through its contents; furthermore, were the instrument made in pursuance to the specifications and drawings, Defendant's Exhibit 147, or like the model, Defendant's Exhibit 148, and the knife edges were driven through the postage-stamp, envelope, etc., to the extent that would with certainty imprint the dark lines referred to from the face of the guides or gauges, the operation would be pernicious and the instrument be worthless; without measuring to a mathematical certainty, if the eye is passed across the face

of the model, Defendant's Exhibit 148, and a sheet of paper is held up near by, it will be readily seen that a blow of sufficient force to
472 drive the knife edges through paper sufficient, which would be at least three or four layers of the thickness of ordinary paper, so as to bear with sufficient force on the canceling stamp to impart the distinct broad lines referred to, great damage would be liable to the contents of the envelope; besides, by applying a straight edge to the face of the postage marker of Defendant's Exhibit 148, it will be seen that it is impracticable to imprint the post-office mark and the broad line in the entire circumference of the postage-stamp canceler, as that part of the canceler stands materially below the corresponding part of the post-marker; and the same would be true if the other canceler (which hangs at the side in the exhibit) were in place, as by actual measurement they are the same height; and furthermore, by observing Fig 1 or Fig 2 of the drawings, the same peculiarity of construction will be found to exist; therefore, I again say that the description in regard to the dark bands or cancellation by ink is erroneous, notwithstanding I find it in the specification, as before stated; or in other words, it is a defective descripti n or specification, and the operation of the instrument would produce what I have described it, a cutting cancellation in distinction from an ink cancellation; and notwithstanding there might be ink carried by the knife edges to some extent, and possibly the broad lines spoken of in the specification might be found in some cases, chiefly, I think, however, on the extreme outside of the canceler, opposite the post-office marker; now, that my view may be fully understood, I will suppose the sharp edges to extend below the face line of the post-office marker, and the gauge or guide faces to be on a plane with the post-office marker, and that the edges are of the breadth or depth represented in the model, Defendant's Exhibit 148, and illustrated in the drawings, Defendant's Exhibit 147, and that the instrun ent so constructed were used in the ordinary way that post-marking and postage-stamp canceling instruments are now used, in my opinion, the knife edges
473 would not be imbedded sufficiently to cut through the postage-stamp, unless extraordinary force was given to the blow, or these knives were sharper and thinner than is contemplated or illustrated by the Patent Office Exhibits; therefore, I conclude again that the broad marks spoken of would not appear in such a construction and use.

Redirect-examination:

By Mr. NORTON:

R. D. 56. On your cross examination you have stated that, as far back as you can remember, you saw devices like Defendant's Exhibit 169 in several places, and on sale, and that they were generally well known, or substantially so. I desire you now to state whether, during that period, you saw any shirts or other clothing with postage-stamps on canceled by the use of an instrument like this one that was produced by the defendant's expert?

A. No.

R. D. 57. Did you ever see during that time any postage stamps that had been canceled by the use of a turtle, or a turtle used for that purpose?

A. No.

R. D. 58. Did you ever hear for that purpose of any such previous to the testimony of the defendant's expert?

A. No.

R. D. 59. In case the sharp edges in the cutting canceling device found

in Defendant's Exhibit 148 should retain ink after being struck upon the inking pad spoken of by you, would or would not that ink slide upward on the vertical-like surfaces of those knives at the time of their piercing the postage-stamp, if they pierce at all, at the time of giving a postmark on the envelope?

(Objected to as immaterial, and as not a proper redirect question.)

474 A. The ink probably would be pressed up as the knife entered the postage stamp, at the same time there doubtless would be some ink left on the canceled stamp.

R. D. 60. At the point where the piercing takes place?

A. On the margins of the cut.

R. D. 61. In using ink for the cancellation of postage-stamps by means of a instrument such as is represented by Complainant's Exhibit B, and Defendant's Exhibit 149, which are now shown you, would or would not the enameled or ink surface of the postage-stamp be somewhat disturbed or marred by means of the flat acting face of such canceling devices coming in forcible contact with such enameled or ink surface, and such postage-stamp be somewhat impregnated with the canceling ink carried upon such acting face by the blow given to the whole instrument at the time of giving the post-mark on the letter envelope?

(The same objection.)

A. Yes; the blow unquestionably would break the enamel to some extent, and the body of ink carried by the broad surfaces of the canceler would percolate or be absorbed more freely on that account.

R. D. 62. You may state, in view of your last answer, whether such cancellation as that spoken of in your last answer would or would not, in your opinion, be a perfect cancellation of the postage-stamp, and that, too, without injury to the letter envelope or its contents.

(The same objection.)

A. It would probably be as perfect a cancellation of the postage-stamp as could be had with any given ink.

475 R. D. 63. In answer to cross-questions 48 and 49 you stated to counsel for defendant that before giving your answer to that question you desired him to allow you to "take the patent and read a little and look at the drawings;" state whether he acceded to your requst on that and subsequent occasions in his cross-examination.

A. He did not. I had not the patent to refer to or refresh my recollection from, until answering the last cross-question No. 55, by the defendant's counsel.

R. D. 64. Where was the patent at the time you were answering?

A. The defendant's counsel had it.

R. D. 65. If I understand correctly your evidence on your cross-examination, I understand you to say, in substance, and to give as your opinion as an expert, that the canceling device found in Defendant's Exhibit No. 148, consisting of sharp edges, cutting knives with segmental guards in combination with those knives, to be useless, pernicious, mischievous, and worthless in practice or in practical use; am I correct in this understanding; and, if not, state wherein, and why not?

(Objected to as leading.)

A. I think the instrument is an impractical one for the purpose intended, to wit, postmarking and postage-stamp canceling. I doubt whether any modification that was not substantial could make it a practical instrument; it cannot be operated practically and according to the description of the patent, Defendant's Exhibit 147, in my opinion. I think if the canceler should be lengthened so as to accomplish all that is claimed for it, or set out in the specification, it would be sure to

cut through the envelope or packet into the contents, and being
476 made as represented it fails utterly to do what is claimed for it, in my opinion; furthermore, I do not believe, with the information I now have, that cancellation by knife edges of any form on a postage-stamp is possible without carrying with it fatal objections.

SAMUEL P. KITTLE.

Subscribed and sworn to before me this June 22, 1878.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned to Tuesday, June 25, 1878, at 9.30 a. m., on motion of defendant's counsel.

NEW YORK, *Tuesday, June 25th*, 1878—9.30 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before.

EUGENE G. DOANE, a witness produced on the part of the complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Eugene G. Doane; I am forty-four years of age; I reside in Jersey City, and I am a clerk in the New York City post-office.

Q. 2. State how long you have been a clerk in the New York City post-office.

A. Between twelve and fourteen years.

Q. 3. State what your duties are at the present time in the New York City post-office.

A. Changing the stamps, and stamping myself once in a while, when I get the chance.

477 Q. 4. What kind of stamps do you change, and what is the stamping referred to in the last answer?

A. The stamps I change are the new fashion stamps we have, with the screws like Defendant's Exhibit B, changing the dates and the time of day; the time of day we change every half hour; the month every month, and the day every day, once a day.

Q. 5. I now show you three exhibits, two already marked—the first, "Complainant's Exhibit, New York," and the second "Complainant's Exhibit, New York," and each "J. A. S., examiner, June 19, 1878;" take them and examine them, and state, if you know, where those envelopes were postmarked, and when, if you know?

A. This, No. 1, was postmarked in the domestic part of the general post-office, New York City, on the 26th of February, at five o'clock p. m.; this one, No. 2, was postmarked in the domestic part of the general post-office, New York City, on the 11th of May, at 11.30 p. m.; the third one was postmarked in the domestic part of the general post-office, New York City, on the 4th of February, at 11.30 a. m.

(Complainant's counsel offers the one designated as the third one in the witness's answer as "Complainant's Exhibit No. 3, New York, J. A. S., examiner, June 25th, 1878.")

Q. 6. Look at these exhibits again, if you please, and state for about what length of time, if you know, has that mode or manner of post-marking letter envelopes, and the cancellation of postage-stamps thereon, been carried on in the New York City post-office?

(Objected to on the ground that complainant should have put in his evidence of infringement before he rested his prima facie case,
478 and that this is not a proper question for this rebuttal.)

A. I should say between two and three years, as near as I can come at it.

Q. 7. Do you know who is the chief or head stamping clerk in the domestic division of the New York City post-office, for postmarking and postage canceling of letters?

A. Myself, Eugene G. Doane.

(Complainant's counsel offers these three exhibits above referred to in evidence, as they are at present marked, for the purpose of illustrating to the court the manner of postmarking on the envelope, and at the same time cancel the postage stamp in the New York City post-office.)

EUGENE G. DOANE.

Subscribed and sworn to before me this June 25, 1878.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned to Wednesday, June 26th, 1878, at 10 a. m., by consent.

NEW YORK, *Wednesday, June 26th*, 1878—10 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before.

Adjourned, by consent, to Thursday, June 27th, 1878, at 10 o'clock a. m.

479 NEW YORK, *Thursday, June 27th*, 1878—10 o'clock a. m.

Met pursuant to adjournment.

Present, Hon. George H. Williams, of counsel for complainant; Samuel B. Clarke, esq., of counsel for defendant.

MARCUS P. NORTON, Esq., a witness produced on the part of the complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Marcus P. Norton; I am 48 years of age; I reside at the city of Troy, N. Y., and am a lawyer by profession and practice.

Q. 2. Reference is made in the bill in this case to a declaration of trust, signed by William W. Secombe, bearing date on the 4th day of March, 1871, and delivered by him to Helen M. Ingalls; do you know what has become of that declaration of trust?

(Objected to on the ground that no evidence having been given on that matter in complainant's prime facie case, and none in the defense, it is now too late in this rebuttal to take it up.)

A. I do.

Q. 3. State what you know about it.

(The same objection.)

A. At the time of the making of the settlement with Mr. Secombe, spoken of in my testimony delivered in Troy, before Mr. Brown, as special examiner in this case, Mr. Secombe required that the
480 original declaration of trust made by him to Miss Ingalls should be surrendered to him. It was so surrendered to him. I personally delivered it to him and he accepted it.

Q. 4. Have you seen it since, or do you know where it is?

A. I do not know where it is, and I have seen it but once since the time of that settlement, and that was soon after its delivery to him.

Q. 5. Look upon the paper which I now show to you, marked Norton, A, E, O, and state what it is, and where and when you obtained it, if you obtained it at all.

A. I have examined that paper. It is a copy of the deed or declara-

tion of trust from Mr. Secombe to Miss Ingalls, and referred to by me in my testimony this morning; I obtained this copy from Mr. William W. Secombe; the time I do not now remember, but believe it to have been not long after the settlement spoken of.

(Paper offered in evidence and marked Complainant's Exhibit, Norton, A, E, O, June 27th, 1878, J. A. S., Ex'r.

Objected to: First, on the ground above stated; second, because a sufficient foundation for secondary evidence has not been laid; third, because it is not proved to be a copy by the person who made it, or by any one who has compared it with the original.)

Cross-examination:

By Mr. CLARKE, of counsel for defendant:

X Q. 6. Whose handwriting is that copy in?

A. I do not know; I have never seen it anywhere, excepting in this paper.

481 X Q. 7. How do you know the paper is a true copy?

A. By comparing it with the original with Mr. Secombe, the original then being in Mr. Secombe's possession.

X Q. 8. Who is Charles P. Barnard, and where is he?

A. Charles P. Barnard is a retired merchant, I think, and resides in the city of New York, on some street opposite Gramercy Park; the street I do not now remember, and he is the same person who witnessed the assignment in trust by Miss Ingalls to Mr. Secombe, of which the original of this paper was and is a part.

X Q. 9. What did his business use to be, and where was it carried on?

A. I only know about that from Mr. Barnard; I never was personally acquainted with him until after, as I understood from him, he had retired from business. Since that time I have understood that he had been in business again on Broadway, in this city, and that was the glove and corset business; whether he is in that business now, or not, I do not know.

X Q. 10. On what side of Gramercy Park did Mr. Barnard live, and how near the park, and when?

A. I think he told me that he was boarding on the west side of Gramercy Park, and that was about a year ago.

X Q. 11. Did you ever know of his ever living near Gramercy Park?

A. Only what he told me.

X Q. 12. When did you see him last?

A. I saw him last in this city within a month after M. William W. Secombe died, which was, if I am not mistaken, in September last. Mr. Secombe died at the Westminster Hotel.

X Q. 13. Where did you then see him, Mr. Barnard?

482 A. I met him on the horse cars on the Broadway and Seventh Avenue railway cars, passing University Place, in this city; he was then on his way to his residence, as he told me.

X Q. 14. Whereabouts on Broadway did he carry on the glove and corset business, if you know?

A. I don't know the number; it was on the east side, not far from the St. Nicholas Hotel, and in a new store built there within three or four years, and I only know that from what Mr. Barnard himself told me. Mr. Barnard was a personal friend, and, if I am not mistaken, a relative of Mr. Secombe's.

X Q. 15 .In whose handwriting is the endorsement "Norton," A. E. O, on the back of that paper?

A. I don't know for certain; but can give my opinion about it.

X Q. 16. I want your opinion as to whose handwriting it is, if you know the handwriting of the person who you think made it.

A. My opinion is that it was written by Judge Williams, counsel in this case.

X Q. 17. When, and for what purpose, if you know?

A. I don't know when, and if he wrote it, I suppose it must have been for the purpose of making it an exhibit in this case.

X Q. 18. When did you last see the file of your caveat of 1853 in the Patent Office?

(Objected to this question on the ground that it does not relate to the subject of the direct examination, and is new matter, and if the counsel proceeds in the examination, he must consider Mr. Norton as his own witness as to such new matter.

Defendant's counsel states that Mr. Norton having been called as a witness for complainant at Troy, and having testified about that
483 caveat, he now intends to cross-examine witness further in regard to it, he having been recalled by the complainant.)

A. The last time that I was in the city of Washington Judge Williams and myself went to the Patent Office and saw the Commissioner of Patents; Mr. Williams enquired for that file, and the Commissioner of Patents sent for it, and we saw it in the Commissioner's room, and in his presence; I have not seen it since then, and that was during the time that the defendant was taking testimony in Washington last spring; I don't remember the exact time; I think it was in the month of March or April.

X Q. 19. Did the file then contain the "additional paper" of August 7, 1854?

A. It contained a paper of that description.

X Q. 20. In your handwriting?

A. In my handwriting.

X Q. 21. When was that paper made by you?

A. During the pendency of the application by Shavor and Corse for the reissue of the original patent mentioned in the bill in this case, on the reissue of which this suit is founded; that was in the summer of 1864, and it was used in that application for that reissue, and it belongs in that reissue file, and that copy is a true and correct copy of the original paper made and signed by me on the 7th day of August, 1854, at Tinmouth, Vermont, and by me sent to the Patent Office by mail from that place, at that time.

X Q. 22. I understand you to mean "that the additional paper" which was in your caveat file last spring was not made by you in the year 1854, and was not made until about ten years later; is that correct?

A. My last answer explains that.

X Q. 23. That paper is not in your handwriting, as you wrote in the years 1853 and 1854, is it?

484 A. It is not.

X Q. 24. But is in your handwriting, as you wrote in the year 1864, is it?

A. I can't say about that; I think it is, however; I was sick at the time I wrote it; I drew it from a certified copy of the Patent Office of the original papers then in my possession; I don't think it will vary much from my handwriting at that time.

X Q. 25. Are your present answers on this point substantially the same as your sworn answers to the charges made against you by Commissioner Leggett?

A. So far as the matters mentioned in that paper, I have no doubt that they are substantially the same.

Redirect examination:

By Hon. GEORGE M. WILLIAMS, of counsel for complainant:

R. D. 26. When, to your knowledge, was the question first raised in the Patent Office as to the time when that "additional paper" in the caveat of 1853 was filed?

A. I never heard or knew anything about it until on the morning that M. D. Leggett, then Commissioner of Patents, handed to me a paper signed by him attempting to disbar me from practising before him as Commissioner of Patents, and that paper I now have in my possession, and that was either in August or September, 1871.

R. D. 27. Were you notified by Leggett that you were disbarred from the Patent Office before any charges against you were made or filed, or any proceedings were had in reference to such charges?

(Objected to as immaterial.)

A. Yes, sir; and that was in writing, and not otherwise.

485 R. D. 28. Prior to that time, were not the files of that caveat referred to in legal proceedings, and certified copies made by the Patent Office, without any question as to the correctness of those files?

(The same objection.)

A. Yes, sir; on several occasions, in the Patent Office, in applications for patents and reissue of patents by myself, they were so used and referred to; and in the courts of the United States they were twice so used and referred to, and I never heard or knew in any manner whatever about there being any trouble whatever about this or another caveat of mine, until Mr. Leggett handed me his written order of disbarment from practising.

R. D. 29. Was there a certified copy of "that additional paper" used in the case of Shavor and Corse vs. The United States, in the Court of Claims?

(The same objection.)

A. Yes, sir; the same identical certified copy caveat filed in this case by the complainant was used in that court and in that case.

R. D. 30. Do you know who abstracted the original "additional paper" referred to from the files of your caveat of 1853 and substituted therefor the copy to which you have referred?

A. I do not.

R. D. 31. Did you do it, or cause it to be done?

(Objected to as assuming it was done.)

A. I did not; and for aught I know that paper may still be somewhere in the Patent Office, and as to that I know nothing.

R. D. 32. When this question was raised as to a change in the files of your caveat of 1853, was there pending between you and other
486 parties controversies in the Patent Office as to your rights under your patent of 1863 and other patents?

(Objected to as immaterial.)

A. There was no controversy in the Patent Office at that time with reference to the patent of 1863; but there had been outside of the Patent Office with reference to that patent; there was a controversy in the Patent Office at that time, and for several months previous thereto, with reference to my patent of January 14, 1862, upon revolving date wheels; that controversy was with a person by the name of Thomas J. W. Robertson, who has been examined as an expert in this case on the part of the defendant.

R. D. 33. Who were the principal parties in the contest outside of the Patent Office with you about the patent of 1863?

(The same objection.)

A. Jeremiah D. Green, Charles Eddy, Jacob Shavor, Albert C. Co se, and Frederick G. Ransford, all of the city of Troy, N. Y.; Peter Low, then of Cleveland, Ohio, and William B. Hatch, of the city of New York, were the principal parties.

R. D. 34. Did Jeremiah D. Green claim to be at that time a patent agent or lawyer, and was he in the habit of frequenting the Patent Office?

(The same objection.)

A. He claimed to be a patent agent, and he was frequently in the Patent Office, and signed and filed in the Patent Office several papers adverse to myself, and claimed to be the agent or attorney of the parties I have above named, both in the Patent Office and out of it. I would like to add one more name to my last answer; that name is Silas
487 H. Sweetland, who then resided at the city of Washington, and who acted in concert with Jeremiah D. Green as agent or attorney for the parties above named.

R. D. 35. Certain papers have been filed in this case by the defendant, showing that some sort of an investigation was made in the Patent Office on charges made against you; was the evidence in that case by witnesses who were examined and cross-examined, or did it consist of ex parte affidavits?

(The same objection.)

A. Almost all of the so-called evidence produced before the Commissioner at the time mentioned in the question was by ex parte affidavits, which I never saw or knew anything about until they were turned out of a basket on to the table before the three persons appointed by the Commissioner to conduct those proceedings, and those persons I did not know who they were to be until I saw them seated at one side of a long table to commence those proceedings; the evidence I have reference to in this answer is that furnished by the Commissioner of Patents at that time to sustain his so-called charges.

R. D. 36. Did you have any opportunity to cross-examine those witnesses?

A. I did not.

R. D. 37. Did you ask to have the witnesses brought before those examiners, so that you might examine or cross-examine them, and what was their ruling on the subject?

(The same objection.)

A. I not only asked that as my right, but I asked permission to go to the residences of those parties and take their testimony before a
488 commissioner; both of these applications were refused by the then Commissioner of Patents, and I was told they would spend no time in any such manner.

R. D. 38. Were any of those affidavits made by any of the persons whom you have named in this deposition?

(The same objection.)

A. There were.

R. D. 39. State all you know about it.

(The same objection.)

A. Peter Low made one; Jacob Shavor made one; Frederick G. Ransford made one; the last two were in the handwriting of Jeremiah D. Green, and some paper, either a statement or an affidavit, was made by Mr. Green and read on that occasion; whether that was filed in the

case or not I don't know, because I applied for a certified copy of it and it could not be found, but I have certified copies of the other affidavits.

R. D. 40. Had you reason, then, to believe, and do you believe that M. D. Leggett, then Commissioner of Patents, was your personal enemy at that time?

(The same objection.)

A. I then had reasons to believe that he was a personal enemy of the most malignant kind, and I have never seen the time since that I have not believed him to be such.

R. D. 41. Was a certified copy of that "additional paper" in your caveat of 1853 used in the case of Shavor and Corse against Hoole?

(The same objection.)

489–499 A. I was a witness in that case and read from the witness stand a duly certified copy of that caveat, including the "additional paper," dated August 7, 1854.

R. D. 42. Did you, on that examination of charges before referred to, make any application as to calling witnesses for yourself; and, if so, what was said and done about it?

(The same objection.)

A. I made such an application and personally made a long argument showing the reasons why my application should be granted; that application was refused; I thereupon asked the Commissioner of Patents to call a Mr. Cranch as a witness; that he refused; Mr. Cranch was a keeper of the secret archives of the Patent Office in which my caveats were filed, and at that time was in the Patent Office building.

MARCUS P. NORTON.

Subscribed and sworn to before me this June 28, 1878.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned to Saturday, June 29th, 1878, at 10 o'clock a. m.

NEW YORK, *June 29th*, 1878—10 o'clock a. m.

Met pursuant to adjournment.

Present, Marcus P. Norton, esq., of counsel for complainant, and Samuel B. Clarke, esq., of counsel for defendant.

500 MARCUS P. NORTON, Esq., recalled by the complainant, testifies as follows:

Q. 43. Have you heretofore been examined in this case as a witness before this examiner; and, if so, were you sworn?

(Defendant's counsel objects to this witness being examined for the third time in this case; also objects to his acting as counsel and witness at the same time.)

A. I have been examined as a witness, and was sworn.

Q. 44. State, if you know, the reason why Judge Williams, complainant's counsel, is not here to day.

(The same objection, also as immaterial.)

A. Judge Williams stated to me night before last, at the Metropolitan Hotel, in this city, that professional engagements in Washington, D. C., imperatively required his presence in Washington on Friday morning, and he left that evening for that purpose, and requested that I should conduct the proceedings to the close of the examination before this examiner.

Q. 45. Look at two papers attached together in one package, and

marked Complainant's Exhibits Norton, Nos. 10 and 12, and state what they are, if you know, and for what purpose they were prepared.

(The same objection.)

A. The exhibit Complainant's Exhibit Norton, No. 12, is an original affidavit made by myself on the 22d day of August, 1871, at the city of Washington, District of Columbia, before Chas. Cons.
501 Callan, a notary public, then residing in that city; it was made by me for the express purpose of explaining to the Patent Office the nature and character of a paper which on that day I was to offer for record in that office. On that day I went to the Patent Office with the paper which I desired to be entered on the records, and also with this affidavit, showing that the paper I offered for record was but a copy of an original paper that had been used in the files of my application for a patent on wheel dating stamps, and dated January 14, 1862, which, I found on inspection of those files, the said original paper had disappeared therefrom. My purpose in recording that paper was to preserve it by record, so that if the copy I then had should afterwards disappear from the then pending application for a reissue of the patent above named, I would then have a record in the Patent Office for any purpose that might be required under that patent. This affidavit to which I now refer as Complainant's Exhibit Norton, No. 12, I also desire to have recorded, together with the paper I then on that day offered for record; the application to have this affidavit recorded, as I have stated, was refused; the other paper was received for record and the fees paid upon it, and the record of it was promised me; a day or two after the record of that paper was refused, and the paper was retained by the Commissioner of Patents. The Complainant's Exhibit Norton, No. 10, is an affidavit made by the notary public before named by me, for the purpose of showing that on the 22d of August, 1871, I made the affidavit (Complainant's Exhibit, No. 12) before him and under his official seal, and also to show that I explained to him the purposes to which I intended to use the affidavit, Complainant's Exhibit Norton, No. 12. This affidavit Exhibit, Norton, No. 10, was made by Chas. Cons. Callan, the notary public above referred to, on the 14th day of September, 1871, under the seal of and before H. Clay Johnson, a notary public
502 then residing at the city of Washington. These two affidavits I offered to use before the Commissioner of Patents, or the commissioners appointed by him to hear and determine certain charges which that Commissioner had preferred against me, in writing, some time in September, 1871; that offer was refused, and I was denied the privilege of reading and filing these affidavits on that occasion, which, had I been permitted to have done, would have fully and entirely explained my conduct in offering to have the paper above referred to entered of record in the United States Patent Office. That paper which I then and there offered to record on the 22d August, 1871, was wholly and entirely in my own handwriting, on clean new paper, and the ink had not set in its color at the time when I offered it for record; the folding of that paper in the usual way was of such very recent date, at that time, that when it was put down on a table without any band on it, it would partially open or spring apart. Every part of that paper, including the paper itself, the writing, and the folding of it, would show to any man then living on God's green earth—unless he were a fool, knave, or a scoundrel—that it was a copy, and only a copy, of some paper.

(The last part of answer objected to as irresponsive.)

Q. 46. Look at a paper marked Complainant's Exhibit Norton, No. 14,

and state, if you know, what it is, and for what purpose it was prepared.

A. This paper, Complainant's Exhibit Norton, No. 14, was prepared by me before 9 o'clock on the 23d of August, 1871, in the city of Washington, D. C.; it is a communication addressed to the then Commissioner of Patents; it relates to an application then pending for a reissue of my letters patent on revolving dates, dated January 14, 1862; it also refers to and relates to the paper that I have above
503 referred to as having been offered by me for record in the Patent Office on the 22d of August, 1871, and explains the reasons and the purposes I had in view in offering that paper for record; it also relates to and refers to my affidavit of explanation dated the 22d of August, 1871, and now Complainant's Exhibit Norton, No. 12; it also asks for and demands of the Commissioner of Patents an interference case between the pending application for a reissue of my patent dated January 14, 1862, and the letters patent granted to T. J. W. Robertson dated September 22, 1857, and also with "a certain patent granted upon Marcus P. Norton's application for a patent, which is dated August 9, 1859," each containing the same identical invention. On the morning of the 23d of August, 1871, I took this paper to the United States Patent Office, expecting to obtain the paper that I had offered for record the day before, and together with my affidavit, Complainant's Exhibit Norton, No. 12, to place each of these papers on file in the United States Patent Office in my application then pending for a reissue of the patent of January 14, 1862. On making application for that paper which I had offered for record the day before, for the purposes above stated, I was told by the clerk to whom I applied that the Commissioner of Patents had refused to allow it to be recorded, and that the Commissioner desired to see me at his room. I immediately went to the Commissioner's room, and after having said to him "Good morning, Mr. Commissioner," he handed to me, without returning my morning salutation, a paper, which I now hold in my hand and will read:

"DEPARTMENT OF THE INTERIOR, PATENT OFFICE,
"*Washington, D. C., Aug. 23d*, 1871.

504 "Until further orders, Marcus P. Norton will not be permitted to examine any papers, look into any file, or transact any business in the Patent Office except by and through some respectable and accredited attorney.

"M. D. LEGGETT,
"*Commissioner of Patents.*"

And I ask to have this paper marked Complainant's Exhibit Norton, No. 16, J. A. S., ex'r, June 29, 1878. On the back of Complainant's Exhibit Norton, No. 14, there is an affidavit made by myself on the 14th of September, A. D. 1871, under the seal of and before Chas. Cons. Callan, notary public, the person above referred to as having made the affidavit Complainant's Exhibit Norton, No. 10, and before whom I made the affidavit Complainant's Exhibit Norton, No. 12. This affidavit explains itself, and I desire to have it marked Complainant's Exhibit Norton, No. 18, J. A. S., ex'r, June 29, 1878.

Q. 47. State, if you know, where the papers marked Complainant's Exhibit Norton, No. 10, No. 12, No. 14, No. 16, and No. 18 have been since the respective dates thereof.

(The same objection.)

A. They have been in my possession since that time and until this present time.

Q. 48. Look at a paper dated United States Patent Office, Washington, D. C., October 22, 1872, and state what it is, if you know.

A. It is a letter addressed to W. W. Secombe, No. 7 Park Place, New York City, signed M. D. Leggett, Commissioner, which I will read:

"U. S. PATENT OFFICE,
"*Washington, D. C., Oct.* 22, 1872.

505 "SIR: In your letter of the 5th inst., calling for copies, you request among others 'duplicates of M. P. Norton's affidavits filed in explanation and defense of charges preferred against him by the Commissioner of Patents, etc.' In reply I have to say that no such papers were filed by him, his defense being verbal. The other copies called for have been sent.

"Respectfully,

"M. D. LEGGETT,
"*Commissioner.*

"W. W. SECOMBE, Esq.,
"*No. 7 Park Place, New York City, N. Y.*"

And I desire to have this marked Complainant's Exhibit Norton, No. 20. J. A. S., ex'r, June 29, 1878.

Q. 49. State where you obtained the paper marked Complainant's Exhibit Norton, No. 20.

(The same objection.)

A. It was delivered to me by W. W. Secombe some time in the fore part of Nov., 1872, and has been in my possession ever since that time until the present time.

Complainant's counsel now offers in evidence, and for the purposes of evidence, the following several papers, to wit, Complainant's Exhibit Norton, No. 10; Complainant's Exhibit Norton, No. 12; Complainant's Exhibit Norton, No. 14; Complainant's Exhibit Norton, No. 16; Complainant's Exhibit Norton, No. 18, and Complainant's Exhibit Norton, No. 20, each of which have been referred to and testified about by the
506 witness now on the stand, and complainant's counsel requests that the marking and filing by the examiner stand upon each paper as made by the examiner during the progress of the examination of this witness.

Complainant's counsel here, and at all times, reserves the right to withdraw from the files of this court these several original papers, when this court shall have determined the issues involved in this cause.

Defendant's counsel objects to each of the papers. First, that it is immaterial; second, that it is not properly proved.

Complainant's counsel here produces in evidence a certified package of several papers with drawings thereto attached, from the files of the United States Patent Office, in the matter of the application of Marcus P. Norton and C. A. Haskins, filed Oct. 15, 1857, for hand printing stamps, which several papers were certified to by J. M. Thatcher, Acting Commissioner of Patents, under the date of Oct. 19, 1872, and are under one certificate and seal of the United States Patent Office, which package is here marked Complainant's Exhibit Norton, No. 22, J. A. S., Examiner, June 29, 1878.

Complainant's counsel here states that he here offers this package of several papers and drawings for the purpose of showing to the court

that the same identical invention and improvement described in the "additional paper," dated August 21, 1855, filed in Marcus P. Norton's caveat of June 21, 1855, and referred to by the Commissioner of Patents in the written charges preferred by the Commissioner
507 of Patents against the said Norton in the Patent Office, on or about the 29th August, 1871, is contained in the drawings and description of this application filed in the United States Patent Office about two years subsequent to the date of the caveat of, on, or about the 21st June, 1855, and extending into the year 1856, and about fourteen years previous to the so-called charges made by M. D. Leggett, in 1871, as Commissioner of Patents.

And also to show to the court that the same invention that was patented to T. J. W. Robertson, the defendant's expert witness in this case, is also contained in this certified package of papers and drawings filed in the United States Patent Office about twenty days subsequent to the date of Robertson's said patent.

And also to show to this court that, had the defense in the case of T. J. W. Robertson against the Secombe Manufacturing Company been properly and truthfully presented, not only in the evidence but in the argument in that cause before Judge Blatchford, that that able and upright judge might have, and in all probability would have, been saved the casting of reflections upon the said Marcus P. Norton, in his written decision in that case.

And also to show that that judge was imposed upon in that case both by the complainant and defendant with reference to that caveat, and the "additional paper" therein contained, then and there examined and passed upon by him in his said decision. That for some cause
508 the real facts and the truth concerning that caveat and said "additional paper" were withheld from the consideration and examination of that judge.

Complainant's counsel states that he offers this for no other purpose than substantially as above stated, because it has nothing whatever to do with the letters patent upon which this suit is founded, or with the caveat of October, 1853, or the "additional paper" in that caveat, dated August 7th, 1854.

Complainant's counsel here offers in evidence, and for the purposes of evidence, the above-named package of several papers and drawings, certified to under the seal of the Patent Office, and by the Acting Commissioner of Patents, on the 19th of October, 1872, as before stated, and which has been marked by the examiner "Complainant's Exhibit No. 22, J. A. S., Ex'r, June 29, 1878," and requests that the marks above quoted may stand as they appear on the exhibit to designate it as the exhibit contained in this offer.

(Objected to as immaterial.)

Q. 50. State where, and of whom, if from anybody, you obtained that package of certified papers just marked by the examiner as "Complainplainant's Exhibit Norton, 22, J. A. S., Ex'r, June 29, 1878," and the circumstances, if any, under which you obtained it.

(The same objection.)

A. I obtained this package of papers at the city of New York, from William W. Secombe, about the time that he settled the matter of
508*a* differences between himself and myself, and with Miss Helen M. Ingalls, and reassigned and reconveyed to her each and every patent that had been assigned by her in trust, either to him or to the "Secombe Manufacturing Company," which was some time in the year 1873, if I am not mistaken.

MARCUS P. NORTON.

Subscribed and sworn to before me, this June 29th, 1878.

JOHN A. SHIELDS,
Examiner, etc.

Complainant's counsel here offers in evidence a certified copy of an assignment recorded in Liber O, 22, page 12, signed Jacob Shavor and Albert C. Corse, to Charles Eddy, of the city of Troy, N. Y., and dated the 18th of December, A. D. 1876, and certified to under the seal of the United States Patent Office by W. H. Doolittle, on the 17th of May, 1878, consisting of four sheets of paper, besides the Patent Office certificate, and asks it to be marked Complainant's Exhibit Shavor, Corse, and Eddy, J. A. S., Ex'r, June 29, 1878.

(Objected to as immaterial.)

Complainant's counsel offers in evidence a package of several papers from the records of the Patent Office, under one seal and certificate of the United States Patent Office, dated 22d of August, 1871, which certificate is in the following words and figures, to wit:

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files
508*b* of this office of the caveat of M. P. Norton, filed June 21st, 1855, for railroad ticket printing press. In testimony whereof, I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this 22d day of August, in the year of our Lord one thousand eight hundred and seventy one, and of the Independence of the United States the ninety-sixth.

[L. S.] M. D. LEGGETT,
Commissioner.

The first paper under the above-named certificate is a petition to the Commissioner of Patents, by Marcus P. Norton, and is dated Tinmouth, Vt., June 4th, 1855.

The second paper is a specification signed Marcus P. Norton, and entitled "Subjoined Description of Railroad Ticket Printing Press."

The third paper is an oath made by Marcus P. Norton, on the 11th day of June, 1855, at Tinmouth, Vt., and before George Capron, jr., a justice of the peace.

The fourth paper is a letter from Marcus P. Norton to the Commissioner of Patents, dated August 10, 1870.

The fifth paper is entitled as follows, to wit: "Additional paper to Railroad Printing Press." It is dated Tinmouth, Vt., August 21st, 1855, and is addressed to the Commissioner of Patents, and signed Marcus P. Norton.

The sixth paper is a letter addressed by Marcus P. Norton to the Commissioner of Patents, and is dated Tinmouth, Vt., August 21st, 1855.

509 The seventh paper is a paper signed T. J. W. Robertson, asking the Commissioner of Patents to furnish him with a copy of the caveat of Marcus P. Norton, for railway ticket printing press, dated June 21st, 1855, and also Marcus P. Norton's consent thereto, dated August 5th, 1871.

The eighth paper is a paper representing what is known as the file wrapper of the above-named caveat.

Complainant's counsel asks to have the above described package of

papers marked Complainant's Exhibit Norton's Caveat, dated June 21st, 1855, and it is so marked, J. A. S., Examiner, June 29, 1878.

(Defendant's counsel objects to the above-described papers as being immaterial.)

Complainant's counsel reserves the right to withdraw the above-named paper from the files of this court, after this court shall have heard and determined the issues involved in this suit.

Complainant's counsel also offers in evidence a package of several papers, namely, of sixteen separate and distinct papers in writing, under one seal and certificate of the U. S. Patent Office, and of J. M. Thatcher, Acting Commissioner of Patents, under the date of the 19th day of October, A. D. 1872. The certificate to said package of papers reads as follows:

"To all persons to whom these presents shall come, greeting:

"This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of letters pat-
510 ent granted Marcus P. Norton, assignor to himself and Charles Eddy & Company, dated January 14th, 1862, No. 34184, for hand stamps for post-office. In testimony whereof, I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this 19th day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-seventh.

[L. S.] "J. M. THACHER,
"*Acting Commissioner.*"

Complainant's counsel asks to have the above-described package of several papers marked Complainant's Exhibit, file wrapper and contents of Norton's letters patent of January 14th, 1862, and the same is so marked, J. A. S., Examiner, June 29, 1878.

Defendant's counsel objects to the above-described papers being received in evidence on the ground that they, and each of them, are immaterial.

Complainant's counsel here states that the rebuttal proofs on the part and behalf of the complainant, in answer to any testimony that has been already taken by the defendant, is now closed.

Complainant's counsel, however, reserves the right to call as a witness D. D. Beeby, of Hudson, Ohio, Jacob Schwartzenburg, formerly of Cleveland, Ohio, and George H. Haskell, now residing at Cleve-
511 land, Ohio; and also the right to recall James R. Haskell, a witness in this case for the complainant; and also the right to call as a witness James Welsh, now residing in the State of Ohio, in case complainant's counsel shall deem it best so to do.

Adjourned sine die.

512 United States circuit court for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, U. S. POSTMASTER, NEW York.

SOUTHERN DISRTICT OF NEW YORK, *ss:*

I, John A. Shields, an examiner duly appointed by the circuit court

of the United States for the southern district of New York, do hereby certify that the several witnesses named in the foregoing depositions appeared before me on the days therein specified, and each of said witnesses being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in said entitled cause, gave the testimony which is herein contained. That said testimony was reduced to writing in the presence of said witnesses, and from their statements, by a clerk duly appointed by me for that purpose, and after the same had been carefully read over to said witness, they severally subscribed the same.

I further certify that Marcus P. Norton, esq., of counsel for complainant, and Samuel B. Clarke, esq., of counsel for defendant, were present at the examinations.

JOHN A. SHIELDS,
Examiner.

513 CHRISTOPHER C. CAMPBELL, COMPLAINANT,
versus
THOMAS L. JAMES, DEFENDANT.

IMPEACHMENT.

Complainant's sustaining testimony.

Complainant's testimony in support of and sustaining the character of Marcus A. Norton, for truth and veracity, he being a witness called and examined on the part and behalf of the complainant.

Infringement of Marcus P. Norton's letters patent, dated April 14th, 1863, No. 38175, and last reissued in two divisions, A and B, October 4th, A. D. 1870, for improvements in post marking letters or other mail matter, and in cancellation of postage-stamps thereon.

514 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMP'T AND ASSIGNEE IN TRUST,
vs.
THOMAS L. JAMES, DEF'T AND U. S. P. M. AT the city of New York.

To STEWART L. WOODFORD,
United States attorney and solicitor for defendant, New York:

SIR: You will please to take due notice, and notice is now and hereby given to you, that on the 31st day of July, A. D., 1878, at 10 o'clock in the forenoon of that day, and before Irving Browne, esq., a special examiner of this court, duly and regularly appointed by the order of this court, upon the written stipulation of counsel for both complainant and defendant in this cause, I shall proceed to take testimony at the office of said Irving Browne, on First street, in the city of Troy, county of Rensselaer, and State of New York, in support of the character of Marcus P. Norton for truth and veracity, a witness for complainant in this cause, whose character for truth and veracity you have attacked. You are requested to be present on that occasion, and to cross-examine

such witnesses as I shall then and there produce, as well as to
515 attend to the examination of any other matter in rebuttal proof in this cause of any proof produced by you, etc. You are also hereby notified that I shall continue examination from time to time, until I shall have examined such number as I may deem best to call and examine on this question of your attempted impeachment of Norton.

Respectfully, etc.,

MARCUS P. NORTON,
Complainant's Solicitor, Troy, N. Y.

Dated July 27, 1878.

(Endorsed:) In the circuit court of the United States, southern district of New York. In equity. Christopher C. Campbell vs. Thomas L. James. Notice of time and place for taking of proof on the part of complainant. Marcus P. Norton, complainant's solicitor, Troy, N. Y.

Due personal service of the written named notice is hereby admitted this 27th day of July, A. D. 1878.

STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol.

516 I hereby certify that the foregoing is a correct copy of the notice of examination and admission of service thereof filed with me in the above-entitled cause.

IRVING BROWNE,
Special Examiner.

(Title.)

Proof final hearing for pl'ffs at Troy, July 31, before Irving Browne.

Present, Norton & Clark.

LUTHER GREENMAN, a witness called on behalf of the claimant, being duly sworn, testifies:

Q. 1. What is your name, age, residence, and business?

A. Luther Greenman is my name; I was born in 1821, fifty-seven years old; my residence is 69 North Second street, Troy, N. Y.; and my business is the furniture business, at 345 River street.

Q. 2. How long have you resided in the city of Troy?

A. Well, it is about thirty-two years; I can't tell within a few years; it is about that.

Q. 3. About how long have you been in the furniture business in this city?

A. About twenty-five years.

Q. 4. Have you, or have you not, been extensively engaged in that business in this city?

A. I have.

Q. 5. Do you know Marcus P. Norton, of the city of Troy?

A. I do.

Q. 6. About how long have you known him?

A. Well, I have known him from twenty to twenty-two years.

Q. 7. What has been his business in this city, so far as you have known it?

A. Well, he was a lawyer by profession.

Q. 8. Have you ever had any business dealings with him?

A. I have.

517 Q. 9. About how frequent or extensive, as near as you can now remember?

A. Well, I have had business transactions with him to large amounts from my first acquaintance with him; for, say the past six years, I have not had much business with him; my business transactions extended through a period of about sixteen years.

Q. 10. Have you the means of knowing his character in this city for truth and veracity?

A. Yes; perhaps I might qualify that a little by saying that I have as good an opportunity, perhaps, of knowing as anybody.

Q. 11. From your knowledge of his character and from your business transactions with him, would you believe him under oath?

(Objected to on the ground that it is not competent to ask the witness a question on the basis of his personal dealings with Mr. Norton, and also because it asks the witness' opinion on the basis of his personal knowledge of Mr. Norton.)

A. I would.

Q. 12. Do you consider his character for truth and veracity good or bad?

A. Good.

Cross-examination:

By Mr. CLARKE:

X Q. 13. What do you understand by the term "character"?

A. Well, now, a man's reputation is what I call character.

X Q. 14. What is a man's reputation?

518 A. The question is, what is a man's reputation, is it? Well, I should call a man's reputation his character.

X Q. 15. How do you determine what a man's reputation is?

A. Well, I form my conclusion of a man's reputation and character by dealings and business transactions with him, and if I find them all well, honorable, upright, square, and manly, I call that man an honorable, upright man.

X Q. 16. Do you, for that reason, say his reputation is good?

A. I do.

X Q. 17. Do you let anything else influence you in making up your mind whether a man's reputation is good or bad, besides your personal dealings with him?

A. No; I should not let anything else influence me with a man that I know to be an honorable and upright man.

X Q. 18. When on your direct examination you said that Mr. Norton's character was good, did you base that conclusion on your knowledge of him personally?

A. Yes.

X Q. 19. Did you base it on anything else?

A. No, sir.

X Q. 20. You relied entirely on your personal acquaintance and dealings with him; is that it?

A. I relied entirely on my personal acquaintance and dealings with him and his good character.

X Q. 21. Do you know what has been currently said about Mr. Norton in this community for the last ten years or so?

A. No, I don't.

X Q. 22. You have never heard anything said about Mr. Norton for the last ten years?

(Objected to unless the question is confined to the matter of truth and varacity.)

519 A. I have not.

(In view of the answer the objection is withdrawn.)

X Q. 23. Are you sure of that?

A. Not to my knowledge.

X Q. 24. Did you ever hear his character for truth and veracity discussed or talked about?

A. I don't know that I ever did.

X Q. 25. Would you remember it if you had?

A. I think I would.

X Q. 26. Mention the name of any person whom you know to be acquainted with Mr. Norton.

A. Mr. Browne, the examiner.

X Q. 27. Any other, not in this room?

A. Esek Cowen, his old law partner.

X Q. 28. Did you ever hear Mr. Cowen say anything about Mr. Norton's truthfulness?

A. I never did.

X Q. 29. Did you ever hear him speak of Mr. Norton?

A. I don't know that I ever did in the world; I don't know that I ever spoke to Mr. Cowen, and I don't know but I have.

X Q. 30 Suppose that it was generally said of a man in the community that he was untruthful; and suppose that you had had extensive personal dealings with that man, and he had always treated you fairly and honorably, would you say that his reputation was good or bad as regards truth?

A. Well, a man that I have dealt with for years for large amounts, and his transactions were all honorable, upright and manly with me, and I never had found an untruthful thing in him; I should call him a man of truth and veracity, notwithstanding what others might say about him.

X Q. 31. You would say his reputation was good?

A. I should.

520 X Q. 32. And you would believe him on oath as readily as you would another man against whom nothing has been said, would you?

A. I would.

X Q. 33. Even though his testimony were in direct conflict with what that other man said?

A. Yes; I would believe him as quick as the other man.

X Q. 34 What was the nature of your business dealings with Mr. Norton, which were so extensive for twelve or fifteen years?

A. Selling him furniture for his house and offices, and doing work for him appertaining to my business.

X Q. 35. Anything else?

A. No, I never did any other business outside my business; nor he for me.

Redirect:

By Mr. Norton:

R. D. 36. Did Marcus P. Norton, during the years you have named, and so far as you know, do a successful and lucrative business in his profession in this city?

(Objected to as immaterial, because the witness is not shown to have any basis of personal knowledge about it.)

A. Well, judging from the office room that he had, and the desks, and the splendid furnished offices that he had, I should say that he did.

L. GREENMAN.

Subscribed and sworn to before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

521 JAMES A. LAWSON, a witness called on the part of the complainant, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation?

A. J. A. Lawson; age, 52; stove manufacturer; residence, Troy, N. Y.

Q. 2. About how long have you resided in Troy?

A. About twenty-two years.

Q. 3. About how long have you been engaged in the business stated by you in answer to question one?

A. Nearly twenty years.

Q. 4. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 5. About how long have you known him?

A. About eighteen years.

Q. 6. Have you had any business transactions with him within that time?

A. I have.

Q. 7. Have you the means for knowing his character for truth and veracity?

A. From my knowledge of business affairs with him, I have.

Q. 8. Do you consider his character for truth and veracity good or bad?

(Objected to as immaterial, and because a proper basis is not laid for the question, and because it is designedly ambiguous.)

A. Good.

Q. 9. From your knowledge of his character, would you believe him under oath?

(Same objection, and as immaterial and irrelevant.)

A. I would.

522 Cross-examination:

By Mr. CLARKE:

X Q. 10. What firm in this city are you connected with?

A. Fuller, Warren & Co.

X Q. 11. What business dealings have you had with Mr. Norton within the last eighteen years?

A. Employing him for the purpose of getting out patents.

X Q. 12. Have you had any other business with him?

A. Nothing that might be considered of any account.

X Q. 13. Did you employ him to get out many patents?

A. I did; through Fuller, Warren & Co.

X Q. 14. Is he now your patent solicitor, or is he of that firm?

A. He is not.

X Q. 15. When did he last get out a patent for you?

A. I think it was in 1867 or '68.

X Q. 16. Have you employed him since?

A. I have not, to my recollection.

X Q. 17. Why did you cease to employ him?

A. Having do occasion for his services.

X Q. 18. Has anybody else done the business for you which Mr. Norton did for you previous to 1867 or '68?

A. No.

X Q. 19. Or like business?

A. No.

X Q. 20. In answer to question 7, you say you have the means of knowing what Mr. Norton's character for truth and veracity is; what are those means?

A. The answer to question 7 would answer that, "as far as my knowledge of business with him went."

523 X Q. 21. I understand you to mean that your means for knowing his character for truth and veracity are your own business dealings with him?

A. That is what I wish to convey.

X Q. 22. In making up your mind as to what his character for truth is, do you allow anything to influence you except your personal dealings with him?

A. I do not.

X Q. 23. Are you sure of that?

A. I shouldn't expressed it if I hadn't been.

X Q. 24. Those business dealings ceased ten or twelve years ago.

A. I think it was ten years.

X Q. 25. You do not allow what is currently said in the community as to Mr. Norton's character for truth and veracity to influence you at all in determining whether his character is good?

A. I was not aware that there was such a report current in the community, and of course, it would have no influence on my decision.

X Q. 26. Does what is currently said in your mind influence you at all in determining whether a man's character is good?

A. I was not aware that there were such current reports, and would not allow them to influence me if there were.

X Q. 27. Have you ever heard anybody say anything about Mr. Norton within the last ten years or so?

A. Yes.

X Q. 28. Did what was said relate to his truthfulness at all?

A. It did not.

X Q. 29. Have you ever heard his character for truth discussed at all?

A. I have no remembrance of any such discussion.

X Q. 30. About how frequently have you heard him spoken of within the last ten years or so?

524 A. But very little.

X Q. 31. State, in a general way, what you have heard within that time relating to him.

A. My knowledge of his truth and veracity has been received through other parties without any knowledge of my own.

(Answer objected to as irresponsive.)

X Q. 32. Please answer my last question.

A. I have heard remarked in conversation or report that they would not believe him under oath. It is so long since I heard anything about it that I don't remember the times or persons, and that was in relation to some suit in which Mr. Norton was interested, and I could not give the particulars of that.

X Q. 33. You have heard people say that they would not believe Mr. Norton on oath?

A. I have heard such reports in the manner before spoken of.

X Q. 34. Do you recollect whether those statements were made by people whom you regarded as respectable and trustworthy?

A. I don't now remember the persons who made these statements.

Redirect examination:

By Mr. NORTON:

R. D. 35. On your cross-examination you have spoken of the firm of Fuller, Warren & Co.; is not that house one of the most extensive houses in that business in this city or this part of the country?

A. It is so considered.

JAMES A. LAWSON.

Subscribed and sworn to before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

525 CALVIN S. SILL, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Calvin S. Sill; my age, 55; my residence, Troy, N. Y.; my occupation, a merchant.

Q. 2. About how long have you resided at the city of Troy?

A. Thirty-five years.

Q. 3. About how long have you been a merchant in the city of Troy?

A. Twenty-eight years.

Q. 4. Your place of business is on Broadway in this city; is it not?

A. It is.

Q. 5. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 6. About how long have you known him?

A. Personally about twelve years.

Q. 7. What has been the occupation of Marcus P. Norton during that time, so far as you know about it?

A. A lawyer.

Q. 8. Have you had business transactions with him in the line of your business?

A. I have.

Q. 9. Covering about what length of time have you had such business transactions with him?

A. Twelve years.

Q. 10. Have you the means of knowing his character for truth and veracity?

A. I have.

Q. 11. Do you consider his character for truth and veracity good or bad?

A. Good.

Q. 12. From your knowledge of his character, would you believe him under oath?

526 (Objected to on the ground that an improper basis is put, and that it is decidedly ambiguous.)

A. I would.

Q. 13. Would you believe him under oath?

(Objected to as immaterial and irrelevant.)

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 14. What kind of merchandise have you dealt in for the past twelve years?

A. Drygoods.

X Q. 15. What business relations have subsisted between you and Mr. Norton during that time?

A. I have sold him goods.

X Q. 16. Is that all?

A. That's all.

X Q. 17. How large bills of goods have you sold him, on the average?

A. Well, from fifty to one hundred and fifty dollars.

X Q. 18. In answer to question 10, you say you have the means of knowing what Mr. Norton's character for truth and veracity is; what are those means?

A. Judging from business relations.

X Q. 19. Do you mean the business dealings you have had with him?

A. Yes, sir.

X Q. 20. Have you any other means of knowing what his character for truth and veracity is?

A. Nothing more than his social relations and his character as a gentleman.

X Q. 21. How do you know what his social relations and his character as a gentleman are?

527 A. Well, I have met him socially, himself and family, in my own family.

X Q. 22. I understand you to mean that you judge his character for truth and veracity to be good from your own business and social relations with him; is that it?

A. It is.

X Q. 23. Do you allow anything else to influence your judgment upon that point?

A. I do not.

X Q. 24. You do not allow what people say about Mr. Norton to influence you at all, in determining whether his character for truth and veracity is good; is that it?

A. I do not allow scandal or anything of that kind to influence me.

X Q. 25. Are things said in this community derogatory to Mr. Norton's character for truth and veracity?

A. I presume there is.

X Q. 26. Have you any doubt about it?

A. No, sir; no more than I have about any other man's character.

X Q. 27. You have no doubt that things are said against Mr. Norton's character for truth and veracity?

A. I have no doubt of it.

X Q. 28. Now, judging from what is said on that point, and not at all from your business and social connection with Mr. Norton, state whether you would believe him on oath in a case in which he was interested, and in which his testimony was in direct conflict with that of a man against whom nothing derogatory to his truthfulness is said.

A. I should believe him, for I never allowed gossip to influence me at all.

X Q. 29. You don't believe that where there is smoke there is fire?

A. That is not the question as I understood it; I do believe that;

528 I do not believe that calumniation injures a man's character directly when he is well known.

X Q. 30. Would you say that a man's character for truth was good if you had had extensive personal dealings with him, and social relations of long continuance, in which he always acted squarely and honorably, and if it was currently and very generally said in the community that he was untruthful?

A. I should believe a man to be truthful until he told me a lie.

X Q. 31. Should you say his character was good under the conditions put in the last question?

A. Current reports have no effect with me in judging of a man's character.

X Q. 32. Well, should you say his character was good under those circumstances?

A. I should; for I place no confidence in calumniation or gossip, as I said before.

X Q. 33. Should you say that his reputation as to truth was good under those circumstances?

A. I cannot judge for others; but common report has no effect upon me as regards a man's character.

X Q. 34. Well, should you say a man's reputation was good under those circumstances?

A. It would be good with me, notwithstanding; I do not judge for others.

X Q. 35. You would swear that it was good, would you?

A. I would for myself, but not for others.

CALVIN S. SILL.

Subscribed and sworn before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

529 ALBE C. DANIELS, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is A. C. Daniels; age, 67; residence, Troy, N. Y.; and occupation, furniture dealer.

Q. 2. About how long have you resided in the city of Troy?

A. Forty-five years.

Q. 3. About how long have you been engaged in the business mentioned in your first answer?

A. Forty-five years.

Q. 4. Do you know Marcus P. Norton, of this city?

A. Yes, sir.

Q. 5. About how long have you known him?

A. Fifteen years, and perhaps longer, I should judge. I don't recollect.

Q. 6. During that time have you had dealings and business transactions with him in the line of your business?

A. Yes, sir.

Q. 7. Have those transactions been frequent and in considerable amounts?

A. Yes, sir.

Q. 8. Have you the means of knowing the character of Marcus P. Norton for truth and veracity?

A. Well, I have had a good deal of business with him, and I have

never seen anything but what was square, so far as I had any dealing with him.

Q. 9. What has been his business in this city, so far as you know?

A. He has been engaged in Patent Office business—a lawyer.

Q. 10. From your knowledge of his character, would you believe him under oath?

(Objected to because a proper basis is not laid, and as immaterial.)

530 A. I should.

Q. 11. You have personally well known him during the time you have stated, have you not, both socially and in business transactions with him?

A. I have.

Cross-examination:

By Mr. CLARKE:

X Q. 12. What has been the nature of your business transactions with Mr. Norton?

A. Well, we have sold him a number of bills of goods. The most were sold him by the firm of Daniels & Hitchins. Some have been sold him by me since that firm dissolved.

X Q. 13. What means of knowing Mr. Norton's character for truth and veracity have you except your personal dealings with him?

A. Well, sir, he was a man, so far as I know, who always bore a good reputation until he got into trouble financially. I always heard him spoken of highly.

X Q. 14. When was it he got into trouble financially?

A. About five or six years ago.

X Q. 15. Did you ever hear it said that he was untruthful, or anything like that?

A. I never did until the last two years.

X Q. 16. Within the last two years, however, you have heard it said that he was untruthful, have you?

A. A man told me so.

X Q. 17. Have you heard it from more than one person?

A. I have no recollection of more than one man.

X Q. 18. Have you ever heard his character for truth discussed, besides that one case?

A. I have no recollection of any except that one instance.

531 X Q. 19. About how frequently have you heard anything said about Mr. Norton within the past six years?

A. I could not tell you, sir.

X Q. 20. Has what you have heard been favorable or otherwise, during that time, to his character?

A. In one case that I have spoken of the man spoke quite unfavorably of him.

X Q. 21 (22). Does Mr. Norton owe you anything?

A. Yes, sir.

X Q. 22 (23). How much does he owe you?

A. I think in the neighborhood of nineteen hundred dollars at the time of his financial troubles.

X Q. 23 (24). How long has that been drawing interest?

A. Well, I couldn't tell you. It became due some time after he failed; I could not tell you how long.

X Q. 24 (25). About how long has it been drawing interest?

A. Six, seven, or eight years.

X Q. 25 (26). Do you expect to be paid by Mr. Norton what he owes you?

A. I do, if he ever gets able to pay. I had so much confidence in him that I trusted him for over one hundred dollars after the note was protested for non-payment.

X Q. 26 (27). Has the note ever been renewed?

A. Yes, and been kept alive.

X Q. 27 (28). When was it last renewed?

A. I can't tell you.

X Q. 28 (29). Was it within a year?

A. No, sir.

X Q. 29 (30). Within two years?

A. No, sir.

X Q. 30 (31). When do you expect that Mr. Norton will be able to pay?

A. I hope that he will pay it this afternoon, but I don't expect that he will.

532 X Q. 31 (32). About when do you expect that he will pay?

A. I could not tell.

X Q. 32 (33). Has Mr. Norton made any representations to you as to whether he ever expected to be able to pay it?

A. He has told me once or twice that if he ever got able to pay it he should. I haven't spoken to him about it in five years, as I remember.

X Q. 33 (34). Has he spoken or written to you about it within that time?

A. No, sir; I don't think that he has.

X Q. 34 (35). Has he ever stated to you that he would be able to pay as soon as the post-office stamp matter was settled with the government, or substantially that?

A. I have no recollection of his ever saying that. If he did say so, he must have said it several years ago.

X Q. 35 (36). Have you any reason to suppose that he expects to make anything out of this case in which he is engaged?

A. Well, I have heard other people talk about it, and they all supposed that he was going to make some money out of it if the case was settled.

X Q. 36 (37). Is that what you suppose?

A. I have no reason to suppose anything about it. All that I know about it is what other people have said about it. About four or five years ago Mr. Norton gave me a pamphlet containing General Dix's statement as to the value of the stamp, and that is all I have read about it, except what I have read in the newspapers.

X Q. 37 (38). According to what you have read, the stamp is one of great value, is it not?

A. I should judge so, sir.

X Q. 38 (39). And you understand that Mr. Norton is the inventor and patentee of it?

A. I do.

533 Redirect examination:

By Mr. NORTON:

R. D. 39 (40). On your cross-examination you have in substance stated that in all this city you have heard but one man speak of the character of Marcus P. Norton, for truth and veracity, in terms unfavorable to him. Will you please state the name of that person?

A. His name is Ransford. I don't know his given name.

R. D. 40 (41). Were you present when a man by the name of Ransford was being examined as a witness for the defendant in this case, and before Mr. Browne, the present special examiner?

A. I was for a few moments.

R. D. 41 (42). Was that the person who spoke to you in terms defamatory to Norton's character for truth and veracity?

A. It was.

R. D. 42 (43). You have been interrogated by defendant's counsel as to Norton's indebtedness to you some years ago; have you that confidence in him so that you unqualifiedly believe that he will pay you every dollar of that indebtedness as soon as he is financially able to do so?

A. I do.

R. D. 43 (44). Has Norton ever asked you in any manner to compromise that indebtedness?

(Objected to as immaterial.)

A. Never has.

R. D. 44 (45). State, if you remember, what Ransford said to you; if you cannot give the language, give the substance of it.

A. He said that he could not believe a word he said. I said that I heard Norton had the inside of the track in the stamp matter,
534 and he replied, "he is such a liar that you cannot believe a word he says," or words to that effect.

R. D. 45 (46). Who, if anybody, was present on that occasion?

A. Captain Tupper—Captain L. H. Tupper.

Recross-examination:

By Mr. CLARKE:

R. C. 46 (47). When Ransford said Norton was a liar, did Captain Tupper say anything on that point?

A. I don't recollect that he said anything about, or anything derogatory to, the character of Norton.

R. C. 47 (48). Would you be likely to remember it if he had?

A. I think I should. We didn't talk anyway more than two or three minutes. This was on River street, opposite to the American Hotel, in this city.

A. C. DANIELS.

Subscribed and sworn before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

ALEXANDER M. KNOWLSON, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation?

A. Alexander M. Knowlson; age, thirty-six; residence, Troy, New York; occupation, apothecary and druggist.

Q. 2. About how long have you resided in the city of Troy?

A. About nineteen years.

535 Q. 3. About how long have you been engaged in the business stated by you in your first answer?

A. I have been in the business about nineteen years; for myself about fourteen years.

Q. 4. On what street is your store located in Troy?

A. No. 350 Broadway.

Q. 5. Do you know Marcus P. Norton, of this city?

A. Yes, sir.

Q. 6. About how long have you known him?

A. About eighteen years.

Q. 7. Have you had any business dealings or transactions with him within that time?

A. Yes, sir.

Q. 8. Have they or have they not been of frequent occurrence?

A. Of former years very frequent; of latter years not so frequent.

Q. 9. Have you the means of knowing his character for truth and veracity?

A. I think I have.

Q. 10. Do you consider his character for truth and veracity good or bad?

(Objected to on the ground that the proper basis for the question has not been laid, and as immaterial.)

A. That is, in my personal dealings with him, good. I consider it good.

Q. 11. From your knowledge of his character, would you believe him under oath?

(Same objection.)

A. Yes, sir; I would.

Cross examination:

By Mr. CLARKE:

X Q. 12. By what means do you determine what a man's character is?

536 A. By my dealings with him, or his dealings with me.

X Q. 13. Is it on the basis of those personal dealings that you say Mr. Norton's character is good, and on nothing else?

A. Yes, sir.

X Q. 14. What has been the general nature of your business with Mr. Norton?

A. I engaged him in general legal business, and to get out a patent, and his family purchased drugs of me.

X Q. 15. How long since he did any business for you, or you for him?

A. Well, he did business for me about ten or twelve years ago; I have sold him drugs within the last week.

X Q. 16. Have you ever heard anything said in regard to his being a truthful man, or an untruthful man?

A. Yes; I have heard said that he was untruthful.

X Q. 17. Have you heard that pretty often?

A. Not of late years; when I was a boy and a clerk in William E. Hagan's store, I heard much from Mr. Hagan against Mr. Norton, but about a year afterward Mr. Hagan turned around and spoke favorably of Mr. Norton, having changed his mind.

X Q. 18. About how long ago was it that you were a clerk in Mr. Hagan's store?

A. About eighteen years ago.

X Q. 19. Have you ever heard anybody else speak unfavorably of Mr. Norton in the same manner?

A. Yes, sir.

X Q. 20. About how many persons have you heard speak that way?

A. Oh, I don't know.

X Q. 21. Under what circumstances did you hear this?

A. Mr. Hagan used often to speak to his friends against Mr.
537 Norton, and they would just say "yes, yes," and "good bye"; Mr. Hagan at that time, for some cause, was very bitter against Mr

Norton; this was in Mr. Hagan's store, No. 10 State street, when I was a clerk; I have heard some lawyers, and others, also, speak against Mr. Norton, but it is so long ago I can't recall their names.

X Q. 22. From what you heard in Mr. Hagan's store, and otherwise, did you then gather that Mr. Norton's reputation for truth was then good or bad?

A. That you mean when Mr. Hagan had his trouble with Mr. Norton? From what I gained from Mr. Hagan, his reputation was bad; from what I gathered from outside it was good; and from what I gained from Mr. Hagan afterwards it was good for truth and veracity.

X Q. 23. The time I refer to is the time when you say that Mr. Hagan spoke against Mr. Norton often to his friends, and they coincided with him; state whether then you gathered it that his reputation was good or bad; did you then consider him to be a truthful man, from what you had heard?

A. I answered that question.

X Q. 24. Did you consider him to be a truthful man, then, from what you heard?

A. Yes.

X Q. 25. Why did you not then believe what you heard; did you know Mr. Norton personally?

A. I knew him personally, not at first, but at the ending up of the Groom case with Hagan.

X Q. 26. You said that you heard others speak against Mr. Norton's truthfulness; about how frequently was that, and what classes of men so spoke?

A. I don't think I have heard anything said against him more than once a year for the past five years; the class of men was those to whom Norton owed money.

X Q. 27. How often have you heard Mr. Norton spoken of in any way for the last five years?

538 A. Well, I can't tell; I have heard him spoken of every time there was an article in the paper stating that Norton's stamp case was coming up before a referee.

X Q. 28. About how frequently have those articles appeared for the last five years?

A. I can't tell, sir.

X Q. 29. Have there been any articles till within the past six months?

A. I should say yes.

X Q. 30. Have there been any articles till within ten months?

A. I can't tell, but I think there has.

X Q. 31. Did those persons who spoke about the stamp on the occasion of the articles in the paper, say anything about Mr. Norton's character?

A. No, sir.

X Q. 32. Have you, within the last five years, heard Norton spoken of on any other occasion than when articles appeared in the papers?

A. Not that I remember of.

X Q. 33. Do you not consider that what is currently said of a man affects his reputation?

A. I do.

X Q. 34. Do you know what is currently said of Mr. Norton as to truth?

A. No, sir; I don't know what they say about him, but I know what I believe about him.

Redirect:

By Mr. NORTON:

R. D. 35. At the time you speak of William E. Hagan's hostility to Mr. Norton, when his store was located on State street, in this city, was he not involved in some kind of litigation about a water stove for the application of superheated steam to assist combustion, with a person by the name of Groom, and his assignees, Jacob Shavor and Louis Potter?

A. Yes, sir; I believe he was.

539 R. D. 36. Did you not, by purchase, succeed William E. Hagan in the business in which you are now engaged in this city?

A. Yes, sir.

R. D. 37. About when was that?

A. About 1864; I am not sure.

A. M. KNOWLSON.

Subscribed and sworn to before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

GEORGE H. PHILLIPS, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. G. H. Phillips, Troy, N. Y.; occupation, a foundryman; my age, about 60.

Q. 2. About how long have you resided in the city of Troy?

A. About forty years.

Q. 3. About how long have you been engaged in the business stated by you in your last answer?

A. About twenty-five years.

Q. 4. Is that business carried on under a firm name?

A. It is.

Q. 5. What is that firm name?

A. For the first sixteen years it was Ingraham, Phillips & Co., the remainder of the time G. H. Phillips & Co., and this is the name now.

Q. 6. State whether the present firm is, or is not, extensively engaged in the business stated in your first answer?

540 A. It does a fair and moderate business, about one hundred and fifty thousand a year; there are some that do more, and some that do less.

Q. 7. Do you know Marcus P. Norton, of Troy?

A. I do.

Q. 8. About how long have you known him?

A. I think it is upwards of twenty years since I first made his acquaintance.

Q. 9. Have you during that time had business or business transactions with him?

A. I have had.

Q. 10. Have you the means of knowing his character for truth and veracity?

A. I have.

Q. 11. Do you consider his character for truth and veracity good or bad?

(Objected to because the proper foundation is not laid, and as immaterial.)

A. So far as my own dealing and acquaintance with him goes, it is good.

Q. 12. From your knowledge of his character, would you believe him under oath?

(Same objection.)

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 13. How do you determine what a man's character for truth is?

A. I judge from the deal that I have had with him.

X Q. 14. When you state that Mr. Norton's character for truth is good as regards truth, are you influenced at all by what is currently said about him?

A. Not at all.

541 X Q. 15. Do you think that a man's reputation is affected at all by what people say about him?

A. I should think that it would affect him in a measure.

X Q. 16. What is the speech of people, so far as you know it, as to whether Mr. Norton is a truthful man or not?

A. I have heard men speak unfavorably about him.

X Q. 17. In respect to truthfulness?

A. In respect to his fidelity to them; in respect to doing what he agreed.

X Q. 18. Did they say that he was untruthful, or substantially that?

A. No, sir; that they wouldn't trust him, that he was treacherous to them in a suit; I only heard one person say that.

X Q. 19. Have you heard anything else derogatory to his character for truth?

A. I have no knowledge of anything else.

X Q. 20. What has been the nature of your personal dealings with Mr. Norton?

A. He has been engaged in patent suits for me, and I have loaned him money frequently.

X Q. 21. When was the last time you had any transactions with him, about how long ago?

A. About a year ago; it may be a little longer.

X Q. 22. About how frequently have you heard Mr. Norton spoken of in any way, in the last five or six years?

A. A hundred times or more; I can't tell exactly.

X Q. 23. Was Mr. Norton's character discussed at all at those times?

A. Only in the matter of exorbitant charges.

X Q. 24. Does Mr. Norton owe you anything now?

A. He owes the firm with which I am connected.

X Q. 25. How much does he owe your firm?

A. I think it is less than one hundred and fifty dollars.

542 X Q. 26. Do you expect to be paid?

A. I certainly do.

X Q. 27. When?

A. Before the millenium.

X Q. 28. Has Mr. Norton made any representations to you or your firm as to when he would pay?

A. He has.

X Q. 29. What was that representation?

A. That he would pay me at a certain time.

X Q. 30. When did he make that representation to you?

A. When he got the money he failed to meet that representation.

X Q. 31. When did he get the money?

A. I think over a year ago.

X Q. 32. Has he made any representations since as to when he would pay?

A. He has, but not at any fixed time.

X Q. 33. What was that representation?

A. It is a sort of a general thing, the same as other customers, promising to pay when he was in funds.

Redirect examination:

By Mr. NORTON:

R. D. 34. On your cross-examination you have substantially said that you heard but one person say anything against the truthfulness of Norton, and that was "that he was treacherous to them in a suit." Please give the name of that person and what the suit was about.

A. I don't know what the suit was; it was a patent suit, and the man's name was Hermance.

R. D. 35. Who was or is this man Hermance, if you know, and what is his business?

(Objected to as immaterial.)

543 A. I don't know what his business is aside from selling dampers; he has been in to sell them to me. I don't know what business he is in other than selling these dampers.

R. D. 36. About how responsible is this man Hermance, so far as you know, in business or anything else?

(Same objection.)

A. I think his responsibility is very light and very "thin."

R. D. 37. You have said something about "exorbitant charges"; did you ever hear anybody complain that Norton didn't charge enough for his professional services?

A. I never heard anyone.

R. D. 38. In Norton's professional dealings with you in obtaining patents and reissue of patents, and as counsel or solicitor in suits, where you have been a party, was he ever treacherous to you or your interest in those matters?

(Same objection.)

A. Not to my knowledge.

R. D. 39. In such professional services, did you ever find him other than truthful, diligent, and trustworthy?

(Same objection.)

A. I don't recollect of any point. I don't remember any case where I would not trust him.

R. D. 40. In any case in which he was professionally engaged for you, did he ever fail of success on your part?

(Same objection.)

544 A. Well, I was thinking that there was one case, but I don't recollect.

G. H. PHILLIPS.

Subscribed and sworn to before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

R. HALSTED WARD, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is R. Halsted Ward; my age is 41; residence, Troy; occupation a physician.

Q. 2. About how long have you resided in the city of Troy?

A. About sixteen years.

Q. 3. About what length of time have you been engaged in your profession in this city, and with whom have you been associated, if with any one.

A. Sixteen years, with Dr. Blatchford.

Q. 4. Dr. T. W. Blatchford was an eminent physician in this city, when you went into business with him, was he not?

A. He was.

Q. 5. Do you know Marcus P. Norton, of Troy?

A. I do.

Q. 6. About how long have you known him?

A. Fifteen or sixteen years.

Q. 7. Have you, since the decease of Dr. T. W. Blatchford, been the family physician of Marcus P. Norton?

A. Yes.

Q. 8. You have had business transactions with him during that time in the line of your profession, have you not?

545 A. Yes.

Q. 9. Have you the means of knowing his character for truth and veracity?

A. So far as I am able to judge from the above transactions.

Q. 10. Do you consider his character for truth and veracity good or bad?

(Objected to on the ground that the proper basis is not shown and as immaterial.)

A. In his dealings with me, it was always good until the closing up of his law business in this city by sheriff's sale.

Q. 11. From your knowledge of his character, state whether you would believe him on oath?

(Same objection.)

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 12. Did you base your answers on the direct examination in regard to Mr. Norton's character entirely on your personal dealings with him?

A. So far as I know, yes.

X Q. 13. How frequent have been your personal dealings with him within the last five or six years?

A. They were occasional; not as frequent as before.

X Q. 14. You have been a witness in this case for the defense, have you not?

A. Yes.

R. HALSTED WARD.

Subscribed and sworn to before me this 31st day of July, 1878.

IRVING BROWNE,
Special Examiner.

546 TROY, N. Y., *August 1st*, 1878.

Met pursuant to adjournment of yesterday.

Present, same counsel as before.

COLE H. DENIS, being called as a witness by the plaintiff and duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. I am 64 years of age last November; Cole H. Denis is my name; my occupation a lawyer; my residence in the village of Lansingburgh, N. Y.

Q. 2. Where is your place of business, and about how long have you been there?

A. My place of business is in the city of Troy, Raul's Hall; I have been there over sixteen years; the exact time I can't tell.

Q. 3. Are you now engaged in the practice of your profession in this city?

A. I am.

Q. 4. About how long have you been engaged in that profession in practice in the city of Troy?

A. Thirty years.

Q. 5. Do you know Marcus P. Norton of this city?

A. Yes, sir.

Q. 6. About how long have you known him?

A. I think it is over twenty years.

Q. 7. Do you remember a suit in the supreme court of this State, of Fleming against Beach, in which you were appointed referee by the court, and which was tried before you?

A. Yes; I remember it.

Q. 8. Do you remember the attorneys for the respective parties in that case?

A. Giles B. Kellogg was one of the attorneys for the defendant and John Moran was for the plaintiff.

547 Q. 9. Was Marcus P. Norton examined as a witness in that case?

A. He was.

Q. 10. If you know, state what his character is for truth and veracity in this city.

(Objected to as immaterial.)

A. Good, as far as I know.

Q. 11. Do you consider it good or bad?

(Same objection.)

A. I consider it good.

Q. 12. From what you know concerning his character for truth and veracity, and from all you ever heard said concerning him, would you believe him under oath?

(Objected to because the question includes, as a part of the basis for it, the witness' personal knowledge of Mr. Norton's character.)

A. I would.

Q. 13. In the case above referred to, when Norton was examined as a witness before you as a referee, did you then believe what he stated to you under oath?

(Objected to as immaterial.)

A. I did.

Q. 14. State, if you remember, the year in which that case was tried before you as referee, or about that time.

A. I think it's between three and four years ago.

Cross-examination:

By Mr. CLARKE:

X Q. 15. When were you you admitted to the bar?

A. In 1844; in the fall, I think.

548 X Q. 16. On your direct examination you stated that Mr. Norton's character was good, so far as you knew; what do you mean by character?

A. I mean, what people say of him, and what I know of him in the affairs of life, and sometimes what they don't say.

X Q. 17. Do you use the term character in the same sense as reputation?

A. In a certain sense it is the same, and in another sense not, perhaps; I may know that a man has a character for charity, while his neighbors may not know of him as having such a character; therefore he would have no reputation among his neighbors for charity; I know of a case where a man had the reputation of being mean, close, and parsimonious in money matters, and yet who is said to have assisted thirty young men to an education; here his character and reputation were two different things.

X Q. 18. Using the term reputation in the sense you have indicated in your last answer, state yes or no, whether you know Mr. Norton's reputation for truth in this community

A. Well, I can't say as I know, for I never heard anybody say anything against it particularly; that explains what I meant in my last answer by saying, "What they don't say about a man"; that is sometimes, I think, evidence of a good reputation.

X Q. 19. How many times, during the last ten years or so, do you think you have heard Mr. Norton spoken of in any way?

A. Oh, I can't say; it is impossible.

X Q. 20. Make a rough estimate, please.

A. I don't think I have heard his name mentioned frequently; I think occasionally.

X Q. 21. During the last five or six years?

A. Not quite so frequently as formerly, but occasionally I have heard his name mentioned in conversation; it was within that time that he was sworn before me in that case mentioned.

549 X Q. 22. How many people whom you had reason to think had had personal dealings with Mr. Norton have you heard speak of him within the last five or six years?

A. I can't say; I don't recollect distinctly but one whom I had supposed to have had personal dealings with him.

X Q. 23. How many the last ten years?

A. I can't tell.

X Q. 24. Can you swear that you have heard more than one speak of him within the last ten years?

A. Oh, yes; perhaps a dozen; I recollect William A. Beach spoke of him, and his ability in getting up affidavits, and also Mr. Beach, the plaintiff in this suit; and then I also heard him occasionally spoken of as being in Washington, or as engaged in carrying on some suit; and now I recollect another young man by the name of Scott, who used to be a draughtsman for him; I think he was here the other day from Bennington; and I think Charles Eddy, I had a conversation with him, what, I can't remember; I can't say how long ago it was; it was in relation to some patents he was getting or trying to get.

X Q. 25. Did any of the parties you have named say anything upon the point whether Mr. Norton was a trustworthy man?

A. I don't know as that came up; I think they spoke about his ability and luck in getting patents.

X Q. 26. On any of the occasions when you have heard Mr. Norton

spoken of, were the circumstances such that if Mr. Norton was esteemed by those persons to be untruthful, they would have been likely to have spoken to you on that point?

A. There is a difference of men on that point; some would be likely to speak of a man whom they found untrustworthy; I know I should; they employed him, and if they found he wasn't a truthful man,
550 I shouldn't suppose they would have employed him; I know I shouldn't expect to be employed if it was found that I wasn't truthful.

X Q. 27. If anything had been said against Mr. Norton being a man of truth, would you have been likely to have remembered it, do you think?

A. I think I should; yes.

X Q. 28. Do you know William E. Hagan?

A. Yes, sir.

X Q. 29. Did you ever hear anything about a case in which he and a man by the name of Groom were parties, and in which an attempt was made to impeach Mr. Norton's reputation for truth?

A. I don't now remember any such case; I remember a man by the name of Groom here, but I don't remember any such case; I don't call any such case to mind now.

X Q. 30. You were in Troy in 1863 and 1864, were you?

A. Oh, yes; for I was burnt out then.

X Q. 31. Did you ever hear of Mr. Norton being a witness in one of the trials following the assassination of President Lincoln, and of being impeached?

A. Never.

X Q. 32. Did you ever hear of Mr. Norton being debarred from practicing in the Patent Office, seven or eight years ago?

A. I heard something about his being debarred from the privileges of the Patent Office in examining papers; this I heard from the newspapers, but I know nothing of the grounds for this.

X Q. 33. Did you ever hear that Mr. Norton was indicted for crime in the District of Columbia?

A. No.

X Q. 34. If the several matters I have referred to had ever taken place, do you think that your association with Mr. Norton, and with others who know Mr. Norton, has been such since 1863 that you would have been likely to have heard those things?

551 A. Well, I can't tell about that.

X Q. 35. You are not sure that your association has been such that you would have been likely to have heard them?

A. They would have been likely to, if they felt disposed to tell me; they had opportunities sufficient, but I have never slept with any of them.

X Q. 36. Does Mr. Norton owe you any money?

A. No; I wish he did; for he would pay it if he could; the money burns in his pocket.

X Q. 37. Did you ever hear that Mr. Norton did not meet his engagements as to money matters?

A. Yes, I have heard of his not meeting some engagements.

X Q. 38. Is the complaint general or otherwise?

A. I don't know; I have heard of some engagements that he did not meet; I have heard of others that he did; I mean that he did not meet when they were due; whether he finally paid them or not, I do not know.

X Q. 39. Did you ever hear that he did not keep the promises made when he obtained money, by borrowing or otherwise?

A. I don't remember any instance of it, nor I don't remember but that the case I speak of was one of those, but I don't know anything about it.

X Q. 40. Do you know what Mr. Norton's reputation is for keeping his business engagements?

A. No, only as I have stated.

X Q. 41. State in a general way how much you do know about Mr. Norton.

A. I have known him as a lawyer practicing in the court; I have known him as a witness before me in the trial of a suit; I have known him by his reputation as a solicitor of patents; known him as a citizen who was flush with his money when he had it. Some years I have seen him every week probably; I never heard his character for truth and veracity called in question by anybody; I have known him by
552 his reputation as a man who spent his money without much judgment, and who, when he had money, was over liberal with it to a fault; that in consequence he was sometimes short.

X Q. 42. When were those years when you saw him every week?

A. I can't tell you now, but it was along in my first acquaintance, and when he was in Beach's house, I think; I used to see him on the street frequently, as I would anybody else who was not in the same building with me.

X Q. 43. How many times have you met him within the last ten years, on an average?

A. I couldn't give you any idea about it; I don't think I met him as frequently as I did before that.

X Q. 44. Was any attempt made to impeach Mr. Norton in the case of Beach and Fleming?

A. No, sir.

X Q. 45. When did Mr. Norton last settle up any debt which he owed you, if any?

A. When he was in Wotkin's block; I don't know how long ago it was; it wasn't a very heavy amount, any way; I think it was ten or twenty dollars.

C. H. DENIS.

Subscribed and sworn to before me this 1st day of August, 1878.

IRVING BROWNE,
Special Examiner.

JOHN HITCHINS, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Direct examination:

By Mr. NORTON:

Q. 1. What is your name, age, residence, and occupation?
553 A. John Hitchins; No. 96 First street, Troy; I am not in any business at present; I am now in my 65th year.

Q. 2. About how long have you resided in the city of Troy?

A. Well, it is forty-five years.

Q. 3. Were you formerly a member of the firm of Daniels & Hitchins, in this city, in the furniture and upholstery business?

A. Yes.

Q. 4. About how long since that firm was dissolved?

A. Nine years last March.

Q. 5. And thereupon you retired from active business, did you not?

A. Yes, sir.

Q. 6. Are you at the present time one of the board of directors of the National State Bank of this city?

A. Yes, sir.

Q. 7. About how long have you been a director in that bank?

A. Since its organization, twenty-six years next September; it started in September, 1852, I think.

Q. 8. It was first organized under the laws of the State of New York, was it not?

A. Yes, it was.

Q. 9. It afterwards became a national bank under the laws of the United States, did it not?

A. Yes.

Q. 10. And you have continued one of the directors under both organizations, have you not?

A. Yes, and am one of the discount committee at the present time.

Q. 11. You have been one of the discount committee for how long?

A. I don't recollect distinctly, but for about fifteen years.

Q. 12. Do you know Marcus P. Norton, of this city?

A. Yes.

Q. 13. About how long have you known him?

554 A. Well, I guess in the neighborhood of twenty years.

Q. 14. What has been his business, so far as you know?

A. He belonged to the legal profession, was a lawyer and counselor in the city of Troy.

Q. 15. Within the time you have stated, has he had an account in the bank of which you are one of its directors and one of its discounting committee?

A. I think he has; I am not conversant with the details of the books, but I think he has, and he was a customer at our bank.

Q. 16. Do you know of a single instance when he has asked a favor of your bank that it has been refused him?

(Objected to as immaterial.)

A. I have no recollection of it.

Q. 17. Have you the means of knowing his character for truth and veracity?

A. I think I have, to some extent.

Q. 18. Do you consider his character for truth and veracity good or bad?

(Objected to as immaterial, and as designedly ambiguous.)

A. Well, I consider it good.

Q. 19. From your knowledge of his character, would you believe him under oath?

(Same objection, and because the proper foundation is not laid for the question, and because the proper basis is not stated.)

A. Yes, sir; I have no reason to doubt but that I would believe him under oath.

Q. 20. While you were a member of the firm of Daniels & Hitchins, did or did not that firm have several business transactions with him in the line of their business?

555 A. Yes.

Q. 21. Covering a period of about how many years?

A. Well, I do not now recollect, but I should think a period of about ten or twelve years.

Cross-examination:

By Mr. CLARKE:

X Q. 22. What is the population of Troy?

A. I should think between fifty and sixty thousand.

X Q. 23. How do you know Mr. Norton's character for truth?

A. From the acquaintance I have with him, and from what I hear around among my friends.

X Q. 24. What do you hear around among your friends about him?

A. Well, I have never heard his character illy spoken of; I don't know that I can give in detail what my friends have said about him; I speak more from my own acquaintance with him and his business transactions with me and my firm.

X Q. 25. Who have you ever heard say anything about Mr. Norton, who would be likely to question his truthfulness, if it could be questioned?

A. Well, I do not recollect of the matter being called into question; I have heard Mr. Ford speak highly of the character and integrity of Mr. Norton, and also my former partner, Mr. Daniels.

X Q. 26. How much have you heard about Mr. Norton in the last ten years or so?

A. I never heard anything derogatory to his character or standing.

X Q. 27. Well, how much have you heard of him in any way?

A. Well, I have not heard much of anything about Mr. Norton, particularly against his character or standing.

X Q. 28. Well, how much have you heard about him?

556 A. I have not heard much of anything; since I retired from business I have not had a tendency to hear much of anything.

X Q. 29. Did you ever hear of Mr. Norton being impeached in any case?

A. No, sir; I don't know as I ever have.

X Q. 30. Did you ever hear of his being indicted for any crime?

A. No, sir; I never heard of any such occurrence.

X Q. 31. Did you ever hear of Mr. Norton being debarred from practicing in the Patent Office?

A. I don't remember of any such occurrence.

X Q. 32. Did you ever hear of Mr. Norton being sold out on sheriff's sale?

A. I did not.

X Q. 33. Did you ever hear of Mr. Norton being pushed for the governorship of the Territory of Wyoming?

A. I heard once something to that effect of that transaction. I don't understand what you mean by the word "push."

X Q. 34. Did you ever hear of Mr. Norton as a candidate in the Republican caucus for United States Senator against Roscoe Conkling?

A. I rather look upon it as a singular question—no.

X Q. 35. Did you ever hear that Mr. Norton was very sick in the year 1864?

A. Yes; I did not only know that he was, but I visited him, and saw that he was a very sick man.

X Q. 36. Do you know what Mr. Norton's financial standing is now?

A. I do not.

X Q. 37. Do you know what it has been in the last ten years?

A. Not particularly; I do not.

X Q. 38. Does Mr. Norton owe you anything?

A. Not a cent.

X Q. 39. How long since you had any dealings with Mr. Norton?
557 A. Well, it is some ten years.

X Q. 40. How frequent were your dealings with Mr. Norton the first ten years you knew him?

A. I had no dealings with Mr. Norton for the first five or six years, I think; and afterwards it was occasionally, as he wanted goods in our line.

X Q. 41. You say that you have the means of knowing what his character for truth is; what are those means?

A Well, nothing more than our business relations.

X Q. 42. Do you think that you know what is currently said about him in this community?

A. I may not know what is currently said; I only judge from my knowledge and acquaintance with him.

X Q. 43. Do you think that you know what his reputation is, except in relation to your personal dealings with him?

A. No; I judge more from my own personal dealings and acquaintance with him.

Redirect examination:

By Mr. NORTON:

R. D. 44. On your cross-examination you have spoken about having heard Mr. Ford speak in terms highly of the character and integrity of Marcus P. Norton; who is this Mr. Ford?

(Objected to as immaterial.)

A. D. W. Ford, paying teller of the National State Bank of Troy, N. Y.

R. D. 45. How long has he been paying teller in that bank?

(Same objection.)

A. Ten or fifteen years, I guess.

558 R. D. 46. Counsel for the defendant has deemed it proper to put to you several questions touching a matter of "governorship," "senatorship," and various other hightoned "fandangoes"; do you understand the reason or the purpose of his putting those questions on this examination to you?

A. No, I can not see the object.

JOHN HITCHINS.

Subscribed and sworn to before me this 1st day of August, 1878.

IRVING BROWNE,
Special Examiner.

EDWARD S. RANDALL, a witness called by the plaintiff, being duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Edward S. Randall; my age is fifty-four; clothing dealer, Troy, N. Y.

Q. 2. About how long have you resided in the city of Troy?

A. 30 years last December.

Q. 3. For about what length of time have you been engaged in the business stated by you in your last answer?

A. Ever since I have been here.

Q. 4. Do you know Marcus P. Norton, of Troy?

A. I do.

Q. 5. About how long have you known him?

A. Fifteen years or so.

Q. 6. So far as you know, what is his character for truth and veracity; is it good or bad?

A. I don't know anything about it one way or the other. So far as my acquaintance has been with him, it has been all right.

Q. 7. Do you consider it good or bad?

(Objected to, as the proper foundation is not laid.)

559 A. So far as my acquaintance with him is concerned, I consider it good.

Q. 8. From what you know of his character for truth and veracity, would you believe him under oath?

(Same objection, and because the proper basis for the question is not stated, and because it is designedly ambiguous.)

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 9. What has been the nature of your acquaintance with Mr. Norton?

A. Simply neighborly; no dealings with him whatever.

X Q. 10. What do you mean by neighborly?

A. Why, our families call backwards and forwards.

X Q. 11. How recently is that?

A. I could not tell you; until within a year or two; until his family moved down to Canaan.

X Q. 12. About how frequent was your intercourse with him?

A. The same as any business man would be; perhaps I might meet him once a week, or once in two weeks. The man might live in the same block with you, and you might not see him oftener than once a week, or once in a month.

X Q. 13. Did you call upon him oftener?

A. No, sir.

X Q. 14. Did he call upon you often?

A. No.

560 Redirect examination:

By Mr. NORTON:

R. D. 15. Did your family and Norton's family hold social intercourse?

A. Yes.

E. S. RANDALL.

Subscribed and sworn to before me this 1st day of August, 1878.

IRVING BROWNE,
Special Examiner.

TROY, N. Y., *August* 2, 1878.

Met pursuant to adjournment from yesterday at the hour of 9.30 a. m.

JAMES KNIBBS, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Direct examination:

By Mr. NORTON:

Q. 1. What is your name, age, residence, and occupation?

A. My name is James Knibbs; residence, Troy; occupation, engineer on the steamer Arba Reed; age, 51.

Q. 2. About how long have you resided in the city of Troy?

A. About thirty years.

Q. 3. About how long have you been engineer of the steam fire engine Arba Reed?

A. A little over eighteen years.

Q. 4. Do you know Marcus P. Norton, of this city?

561 A. I do.

Q. 5. You have known him for about what length of time?

A. I think my first acquaintance with him was in 1854 or 1855. I can't tell exactly when.

Q. 6. Have you the means of knowing his character for truth and veracity?

A. I have a general acquaintance only. I have always heard his character spoken of as good.

Q. 7. Do you consider his character for truth and veracity in this city good or bad?

(Objected to as ambiguous.)

A. I consider it good.

Q. 8. From your knowledge of his character for truth and veracity in this community, whould you believe him under oath?

(Objected to, as the proper basis is not laid.)

A. I would; I have always found his word to be true, so far as I have had dealings with him.

Cross-examination:

By Mr. CLARKE:

X Q. 9. What are your duties as engineer?

A. I have charge of the steam fire engine Arba Reed. My duties are to take charge of it, to run it at fires, and to take care of it in the house.

X Q. 10. About what is the population of Troy?

A. I think it is estimated between forty-five and fifty thousand. I have no means for knowing the exact population. It is generally estimated at that.

X Q. 11. How often have you met Mr. Norton within the last ten years or so?

A. Well, I have met him very frequently within the last four-
562 teen years. I could not tell how often. I have been interested with him in a patent, and for that reason my acquaintance has been very general with him since 1864. I have probably met him hundreds of times between that time and this.

X Q. 12. Have you any connection with a patent suit relating to a steam fire engine, now pending in New York, in which Christopher C. Campbell, assignee, is complainant, and the mayor and commonalty, of the city of New York are defendants?

A. I sold my interest in the patent to Mr. Campbell about a year ago.

X Q. 13. Had the suit referred to then been begun?

A. I could not tell you, sir. I don't keep track of Mr. Campbell's affairs.

X Q. 14. Have you any interest in that suit?

A. I don't know what you may mean. I should like to have the thing explained.

X Q. 15. Do you think you have any interest in that suit?

A. I decline to answer what I think.

X Q. 16. Why do you decline?

A. Because I am not going to tell any man my own private affairs,

what I own, or what I don't own. Whether my pocket book contains a silver dollar or paper dollar.

(Complainant's counsel here interposes objections to all questions and answers with reference to his supposed interest by defendant's counsel of the witness in the suit referred to on the grounds: 1st, that there is higher and better evidence on that point, to wit, the records of the Patent Office, containing deeds of assignments and transfers. 2nd, inasmuch as defendant's counsel has refused to answer witness' interrogatory answer, he is not at liberty to further inquire of the witness, until the witness understands the nature of counsel's question. 3d,
563 as having been already answered when the witness stated that he had sold his interest in the patent on which that suit is brought to Mr. Campbell about a year ago.)

X Q. 17. In what patent have you been interested with Mr. Norton?

A. A relief valve for steam fire engines and other pumps.

X Q. 18. Is that the patent on which that suit against New York City is based?

A. I could not tell you. Mr. Campbell's counsel could probably tell you all the minutiæ on that point, if there has been a suit commenced.

X Q. 19. Do you know whether there is a suit pending against the Mayor, &c., of New York City, based on a patent for a relief valve in steam fire engines, or substantially that, in which Mr. Campbell is complainant?

A. I could not say. I heard that there was to be a suit started, but as to further questions I must refer you to Mr. Campbell and his counsel, for I shall decline to answer all further questions in relation to that relief valve, for reasons already stated. I assigned the patent to Mr. Campbell, and know nothing about his business affairs.

X Q. 20. Have you ever seen the bill of complaint in that suit or a copy?

A. On what? I decline to answer. It is entirely outside of this matter. I have sold out my interest in that patent to Mr. Campbell, and the assignment is on file in the Patent Office, and will state all about the sale of my interest.

X Q. 21. Have you ever seen the bill of complaint, or a copy thereof, in the suit of Christopher C. Campbell against the Mayor, &c., of New York City, on a patent for a relief valve?

A. I have already stated that I declined to answer any more questions in relation to Mr. Campbell's matters on that relief valve. I know nothing about Mr. Campbell's matters.

564 X Q. 22. That is not Mr. Campbell's affair; it is your affair. I ask you for what you have seen?

A. For what I have seen? I have seen a good many things.

X Q. 23. Please answer question 21, which the examiner will read to you. (Question is read.)

A. I can't say whether I have or not.

X Q. 24. Do you expect to see it and the answer?

A. I can't expect anything of the kind. If I am served with a copy I shall probably see it.

X Q. 25. Don't you expect that Mr. Norton will keep his word?

A. He has always done so with me.

X Q. 26. Has he not said that he would send you a copy of the bill and the answer?

A. I believe that he has, and I expect to have it through him on the strength of this promise.

X Q. 27. Has he not already given you a copy of the bill, or shown it to you?

A. He has not.

X Q. 28. Is Mr. Norton solicitor in that case?

A. Don't know.

X Q. 29. Is he counsel?

A. Don't know.

X Q. 30. Did you just hear him say that he was?

A. I did not.

X Q. 31. Did you ever hear him say that *that* he was?

A. No, sir; I have no recollection of it.

X Q. 32. Did you ever understand from him, or Mr. Campbell, that he was counsel or solicitor in that case?

A. No, sir; never inquired of him or Mr. Campbell who was going to be counsel, or anything whatever; and they never gave me any information in regard to it.

X Q. 33. Who was the patentee of the patent for the relief valve, in which you say you and Mr. Norton have been interested?

A. James Knibbs.

X Q. 34. Yourself?

A. I suppose so; yes.

565 X Q. 35. In what way was Mr. Norton interested with you in that patent?

A. By assignment from me to him.

X Q. 36. Has there ever been a reissue of that patent?

A. No, sir; the patent was issued for seventeen years, and the time has not expired yet.

X Q. 37. What interest did you assign to Mr. Campbell about a year ago?

A. About one-half.

X Q. 38. Did you assign to him absolutely, or in trust?

A. I don't understand the terms exactly.

X Q. 39. What don't you understand about it?

A. I don't understand it sufficiently to answer the question, what he means by in part or in trust. I stated I sold my interest to Mr. Campbell, and was satisfied with the terms of the sale.

X Q. 40. What was the consideration for that assignment?

A. Cash.

X Q. 41. Anything else?

(Objected to on the ground that the witness has already stated that the assignment to Campbell of the patent in question was in writing, and on record in the Patent Office, or substantially that, and that that assignment would explain the terms and conditions of that sale to Campbell. Such being the fact, there is higher and better evidence, if the matter is at all material to any of the issues in this case; and complainant's counsel further states as an objection that, if the Government of the United States, here represented by defendant's examining counsel, is too poor to pay for a certified copy of that assignment, or if counsel now present and representing the defendant, and said United States in this matter, feels himself unable to pay for said certi-
566 fied copy, the complainant in this case will furnish the same at his expense, and deliver the same to the United States, or to their counsel now present.)

A. No, sir.

X Q. 42. Was the consideration cash down, or cash to be paid in the future, or both?

A. Cash right down. I had the cash before signing the assignment.

X Q. 43. Did Mr. Campbell agree to pay you anything at any future time?

A. He did not; that is, there was no agreement except what the assignment says; no outside agreement at all.

X Q. 44. What is your recollection of what the assignment says on that point?

(Objected to in view of the last answer, because it appears that there is higher and better evidence on the point inquired about.)

A. I decline to answer from the fact that I can't go into the details of it.

X Q. 45. State generally.

(Same objection as last above.)

A. I decline to answer. My answer is same as the last.

X Q. 46. Are you to receive anything in addition to what you have received, in case the suit against the city of New York succeeds, or in case the city or any other city pays royalty on your invention?

(Same objection, and further, that the question has been already fully and fairly answered by the witness.)

A. I refer counsel to the assignment.

X Q. 47. Why will you not answer?

567 A. Because I might not be able to do so correctly.

X Q. 48. Give your best present recollections.

A. I decline to recollect anything about it.

X Q. 49. Why do you so decline?

A. Because it is in black and white, and that is better than my recollection.

X Q. 50. Are you interested in the result of that suit in any way?

A. I don't know of any suit. If there is one instituted against New York City, and I am subpœnaed as a witness, I shall probably have to attend.

X Q. 51. Are you interested in any manner, direct or indirect, in the patent for the relief valve?

(Objected to as having been several times answered, the witness having already stated that he had sold his interest to Mr. Campbell, about a year ago, giving him an assignment of a deed in writing for cash, and that such assignment is on record in the Patent Office, and will show for itself better than his present recollections of it, and that there is no other agreement outside of that written instrument; and further, that complainant's counsel has offered to furnish a certified copy of that assignment, if asked for. There being such written evidence on the matter inquired about, it must be produced if the matter inquired about be deemed material to the case, and especially so, as that instrument is under the seal and signature of the witness, and of record in the Patent Office.)

A. I sold my whole interest which I had to Mr. Campbell, without any reserve, and what he is going to do with it, or what he has done with it, I know nothing about it.

X Q. 52. Have you any interest, direct or indirect, in the patent for the relief valve?

568 A. I have sold my whole interest, without any reserve.

X Q. 53. Will you answer my question?

A. I supposed that I was answering your questions in the broadest manner possible. I don't want the court to understand that I intended the slightest disrespect in any of my answers.

X Q. 54. Please answer my question, yes or no, whether you have any

interest, direct or indirect, in the patent for the relief valve, or in any money realized from the use of it?

A. Yes.

X Q. 55. What means have you for knowing Mr. Norton's reputation for truth and veracity?

A. My dealings with him as a man.

X Q. 56. Have you any other means?

A. I never lived with him.

X Q. 57. Have you any other means besides your personal dealings, for knowing Mr. Norton's reputation for truth and veracity?

A. None.

X Q. 58. You based your answers on the direct examination entirely on your personal dealings and knowledge of Mr. Norton, did you?

A. I based my answers on the dealings which I have had with him for fourteen years past. During that time I have found every word that he has told me to be true, and would believe every word that he said just as quick without an oath as with it.

X Q. 59. Do you think you know what is currently said about Mr. Norton in this community?

A. No, sir; I don't know anything about what is currently said. I pay very little attention to reports any way. I judge of a man by my dealings with him.

X Q. 60. Leaving out of view your personal knowledge and dealings with Mr. Norton, state whether you think you know what Mr. Norton's general reputation for truth and veracity is in this community.

569 A. Good.

X Q. 61. You do think you know?

A. I do.

X Q. 62. How do you know? You have stated that you paid very little attention to reports, and I have requested you to answer without reference to personal dealings?

A. I have never heard anything against the man.

X Q. 63. Do you know what Mr. Norton's financial standing is in this community?

A. I couldn't tell you; you could probably ascertain that fact at the bank where he does his business.

X Q. 64. Do you know William E. Hagan?

A. I am somewhat acquainted with him; not much.

X Q. 65. Did you ever hear of a case in which he was interested, in which an attempt was made to impeach Mr. Norton's reputation for truth and veracity?

A. No, sir.

X Q. 66. Did you ever hear that Mr. Norton was debarred from practicing as a solicitor in the Patent Office, six or seven years ago?

A. I heard it so rumored, but I know nothing of the truth or falsity of the matter.

X Q. 67. Did you ever hear that Mr. Norton was indicted for crime in the District of Columbia, six or seven years ago?

A. No, sir; and it would take good strong evidence to make me believe it, even if I did hear it.

X Q. 68. Did you ever hear of Mr. Norton being sold out on sheriff's sale?

A. Never anything about the sheriff. I heard about his books being sold at auction.

X Q. 69. Did you ever hear of an attempt being made to impeach

Mr. Norton's veracity, in one of the actions following the assassination of President Lincoln, in which Mr. Norton was a witness?

A. No, sir.

570 X Q. 70. Did you ever hear of an attempt to impeach his veracity?

A. No, sir.

X Q. 71. Did you ever hear from any one that Mr. Norton was not to be depended upon, or substantially that?

A. No, sir.

X Q. 72. Did you ever hear from any one that Mr. Norton did not meet his financial engagements, or substantially that?

A. No, sir.

X Q. 73. Did you ever hear from any one that Mr. Norton was untruthful, or substantially that?

A. No, sir.

X Q. 74. How frequently have you heard Mr. Norton mentioned in any way by the people of Troy, within the past six or seven years?

A. I don't know as I ever heard his name mentioned; I never heard it spoken of derogatory of any way.

X Q. 75. What people of Troy who are acquainted with Mr. Norton do you know?

A. I can't tell without comparing notes with Mr. Norton.

X Q. 76. What is your salary as engineer?

A. One hundred dollars a month.

X Q. 77. What was your business before you became engineer of the Arba Reed?

A. Machinist. I worked for N. B. Starbuck & Son four or five years; for the Troy & Boston Railroad about three or four years; and for the Saratoga Railroad a couple of years.

X Q. 78. How much pay did you get when you were machinist, on an average?

A. When I commenced at Starbuck's I got five dollars a week; when I left off I got fourteen shillings a day. At the Troy and Boston shop I engaged for twelve shillings a day, and when I left off I got my fourteen shillings, the same as the best man in the shop.

571 Redirect examination:

By Mr. NORTON:

R. D. 79. Of how many men is the steam fire-engine Arba Reed composed?

A. It is entitled to forty members; we have now between thirty-two and forty.

R. D. 80. Will you explain how those men become members of that organization, briefly?

A. They are first proposed to the company by a written application for membership, the application stating name, age, residence, and occupation. They are referred to a committee, consisting of three members of the company. When that committee report, the name is then balloted for with ball ballots, requiring a two-third vote to elect; if elected, it is then referred to the board of fire commissioners; referred by them to a committee. If they report favorable, it is confirmed; then referred from the fire commissioners to the common council of the city, and a certificate is granted under the seal of the city, if the common council approve.

R. D. 81. None but the best of the citizens can become members of that organization, can they?

A. No, sir; not knowingly.

R. D. 82. And if you should be unfortunate and get in a bad man, there are means for ridding the company of such a man, are there?

A. There are.

R. D. 83. When that company desire to meet for company or other purposes, where does it convene?

A. In the parlors of the engine-house, monthly.

R. D. 84. And where in the city is the engine-house of the steam fire-engine Arba Reed situated?

A. Corner of State and Third streets.

R. D. 85. State whether that engine-house is near the City Hall,
572 St. Paul's Church, Troy City Savings Bank building, as well as several other banks doing business in this city?

A. It is.

JAMES KNIBBS.

Subscribed and sworn to before me this 2d day of August, A. D. 1878.

IRVING BROWNE,
Special Examiner.

SAMUEL D. FRENCH, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Direct examination:

By Mr. NORTON:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Samuel D. French; age, 47; residence, 41 Second street, Troy, N. Y.; and my occupation, dentist.

Q. 2. About how long have you resided in Troy?

A. About twenty-three years and a half.

Q. 3. And about how long have you been engaged in the practice of your profession?

A. About twenty-six years.

Q. 4. About how long have you been engaged in the practice of your profession in this city?

A. About twenty-three years and a half.

Q. 5. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 6. About how long have you known him personally?

A. Since 1863, certainly; I cannot tell how much before that time.

Q. 7. Have you, in the line of your profession or otherwise, had business within that time with him?

573 A. I have.

Q. 8. Have you the means of knowing his character for truth and veracity in this city?

A. As far as I am concerned myself, I have.

Q. 9. Do you consider it good or bad for truth and veracity?

(Objected to because the proper foundation has not been laid.)

A. I consider it good.

Q. 10. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

(Same objection, and because the proper foundation for the question is not stated therein.)

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 11. What means have you for knowing Mr. Norton's character for truth and veracity in this city?

A. Having done business with him for at least fifteen years, he having always made his settlements promptly.

X Q. 12. Any other means?

A. No, sir; no other means except in a business way.

X Q. 13. When you say that you consider his character for truth good, do you allow anything to influence you in making up your mind upon the point except your knowledge of and dealings with him?

A. No, sir.

574 X Q. 14. Do you allow rumors and reports concerning him to influence you at all?

A. No, sir.

X Q. 15. What has been the nature of your business with him?

A. Operations in dentistry for himself and family.

X Q. 16. About how frequent have been those operations within the last fifteen years?

A. A few years ago they were quite frequent, but within the past two years I think but once.

Redirect examination:

By Mr. NORTON:

R. D. 17. Question fourteen asks to you to state whether you "allow rumors and reports concerning him to influence you"; during your acquaintance with Norton in this city, have you ever heard anybody say that he was an untruthful man, and that they would not believe him under oath, or anything against his standing for truth and veracity?

(Objected to as not a proper redirect question.)

A. I never did.

Recross:

By Mr. CLARKE:

R. C. 18. Do you know William E. Hagan?

A. I do.

R. C. 19. Did you ever hear anything about a suit in which he was engaged, and in which the character of Mr. Norton for truth was impeached or attempted to be impeached?

A. I did not.

R. C. 20. Did you ever hear that Mr. Norton was debarred from practicing in the Patent-Office six or seven years ago?

575 A. I did not.

R. C. 21. Did you ever hear that Mr. Norton was indicted for crime in the District of Columbia six or seven years ago?

A. I did not.

R. C. 22. Did you ever hear that Mr. Norton was sold out at sheriff's sale?

A. I did.

R. C. 23. Do you know what Mr. Norton's financial standing is?

A. I do not.

R. C. 24. Did you ever hear anybody say anything about it?

A. Years ago, when he was sold out?

R. C. 25. Did you ever hear that Mr. Norton did not keep his financial engagements?

A. I did not.

R. C. 26. How frequently have you heard Mr. Nortan mentioned in any way by anybody?

A. I have heard him mentioned within the last two years.

R. C. 27. How frequently for the last five or six years?

A. I have heard him spoken of within the last three years about some suit out in the country before a board of arbitration, in which he was counsel.

R. C. 28. How frequently within the last ten years?

A. I couldn't say.

R. C. 29. Was it very frequently or occasionally?

A. Occasionally.

Redirect examination:

By Mr. NORTON:

R. D. 30. If you have no objection, you may state whether you hold an official place in a dental association in this country?

A. I do.

576 R. D. 31. If you have no objection, you may state the name of that association and the official place you hold?

A. The New York State Dental Society. I am State censor from the third district.

R. D. 32. When that association meet for business or other purposes under its organization, where does it usually convene?

A. In the city of Albany.

R. D. 33. The third district represented by you as State censor is situated where?

A. The counties Albany, Rensselaer, Columbia, Greene, and, I think, Ulster and Sullivan.

R. D. 34. Do you hold any office in any other society; and, if so, what?

A. I am president of the Hudson Valley Dental Society.

Recross:

By Mr. CLARKE:

R. C. 35. In what other ways, if any, have you heard Mr. Norton mentioned in any manner, by anybody, within the last three years, except in the matter before the board of arbitrators?

A. I don't know that I have heard his name mentioned.

R. C. 36. How many times did you hear his name spoken of in connection with that matter of the arbitration?

A. I myself asked one of the members of the board of arbitrators who was in town, and whom I knew personally, how the case was getting along.

S. D. FRENCH.

Subscribed and sworn to before me this 2d day of August, 1878.

IRVING BROWNE,
Special Examiner.

577 ALONZO ALDEN, a witness called on the part of the plaintiff being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Alonzo Alden; Troy; real estate and insurance agent; my age is 44.

Q. 2. About how long have you resided in the city of Troy?

A. Troy has been my home since 1855, although I have not resided here, not been here, all that time.

Q. 3. About how long have you been engaged in the business stated in your first answer, in the city of Troy?

A. About four years.

Q. 4. Were you, during the recent civil war in this country, in the army of the United States volunteers?

A. I was.

Q. 5. For about what length of time did you serve in that army?

A. Four years and a half.

Q. 6. During that war, in what division of the army did you serve?

A. In the Army of the Potomac, in the Department of the South, the Army of the James, and the Department of North Carolina; also the Department of Washington.

Q. 7. During the latter portion of that war, and at its close, what official place or position, if any, did you have?

A. Colonel and brigadier-general by brevet.

Q. 8. After the war, were you postmaster of the United States at the city of Troy?

A. About a year after the war I was made postmaster of this city.

Q. 9. Who made that appointment?

578 A. General Grant, then President of the United States; my first appointment, however, was by Andrew Johnson, in 1866. I have held the post-office here for two terms—one under Johnson, and one under Grant.

Q. 10. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 11. About how long have you known him?

A. I think I first made his acquaintance soon after I entered the post-office; I can't tell exactly when, in 1866 or 1867.

Q. 12. Have you the means for knowing his character for truth and veracity in this city?

A. My acquaintance with Mr. Norton has been general and limited; I know nothing adverse to his character and reputation in this city.

Q. 13. From your knowledge of his character for truth and veracity, would you believe him under oath?

(Objected to, because the proper foundation is not stated.)

A. I would.

Q. 14. Do you consider his character good or bad in this city?

A. So far as I have any knowledge of his character, I consider it good.

Q. 15. Did you ever hear any person in this city say that Norton was an untruthful man, and could not be believed on his oath?

A. I have heard remarks made by different ones unfavorable to Mr. Norton's reputation, but nothing especial as to his being believed under oath.

Q. 16. Or that he was untruthful?

A. Nothing of that kind, that I remember.

Cross-examination:

By Mr. CLARKE:

X Q. 17. Please state fully your means of knowing what Mr. Norton's character is.

579 A. As I have stated, I have never had any business intercourse with Mr. Norton, and only a passing acquaintance, and have no special means of knowing anything about Mr. Norton's character or reputation, favorably or adversely. My attention was first directed to a Marcus P. Norton while I was in the post-office, before I had seen the gentleman, by his association with the stamp used for the cancellation of letters, and had frequently thereafter conversed with him on the subject.

X Q. 18. Do you think you know enough about Mr. Norton to state that you know what his reputation for truth is, laying aside now your personal knowledge and acquaintance with him?

A. I can say simply that, from my personal knowledge, I have no knowledge adverse to his character and reputation; I have heard incidentally, in conversation with others, words unfavorable to Mr. Norton; what those words were, or what was said, I do not now remember; hearsay I pay no attention to, and to which I pay no regard about anybody.

X Q. 19. How many times have you heard Mr. Norton spoken of by anybody within the last eight or ten years; frequently, or seldom?

A. Well, seldom, on the whole, with reference to his reputation or character, but frequently with reference to his invention.

X Q. 20. When did you cease to be postmaster?

A. On April 1, '74.

X Q. 21. Since then have you heard Mr. Norton spoken of by anybody in any way, and if so, how frequently?

A. I don't think I have heard anything since then; I have seen in the newspapers that he was prosecuting this suit, and that is all.

X Q. 22. Were the remarks which you heard while you were postmaster, in regard to Mr. Norton as the inventor of the stamp, made chiefly by citizens of Troy, or by government employees?

580 A. Principally by my employees in the post-office.

X Q. 23. Did what they said relate principally to Mr. Norton personally, or to the stamp?

A. To the stamp.

Redirect examination:

By Mr. NORTON:

R. D. 24. Do you recollect that soon after the election of President Grant to the Presidency, for his first Presidential term, of having written a letter to him recommending the appointment of Marcus P. Norton to the office of the governorship of the Territory of Wyoming?

A. I recollect writing such a letter, but I can't say at what time.

ALONZO ALDEN.

Subscribed and sworn to before me this 2d day of August, 1878.

IRVING BROWNE,
Special Examiner.

On motion of defendant's counsel, the plaintiff's counsel consenting, the hearing is adjourned until the 20th day of August, Tuesday, at 10 a. m.

IRVING BROWNE,
Special Examiner.

581 TROY, *Tuesday, August* 20.

Case called and adjourned until Thursday, August 22, on application of complainant's counsel.

TROY, *August* 22, 1878.

Met pursuant to adjournment as above.

Present, Marcus P. Norton, of counsel for complainant, and Samuel B. Clarke, assistant U. S. district attorney, of counsel for defendant.

Whereupon complainant's counsel offers in evidence a certified copy from the United States Patent Office of the decision of the examiners-in-chief in the matter of the application for the reissue of letters patent granted Marcus P. Norton, dated April 14, 1863, and reissued August 23, 1864, upon improvements in postmarking letters and cancellation of

postage stamps thereon, signed R. L. B. Clarke, Samuel C. Fessenden, examiners in chief, dated July 29, 1869, number 3952, and under the seal of the Patent Office, and signed Elias Spear, Commissioner, and marked Complainant's Exhibit, decision of the board of appeals, U. S. Patent Office, I. B., ex'r, August 22, 1878.

(Objected to as immaterial.)

Complainant's counsel also offers in evidence a certified copy of letters patent granted Helen M. Ingalls for improvement in hand-stamp, dated August 23, 1870, number 106716, under the seal of the United States Patent Office and the signature of Elias Spear, Commis-
582 sioner, and the same is marked Complainant's Exhibit, hand-stamp, patented August 23, 1870, I. B., ex'r, August 22, 1878.

(Same objection.)

Complainant's counsel calls as a witness LEWIS C. LILLIE, who, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Lewis C. Lillie; age, 41; residence, Elizabeth, N. J.; my occupation is manufacturer of time bank-locks.

Q. 2. State where your present place of business is.

A. Well, my manufacturing is done in Newark, N. J., and my office in New York is 24 John street.

Q. 3. You have a partner in business, have you not?

A. Yes, sir; a special partner.

Q. 4. Have you ever resided in the city of Troy, New York?

A. I have.

Q. 5. About what time did you cease to reside there, if at all?

A. From the first of May, 1867.

Q. 6. Previous to May, 1867, how long had you resided at the city of Troy?

A. Twenty-one years.

Q. 7. While residing at Troy were you engaged in any kind of business; and, if you were, state that business, and who were associated with you in it, if any one?

A. I was engaged in a business of manufacturing mercantile and bank safes, locks, etc. My father, Lewis Lillie, was associated with me under the firm name of Lewis Lillie & Son.

Q. 8. About how extensive was the business carried on by that firm in the manufacture of bank safes, vaults, etc., while they were located and doing business in the city of Troy?

583 A. It was extensive, extending all over the United States and some foreign countries.

Q. 9. When you removed your works from the city of Troy, where did you go with them, if anywhere?

A. Bucks County, Penn., near Riegelsville.

Q. 10. What kind of business did you carry on there?

A. The manufacture of pig iron, in addition to what I manufactured here in Troy.

Q. 11. While you resided at the city of Troy did you know Marcus P. Norton, of that city; and, if you did, state how long you did, and also state his business?

(Objected to as immaterial.)

A. I did know him, and for ten years, while I lived here in Troy; his business was patent lawyer.

Q. 12. State whether he was employed by your firm in Troy; and, if so, for what business, as well as about the length of time it was continued, if you remember.

A. He was employed by our firm all the length of time I was a member of it for the purpose of securing patents for us, and all our business relating to patents; and that continued until about January, 1867.

Q. 13. You employed him by the year, at a fixed salary, whether you had business in his profession for him or not, did you or did you not?

A. We did.

Q. 14. State, if you remember, what that salary was; and, if you do, state the same, exclusive of expenses.

A. Fifteen hundred dollars, exclusive of expenses.

Q. 15. While you were in Troy, engaged in the business stated by you, had you the means of knowing Marcus P. Norton's character for truth and veracity?

(Objected to as immaterial.)

584 A. I had.

Q. 16. Did you consider it good or bad.

(Same objection.)

A. Good.

Q. 17. From your knowledge of his character for truth and veracity, would you believe him under oath?

(Same objection, and also because the proper basis for the question is not stated, and also because the question is designedly ambiguous.)

A. I would.

Q. 18. State whether Norton, while employed by your firm, did a large or small business for you in the line of his profession.

A. He did a large business.

Q. 19. State whether that business was or was not successfully done, or done to your satisfaction, at all times and in all places?

A. Wholly successful; entirely satisfactory.

Cross-examination:

By Mr. CLARKE:

X Q. 20. Does Mr. Norton owe you anything?

A. Not at present.

X Q. 21. In answer to question fifteen you state substantially that before you left Troy, in the year 1867, you had the means of knowing Mr. Norton's character for truth and veracity; what were those means?

A. Well, my personal acquaintance with the man, his employment by several of the prominent iron or stove houses, and the personal recommendation of Dr. Alfred Wotkyns, formerly president of the
585 National State Bank, with whom I conferred as to Mr. Norton's reliability; Mr. Norton keeping his accounts at that bank.

X Q. 22. What made you confer with Mr. Wotkyns as to Mr. Norton's reliability?

A. My father's absence threw the business generally upon my shoulders, and at the time mentioned we were making a general revision of patents, getting reissues, &c., and I was in the habit of consulting with Dr. Wotkyns in relation to them, and we kept our account at the same bank.

X Q. 23. Well, how came Mr. Norton's reliability to become a subject of discussion between you?

A. We were holding a conversation on general matters, among which the subject of patents came up, and very likely he may have asked me who was getting out my patents, and I remember his saying these words: 'I have had considerable knowledge of and intercourse with Mr. Norton, and consider him an able and reliable man."

X Q. 24. Was that all that was said about Mr. Norton's reliability?

A. That was all.

X Q. 25. Did Mr. Wotkyns say that of his own accord, or did you ask him in regard to Mr. Norton?

A. He said that of his own accord; I did not ask him his opinion of Mr. Norton.

X Q. 26. What year was it?

A. I should say that was in '65, or the fore part of '66.

X Q. 27. Do you know William E. Hagan, or did you when you lived in Troy?

A. I did.

X Q. 28. Did you ever hear of an attempt to impeach Mr. Norton's reputation for truth and veracity, in a case in which Mr. Hagan was plaintiff and Groom, Shavor, and Potter were defendants, in 1863?

A. Not that I remember of.

X Q. 29. Did you ever hear of any attempt to impeach Mr. Norton's reputation for truth?

586 A. Well, I never heard anything, unless I qualify it by saying that I heard some testimony given in the New York court house, from which I inferred that there was something of that kind going on; and that was in this case, and it was not more than two months ago.

X Q. 30. How do you determine what a man's reputation for truth is?

A. I determine by uprightness in his business relations, or the social relations, where I am personally cognizant of them.

X Q. 31. Do you allow rumor or report to influence you at all in determining whether a man's character for truth is good or bad?

A. I never intend to.

X Q. 32. When you stated on your direct examination that Mr. Norton's character for truth was good, I understand that the basis for your statement was your personal knowledge of Mr. Norton, derived from your business dealings and social relations with him; is that correct?

A. My answer on the direct examination was based not only on my personal knowledge and social relations, but also the fact that he had the confidence of my father previous to my entering the firm, and was employed professionally by various prominent houses in the city.

X Q. 33. When did Mr. Norton begin to do business for your firm?

A. I went into the firm in the year '64, I think it was, and he then commenced his business first for the firm of Lewis Lillie & Son; he previously had done business for Lewis Lillie before I entered the firm.

X Q. 34. What have you known of Mr. Norton since 1867?

A. I have not met Mr. Norton to speak with him since '67 until within the past two months, with one exception.

X Q. 35. Have you heard anything about him within that time?

587 A. Well, I don't know that I have.

X Q. 36. How long since Mr. Norton has owed you anything?

A. I don't know that he has ever owed me anything.

X Q. 37. Do you think that you know what was currently said about Mr. Norton, as to truthfulness, in this community, between the years 1864 and 1867?

A. I could only know what happened in my business relations, and in the sphere of my business acquaintance or intercourse with business men.

X Q. 38. Did you know the town talk?

A. I did not.

Redirect:

By Mr. NORTON:

R. D. 39. If you know, you may state whether Dr. Wotkyns is dead or living?

A. I have understood that he is dead.

R. D. 40. Dr. Wotkyns was president of the National State Bank for many years previous to his last sickness and death, was he not?

A. He was.

R. D. 41. Dr. Wotkyns was at one time mayor of this city, was he not?

A. He was.

R. D. 42. Dr. Wotkyns was a prominent physician in this city for many years, was he not?

A. He was.

(Objected to.)

R. D. 43. You may state whether your father, Lewis Lillie, is living or dead.

A. He is dead.

588 R. D. 44. Previous to your partnership with him, under the firm name of Lewis Lillie & Son, state whether your father was engaged in a large and extensive manufacturing business in this city for many years previous thereto.

A. He was.

R. D. 45. Did you ever hear anybody in this city speak of Marcus P. Norton in terms derogatory or defamatory to his reputation for truth and veracity?

A. I never did.

R. D. 46. On your cross-examination you have spoken of your business relations while you were engaged in business in this city, and also of your acquaintance with business men during those times; state whether your business relations were large or small, and whether you had or had not a general acquaintance with the prominent business men of this city.

(Objected to as not a proper redirect question.)

A. My acquaintance extended to all the prominent business men. My business relations were confined wholly, or almost wholly, to the iron interests.

R. D. 47. In how many banks did the firm of Lewis Lillie & Son keep an account or do business in this city?

(Same objection.)

A. Three.

R. D. 48. Name them.

(Same objection.)

A. Troy City National, Manufacturers' National, National State Bank.

R. D. 49. If you had any important suit to be prosecuted or defended, and you wanted Norton's professional services in such suit, would you hesitate to employ him professionally?

A. I should not.

589 R. D. 50. Do you know of anybody in New Jersey who has recently employed Norton of some importance?

(Same objection.)

A. I do.

R. D. 51. State the name, if you remember.

A. Amwell National Bank of Lambertville.

R. D. 52. State, if you know, whether Mr. Norton has been recently employed by anybody in the State of Pennsylvania in an important patent case.

A. I do.

R. D. 53. State the name of such person or persons.

A. The First National Bank of Easton.

LEWIS C. LILLIE.

Subscribed and sworn to before me this 22d day of August, 1878.

IRVING BROWNE,
Special Examiner.

Complainant's counsel calls THEODORE A. MALLARY, who, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Theodore A. Mallary; age, 42 years; residence, Watervliet, Albany County; occupation, coal dealer, Troy, N. Y.

Q. 2. Your place of business is in the city of Troy, is it not?

A. Yes, sir.

Q. 3. Have you previously resided with your family in the city of Troy?

A. Yes, sir.

590 Q. 4. About how long have you been engaged in business as a dealer in coal?

A. Fourteen years as a proprietor.

Q. 5. With whom have you been associated, if with any one, during that time?

A. With E. S. Mallary, my father; afterwards with Bolton & Anthony.

Q. 6. Your father was a dealer in coal, was he not, for many years in this city previous to your copartnership with him?

A. Yes, sir; from 1846 to 1864.

Q. 7. Is your father dead, or is he living?

A. He is dead.

Q. 8. State, if you know, whether the business carried on by him, and afterwards by Mallory and Son, in which you were a partner, was or was not an extensive business in this city?

A. It was extensive.

Q. 9. State, if you know, whether the business that has been carried on by you, in which you were a partner, was or was not also an extensive business in this city.

A. It was.

Q. 10. State whether the business now carried on by you is not also an extensive business.

A. It is.

Q. 11. During the time you have carried on the business stated by you in this examination, you have had the opportunity to know and form the acquaintance of business people in this city, have you not?

A. I have.

Q. 12. And you know a large number of business people in Troy, do you not?

A. A large number.

Q. 13. State, if you remember, where your father's office or place of business was located in this city, when you were his partner, and previous.

A. On Mechanic street, and in the rear of 361 River, and also at the foot of Grand Division street.

591 Q. 14. State whether your present place of business is in or near that part of the city at this time.

A. Number 377 River street, and within one block.

Q. 15. Do you know Marcus P. Norton, of this city; and, if so, how long have you known him, and what have you understood his business to be during that time?

A. I do, and have for about twenty years; his business was solicitor of patents and patent lawyer.

Q. 16. Have you ever had any business transactions with him during that twenty years?

A. I have.

Q. 17. Were those business transactions yearly ones?

A. Yes; and up to the time he discontinued housekeeping; and after that, when he was boarding at the Mansion House in this city.

Q. 18. Does Mr. Norton owe you anything at this time?

A. Yes.

Q. 19. About how much, in round numbers?

A. Between a thousand and fifteen hundred or two thousand. I don't remember the exact amount.

Q. 20. State if you remember having a note covering that amount, exclusive of interest.

A. I had such a note.

Q. 21. State whether, after that note had become void or non-collectable, by reason of the statute of limitations, you called upon Mr. Norton and stated that fact to him; and, if you did, what he said, and what was done in reference to it.

A. I called upon Mr. Norton, presented him the note, stated the case to him as it was, and asked if he wished to renew it. He emphatically said yes; said that it was for a just bill, and that he only wished that he could pay the cash for it at that time, and renewed the note immediately, and thereby removed the bar of the statute of limitations.

592 Q. 22. About how long ago was that, if you remember?

A. About three years ago, as near as I remember.

Q. 23. Do you consider a man that will do as stated by you in your last two answers an honest man, and entitled to be believed under oath in this or any other court?

(Objected to as irrelevant, immaterial, incompetent.)

A. I do.

Q. 24. Have you and have you had the means of knowing the character or reputation of Marcus P. Norton in this city for truth and veracity?

A. I have.

Q. 25. Do you consider his character for truth and veracity in this city good or bad?

A. Good.

Q. 26. Would you believe him under oath?

A. I would.

Q. 27. Did you ever hear anybody, in this city or elsewhere, say anything against his character for truth and veracity?

A. Not that I can remember.

Q. 28. Would you have been likely to have remembered it, if you had?

A. Yes, sir.

Cross-examination:

By Mr. CLARKE:

X Q. 29. What are your means for knowing Mr. Norton's character for truth in this city?

A. In my business relations with other people.

X Q. 30. Please explain how your business relations with other people are a means of knowing Mr. Norton's reputation for truth and veracity.

593 A. Having met him on the street and other places of business, and not hearing anything derogatory to his character.

X Q. 31. How long have you known Mr. Norton?

A. About twenty years.

X Q. 32. Whom have you ever heard speak about him?

A. I don't know as I can mention any names.

X Q. 33. How often have you heard him spoken of by anybody within the past five or six years?

A. I don't know as I can mention any names there, either.

X Q. 34. Well, about how often have you heard him spoken of in any way by anybody, within that time?

A. I don't know that I have heard him spoken of within that time; at least I don't remember.

X Q. 35. Did you ever hear of any attempt to impeach Mr. Norton in any suit?

A. I think I have; in this same suit.

X Q. 36. In any other suit or case than this?

A. I don't remember any other suit.

X Q. 37. Do you know William E. Hagan?

A. I do.

X Q. 38. Did you ever hear of an attempt to impeach Mr. Norton's testimony, made by Mr. Hagan, in a suit in which he was plaintiff and Shavor, Groom and Potter were defendants, and in the year 1863?

A. I don't remember.

X Q. 39. Did you ever hear of an attempt to impeach the testimony of Mr. Norton in one of the trials following the assassination of President Lincoln?

A. I did.

X Q. 40. When did you hear that?

A. I read it in the newspapers.

X Q. 41. Did you ever hear of Mr. Norton being debarred from practicing in the Patent Office?

A. I don't remember that I did.

594 X Q. 42. Did you ever hear of Mr. Norton being indicted for forgery, in the District of Columbia, five or six years ago?

A. I don't remember that I did.

X Q. 43. Did you ever hear of Mr. Norton being pushed by his friends for the governorship of Wyoming in the year 1869?

A. I think I did.

X Q. 44. How frequently have you had dealings with Mr. Norton, on an average, and to what extent?

A. Well, from month to month, and from two to three hundred dollars a year up to seven hundred.

X Q. 45. What was the nature of this business?

A. For coal sold to him and ordered by him.

X Q. 46. Do you remember to have ever heard Mr. Norton's character discussed in any way by anybody?

A. I don't remember that I have.

X Q. 47. Do you remember to have ever heard him spoken of in any way by anybody.

A. I have heard Mr. Charles Eddy speak of him.

X Q. 48. Any one else?

A. Not that I remember now.

X Q. 49. When did Mr. Eddy speak of him?

A. Since Mr. Norton left housekeeping.

X Q. 50. What was Mr. Eddy's conversation about?

A. Well, in regard to this case.

X Q. 51. Well, what did Mr. Eddy say?

A. Well, he said he thought that he would be successful in this case, and would come out all right, and that I should be able to get my pay.

X Q. 52. Anything else?

A. Nothing that I remember of.

X Q. 53. When was that debt Mr. Norton owes you contracted; how long ago?

A. I should judge it was eight or nine years ago.

X Q. 54. When do you expect to be paid?

A. I cannot say.

X Q. 55. If Mr. Norton succeeds in this stamp matter, you expect to be paid then, don't you?

595 A. I do.

Redirect examination:

By Mr. NORTON:

R. D. 56. You say in your answer to question 55 that you have such confidence in Mr. Norton that when he comes in possession of funds sufficient he will pay every cent of principal and interest he owes you?

A. Most assuredly I do.

R. D. 57. Counsel for the defendant has been pleased to ask you several questions relating to an attempted impeachment of Norton, of his debarment from the Patent Office, and of an indictment for forgery; did you ever hear that the counsel for the defendant had murdered a man in Massachusetts some years ago?

A. No, sir.

R. D. 58. Did you ever know or hear of his having fought a battle with anybody?

A. I never did.

R. D. 59. Did you ever hear while he was in Massachusetts, and before six years of age, of his ever having urinated in anybody's bed?

A. I never did.

R. D. 60. Well, did you ever hear anybody say that President Hayes had been to State's prison for a term of years?

A. I don't remember.

THEODORE A. MALLARY.

Subscribed and sworn before me this 22d day of August, 1878.

IRVING BROWNE,
Special Examiner.

596 WILLIAM TOUGH, being called as a witness by the complainant, first being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William Tough; age, thirty-nine; residence, Tro, New York; occupation, salesman.

Q. 2. About how long have you resided in the city of Troy?

A. Between fourteen and fifteen years.

Q. 3. You say in your first answer that you are a salesman; for whom, if for anybody, are you so employed?

A. Wolfe Stove Company.

Q. 4. About how long have you been so employed for that company?

A. Since the beginning of the year; it has only been organized for that length of time.

Q. 5. Previous to the organization of that company, for whom and for how long a time were you employed?

A. I was employed by Hicks & Wolfe, the predecessors of that company, and for seven years as a bookkeeper.

Q. 6. What business was carried on by Hicks & Wolfe during the time you were their bookkeeper?

A. Stove manufacturers.

Q. 7. State whether or not they did a somewhat extensive business as manufacturers and venders of stoves.

A. They did a large business in the manufacturing and selling of stoves of various descriptions.

Q. 8. If you know, state the street and number in the street in which Hicks and Wolfe carried on their business in this city.

A. 263 River street.

Q. 9. Where was their foundry located?

A. On Green Island.

Q. 10. Where is Green Island?

597 A. Near Troy, and separated by the Hudson River.

Q. 11. If you know, you may state where the business of the Wolfe Stove Company is now carried on.

A. 263 River street, Troy.

Q. 12. Do you know Marcus P. Norton of this city?

A. I do.

Q. 13. About how long have you known him?

A. About eight years.

Q. 14. Do you know his character for truth and veracity in this city?

A. Well, as far as I know, it has been good.

Q. 15. Have you ever known his character for truth and veracity called in question?

A. No; I don't know anything of the kind.

Q. 16. From your knowledge of his character for truth and veracity, would you believe him under oath?

A. I would.

Q. 17. Do you know a person in this city by the name of Nelson Pramer?

A. I do.

Q. 18 To your knowledge, was Nelson Pramer ever employed by the firm of Hicks & Wolf in this city?

A. He was.

Q. 19. If you know, you may state the nature of the employment and about how long it continued.

(Objected to as immaterial.)

A. He was employed as salesman most of the time for some fourteen or fifteen years.

Q. 20. If you know, you may state when he left that employment.

(Same objection.)

A. About the first of March, 1878.

598 Q. 21. You may state if you remember of an interview between

A. I don't remember that I have.

X Q. 47. Do you remember to have ever heard him spoken of in any way by anybody.

A. I have heard Mr. Charles Eddy speak of him.

X Q. 48. Any one else?

A. Not that I remember now.

X Q. 49. When did Mr. Eddy speak of him?

A. Since Mr. Norton left housekeeping.

X Q. 50. What was Mr. Eddy's conversation about?

A. Well, in regard to this case.

X Q. 51. Well, what did Mr. Eddy say?

A. Well, he said he thought that he would be successful in this case, and would come out all right, and that I should be able to get my pay.

X Q. 52. Anything else?

A. Nothing that I remember of.

X Q. 53. When was that debt Mr. Norton owes you contracted; how long ago?

A. I should judge it was eight or nine years ago.

X Q. 54. When do you expect to be paid?

A. I cannot say.

X Q. 55. If Mr. Norton succeeds in this stamp matter, you expect to be paid then, don't you?

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Redirect examination:

By Mr. NORTON:

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A. Most assuredly I do.

R. D. 57. Counsel for the defendant has been pleased to ask you several questions relating to an attempted impeachment of Norton, of his debarment from the Patent Office, and of an indictment for forgery; did you ever hear that the counsel for the defendant had murdered a man in Massachusetts some years ago?

A. No, sir.

R. D. 58. Did you ever know or hear of his having fought a battle with anybody?

A. I never did.

R. D. 59. Did you ever hear while he was in Massachusetts, and before six years of age, of his ever having urinated in anybody's bed?

A. I never did.

R. D. 60. Well, did you ever hear anybody say that President Hayes had been to State's prison for a term of years?

A. I don't remember.

THEODORE A. MALLARY.

Subscribed and sworn before me this 22d day of August, 1878.

IRVING BROWNE,
Special Examiner.

596 WILLIAM TOUGH, being called as a witness by the complainant, first being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William Tough; age, thirty-nine; residence, Tio, New York; occupation, salesman.

Q. 2. About how long have you resided in the city of Troy?

A. Between fourteen and fifteen years.

Q. 3. You say in your first answer that you are a salesman; for whom, if for anybody, are you so employed?

A. Wolfe Stove Company.

Q. 4. About how long have you been so employed for that company?

A. Since the beginning of the year; it has only been organized for that length of time.

Q. 5. Previous to the organization of that company, for whom and for how long a time were you employed?

A. I was employed by Hicks & Wolfe, the predecessors of that company, and for seven years as a bookkeeper.

Q. 6. What business was carried on by Hicks & Wolfe during the time you were their bookkeeper?

A. Stove manufacturers.

Q. 7. State whether or not they did a somewhat extensive business as manufacturers and venders of stoves.

A. They did a large business in the manufacturing and selling of stoves of various descriptions.

Q. 8. If you know, state the street and number in the street in which Hicks and Wolfe carried on their business in this city.

A. 263 River street.

Q. 9. Where was their foundry located?

A. On Green Island.

Q. 10. Where is Green Island?

597 A. Near Troy, and separated by the Hudson River.

Q. 11. If you know, you may state where the business of the Wolfe Stove Company is now carried on.

A. 263 River street, Troy.

Q. 12. Do you know Marcus P. Norton of this city?

A. I do.

Q. 13. About how long have you known him?

A. About eight years.

Q. 14. Do you know his character for truth and veracity in this city?

A. Well, as far as I know, it has been good.

Q. 15. Have you ever known his character for truth and veracity called in question?

A. No; I don't know anything of the kind.

Q. 16. From your knowledge of his character for truth and veracity, would you believe him under oath?

A. I would.

Q. 17. Do you know a person in this city by the name of Nelson Pramer?

A. I do.

Q. 18 To your knowledge, was Nelson Pramer ever employed by the firm of Hicks & Wolf in this city?

A. He was.

Q. 19. If you know, you may state the nature of the employment and about how long it continued.

(Objected to as immaterial.)

A. He was employed as salesman most of the time for some fourteen or fifteen years.

Q. 20. If you know, you may state when he left that employment.

(Same objection.)

A. About the first of March, 1878.

598 Q. 21. You may state if you remember of an interview between

him and Marcus P. Norton, in your presence, and in the office or counting-room of Hicks & Wolfe, in this city, with reference to Patent Office fees upon some application for a patent for Mr. Pramer.

(Objected to as immaterial, irrelevant, and incompetent.)

A. I remember such an interview.

Q. 22. About how long ago was that, as near as you remember?

A. I think it was in the fall of 1870 or spring of 1871.

Q. 23. I desire you to state all that you remember to have heard Mr. Pramer or Norton say about that matter on that occasion, and state further whether Mr. Pramer, at any time, showed you a letter from the Patent Office having reference to the same matter.

(Same objection.)

A. Pramer asked Mr. Norton what he had done with the fifty dollars he got for that patent application, and why he had not returned it; Mr. Norton told him that he had paid the money into the Patent Office and that he could prove that he had done so, and advised Pramer to write to the Commissioner of Patents and ascertain if what he said was not correct in relation to the payment of this money, and that he would look the matter up among his own papers. Pramer shortly afterwards, as advised by Mr. Norton, wrote to the Commissioner of Patents and received a reply from, as well as I can recollect, the chief clerk or some other Patent Office official, stating that the money had been received at the time specified by Norton. As well as I can recollect, Pramer
599 requested the money to be returned if the patent had been disallowed. The Patent Office official replied that there was no provision of law authorizing them to return fees on a disallowed claim. Afterward Mr. Norton came into Hicks & Wolfe's office while I was present and showed Pramer his letter-book, showing him a copy of the letter in which he had inclosed the money to the Patent Office, and some other papers relating to that correspondence.

Q. 24. Did or did not Mr. Pramer on that occasion express his entire satisfaction to Norton for his whole course and conduct in that matter to which you have referred in your last answer?

(Same objection.)

A. He said that that transaction was perfectly straight between Norton and himself, and said that he objected very strongly to the law not allowing the money to be returned on disallowed claims.

Cross examination:

By Mr. CLARKE:

X Q. 25. How do you know what Mr. Norton's character for truth is in this city?

A. Well, all I know is in business relations with Hicks & Wolfe.

X Q. 26. Whose relations with Hicks & Wolfe?

A. His, since I have been with them.

X Q. 27. That is about eight years?

A. Yes.

X Q. 28. During those eight years about how many times have you heard Mr. Norton spoken of?

A. When he was in the city he usually came into Hicks & Wolfe's office, and of course that gave rise to all the conversation that I have ever heard about him.

600 X. Q. 29. What have you heard about him?

A. Well, I never heard anything about his not being a straightforward, honest man.

X Q. 30. Well, what did you hear about him?

A. In what respect do you mean; as a lawyer, citizen, business man, or what?

X Q. 31. In any respect?

A. I heard that he was unfortunate in his business financially.

X Q. 32. Anything else?

A. No; I don't remember of his being spoken of otherwise, except that he was a pretty good patent lawyer.

X Q. 33. Did you ever hear that he did not keep his business engagements?

A. No; I don't recollect having heard that spoken of.

X Q. 34. Does Mr. Norton owe you anything?

A. No.

X Q. 35. Has he ever owed you anything?

A. No.

X Q. 36. Did you ever have any business dealings with him?

A. None whatever.

WILLIAM TOUGH.

Subscribed and sworn to before me this 22d day of August, 1878.

IRVING BROWNE,
Special Examiner.

WILLIAM H. YOUNG, a witness called on the part of the plaintiff, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William H. Young; aged, 60; residence, Troy; occupation, bookseller and stationer.

601 Q. 2. About how long have you resided in the city of Troy?

A. I was born here, and have resided here ever since.

Q. 3. About how long have you been engaged in the business stated by you in your first answer?

A. Between thirty-six and thirty-seven years.

Q. 4. State the locality of your place of business during those thirty-six or thirty-seven years.

A. From 1842 to 1864 I was at 216 River street, in my business; in 1864 I built the store 8 and 9 First street, and extended it through to this street (First street), occupying stores running through from First to River street.

Q. 5. During the time you have been in business, and if you have no objections, you may state whether that business has not been and is not now quite an extensive business conducted by you?

A. It has been an increasing business until the past few years, and has extended to the city, county, and vicinity.

Q. 6. State whether at the present time you are one of the board of directors of the Mutual National Bank of this city.

A. I am.

Q. 7. State whether you at the present time hold any official place in or connected with the Polytechnic Institute of this city.

A. I am one of the trustees, and also its treasurer; which position of treasurer I have held for the past twenty-seven years, and have been trustee for about seventeen years.

Q. 8. Have you ever been a member of the board of education of the city of Troy; and, if you answer yea, when and what ward did you then represent, if any?

A. I answer, yea; the second ward. I first was elected in 1849 to

represent that ward. In 1866 I represented the eighth ward.
602 Twice I was elected by the common council to fill vacancies, and was in the board for about eleven years.

Q. 9. Have you ever been president of the young men's association of this city?

A. I have.

Q. 10. During the time you have been engaged in business, as well as during the time you held the various official positions named by you in answer to questions, you had the opportunity of becoming well acquainted with business men and men holding official positions in this city, had you not?

A. A general acquaintance.

Q. 11. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 12. About how long have you known him?

A. In the neighborhood of twenty years.

Q. 13. Have you had business transactions with him in the line of your business during that time?

A. Yes, sir.

Q. 14. About how many years, during that time, have you had such business transactions with him?

A. The greater part of that time.

Q. 15. During a portion of that time those transactions have been somewhat extensive, have they not?

A. Yes; for an individual account.

Q. 16. While his office was located in Wotkyns' block for a space of ten years, you supplied his office with stationery and other matter wanted, did you not?

A. Yes.

Q. 17. Does he owe you anything at this time?

A. He does.

Q. 18. State the amount, if you remember.

A. About eighteen hundred dollars. I am also interested in a note for about $400, held by Young & Blake.

Q. 19. You may state in what form the indebtedness named in
603 the last answer exists at the present time; I mean whether it is in book account or in notes.

A. In notes.

Q. 20. State, if you remember, when the book accounts now represented by those notes were first settled and receipted by a note or notes.

A. About December, 1872.

Q. 21. State, if you remember, whether the notes mentioned in your last answer were held by you and by Young & Blake, without being paid in whole or in part until the statute of limitations had barred their collection, and thereby rendered the same entirely worthless.

A. Yes; it had.

Q. 22. Did you at any time call Norton's attention to that fact?

A. Not until after they were due, and past due, and uncollectable in law.

Q. 23. Upon his attention being called by you to that fact, what did he do about it, if anything?

A. He proposed to give me new notes, adding the interest to the date of the new notes.

Q. 24. Was that done?

A. Yes.

Q. 25. You gave up the old and worthless notes and received the new ones in lieu thereof, did you?

(Objected to as immaterial.)

A. I did.

Q. 26. Was that done upon the unasked for proposition by Norton, other than your presenting the notes to him, and stating the facts of their having been outlawed?

(Same objection.)

A. It was.

604 Q. 27. In view of the testimony already given by you in this matter, have you the means of knowing the character of Marcus P. Norton for truth and veracity in this city?

A. So far as I know from my own knowledge, I have no reason to doubt his character for truth and veracity.

Q. 28. Do you consider it good or bad?

(Objected to as designedly ambiguous.)

A. I consider it good.

Q. 29. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

(Objected to because the proper foundation for the question is not laid.)

A. I would.

Q. 30. Have you at this time an open account with Marcus P. Norton?

(Objected to as immaterial.)

A. I have.

Cross-examination:

By Mr. CLARKE:

X Q. 31. How do you determine that Mr. Norton's character for truth in this city is good?

A. Well, from my own general knowledge and business transactions.

X Q. 32. Do you mean your personal knowledge of him and dealings with him?

A. Yes.

X Q. 33. Do you allow anything else to influence you in determining this point other than your own personal knowledge of and dealings with him?

A. I don't know that I do.

X Q. 34. Do you allow rumor and report to influence you at all?

605 A. No; I do not, and have not.

X Q. 35. Suppose that you had had extensive dealings with a man, in which he had always treated you squarely and uprightly, and suppose it was currently reported in the community that that man was a liar, would you say that that man's character for truth was good or bad?

A. Well, current report, without any direct knowledge, I should say that it was good.

X Q. 36. I understand you to mean that you would consider a man's character good unless you had personal knowledge of his untruthfulness. Is that correct?

A. Having had transactions with a supposed party for a number of years, and found him truthful to me, if I heard in the street that that man was a liar, I would not believe it unless I had proof of it.

Redirect examination:

By Mr. NORTON:

R. D. 37. Have you ever heard any man, woman, or child, within the past twenty years, in this city, say Marcus P. Norton was a liar?

A. I have not, that I recollect of.

R. D. 38. Did you ever hear anybody question his character for truth and veracity, in this city?

A. No; I can't recall a single instance of that kind.

Recross-examination:

By Mr. CLARKE:

R. C. 39. How often have you heard Mr. Norton spoken of in any way within the last seven or eight years?

A. I don't know that I can answer that question.

R. C. 40. Has it been frequently or seldom?

A. Seldom.

606 R. C. 41. When do you expect to be paid the debt Mr. Norton owes you?

A. The notes which he has given me will be due in July next, and I expect that they will be paid when they become due.

R. C. 42. Who did you ever hear say anything about Mr. Norton?

A. Well, I don't know that I can recall any names.

WM. H. YOUNG.

Subscribed and sworn to before me this 22d day of August, 1878.

IRVING BROWNE,
Special Examiner.

JOHN T. LAMPORT, a witness called on the part of the plaintiff, first being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John T. Lamport. My age is 68. My profession is that of attorney at law. I reside in the city of Troy.

Q. 2. About how long have you resided in the city of Troy?

A. Fifty-six years on the first day of May last.

Q. 3. About how long have you been a member of the bar of Rensselaer County, and practiced your profession in this city?

A. I was admitted to practice law in the supreme court at the May term, 1831, and have continued to practice that profession ever since, except while I was city chamberlain for eight or ten years, during which time my practice was very limited, necessarily.

Q. 4. You speak in your last answer of having been chamber-
607 lain of the city of Troy, and of having held that office for about ten years. Was that an official place of honor and of trust?

A. It is so generally regarded. I so regard it.

Q. 5. What official place, if any, do you now hold under the law or by the authority of the circuit court of the United States for the northern district of New York?

A. I am a commissioner of the United States circuit court for the northern district of New York, and also an examiner in equity in the same court.

Q. 6. About how long have you held those positions, and by whom were you appointed?

A. The positions to which I refer were conferred upon me by the circuit court of the United States for the northern district of New York, Judge Samuel Nelson presiding, Judge N. K. Hall, district judge, I

think. I was appointed in 1861, and have held the office ever since, and hold it now.

Q. 7. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 8. About how long have you known him?

A. Since 1854 or 1855, I think.

Q. 9. State whether he ever appeared before you in taking of testimony in patent or other causes, in your official capacity as United States commissioner or examiner in equity.

A. He has, in many cases. This occurred during the years extending from 1862 down to the present time.

Q. 10. Do you know the character of Marcus P. Norton for truth and veracity, in this city?

A. I think I do.

Q. 11. Do you consider it good or bad, as to truth and veracity?

A. I regard it as good.

Q. 12. From your knowledge of him and of his character for truth and veracity, would you believe him under oath?

(Objected to as improperly worded.)

608 A. I should.

Q. 13. Have you previously been examined as a witness in this cause?

A. I was.

Q. 14. By whom and for whom were you subpœnaed to appear as a witness?

A. I was subpœnaed by one of the parties, but I am at a loss now to say which one.

Q. 15. When was that?

A. I think it was within the past year; I can't say exactly when.

Q. 16. Who, if you remember, conducted your examination in chief?

A. My examination was conducted by Mr. Clarke, now present.

Cross-examination:

By Mr. CLARKE:

X Q. 17. What are your means of knowing what Mr. Norton's reputation is for truth and veracity?

A. A somewhat intimate acquaintance with him, different remarks of people of the city, the extent of his business before me, and within my knowledge.

X Q. 18. What are those remarks which you have heard?

A. In regard to the conduct of causes in which he was engaged, I have heard him spoken of as an impulsive man.

X Q. 19. Did you ever hear anything else said about him?

A. Yes, sir; I have heard it said that he did not value money very highly—an inclination to indulge in a somewhat expensive taste in fitting up his office and library.

X Q. 20. Anything else?

A. I don't know that I think of anything else now.

X Q. 21. Did you ever hear his reputation for truth and veracity discussed at all?

609 A. I have no recollection at the present time of hearing it discussed, but I cannot say that it has not been discussed.

X Q. 22. Do you know what his reputation is as regards truth?

A. Nothing further than I have stated.

X Q. 23. Did you ever hear of Mr. Norton being impeached in 1863, in a case between William E. Hagan and a man called Groom?

know a firm by the name of H. Burden & Sons, in this city, by reputation or otherwise?

613 A. I did.

Q. 13. If you know, you may state what kind of business was carried on by that firm.

A. Manufacturing iron, railroad spikes, and horseshoes.

Q. 14. Did you hear or know of a controversy or litigation between the two firms, or some persons thereof, with reference to patented machinery, said to have been used in their works, while you were employed by Corning, Winslow & Company?

(Objected to as immaterial.)

A. Yes; the great spike suit.

Q. 15. Do you remember any other suit or litigation?

A. Yes; the horseshoe machine suit.

Q. 16. About how far apart are the works formerly belonging to Corning, Winslow & Company, and those of H. Burden & Sons, and in what part of this city are each of those works situated?

(Same objection.)

A. Both are in South Troy; one is on one side of the Wynantskill Creek and the other on the other side, not very far apart.

Q. 17. Do you know Marcus P. Norton of this city?

A. I do.

Q. 18. And about how long have you known him?

A. About twenty years.

Q. 19. While you were in the employment of Corning, Winslow & Company, do you know whether he was one of their counsel in the patent business and in litigated cases, involving one or more patents?

A. He was.

Q. 20. Did you frequently see him in conference with Mr. John F. Winslow?

614 A. I did.

Q. 21. State, if you know, whether that firm paid Marcus P. Norton for services in sums large or small.

(Same objection.)

A. They paid him in checks, generally of about one thousand dollars apiece; sometimes larger, sometimes smaller.

Q. 22. Do you know his character for truth and veracity in this city?

A. I never heard it doubted.

Q. 23. Do you consider it good or bad in this city?

A. I have never heard anything against it, and I consider it good.

Q. 24. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 25. Have you ever had any personal dealings with Mr. Norton?

A. Only on business.

X Q. 26. What business?

A. When I was in the employ of the Albany Iron Works.

X Q. 27. How long ago was that?

A. Ten years ago.

X Q. 28. Have you had anything to do with Mr. Norton within the past ten years?

A. No.

X Q. 29. How often have you heard him spoken of in any way by anybody within that time?

A. I haven't heard him spoken of since he was doing business for the Albany Iron Works.

615 X Q. 30. What business did he do for the Albany Iron Works ten years ago?

A. He was one of the counsel in the spike and other suits.

X Q. 31. Whom did you hear speak of him at that time?

A. I heard David L. Seymour, Mr. Peterson, his partner, and John F. Winslow.

X Q. 32. Winslow had what connection with the Albany Iron Works?

A. A partner; or one of the partners.

X Q. 33. How often did you use to hear Mr. Norton spoken of in those days?

A. Frequently.

X Q. 34. Principally by people connected with the Albany Iron Works, or those suits?

A. Yes.

X Q. 35. Did you ever hear of an attempt being made to impeach Mr. Norton's character for truth about the year 1863, in a case in which William E. Hagan was plaintiff and Shavor, Potter and Groom were defendants?

A. Not that I remember.

Redirect examination:

By Mr. NORTON:

R. D. 36. In answer to question 31, you substantially state that you had heard David L. Seymour, John F. Winslow, and Mr. Peterson, then a partner of Mr. Seymour's, speak concerning Marcus P. Norton; what was the business, if you know, of Seymour and Peterson?

(Objected to as immaterial.)

A. They were other council in the same suits, and they were lawyers in this city.

616 R. D. 37. Was not David L. Seymour at that time known in this community as a very able lawyer?

A. He was.

R. D. 38. You may state, if you remember, the substance of what you heard those three gentlemen state with reference to Norton, and in as brief a manner as you may deem best.

A. Only in regard to the suits pending at that time.

R. D. 39. It was only in reference to those suits pending?

A. That is all.

THOS. EDGLEY.

Subscribed and sworn to before me this 23d day of August, 1878.

IRVING BROWNE,
Special Examiner.

Complainant's counsel here offers in evidence a certified copy of an opinion and decision signed J. J. Coombs, S. H. Hodges, and S. C. Sheker, examiners-in-chief in the United States Patent Office, in the interference case between the application of William E. Hagan for a method of burning fuel for generating heat, and the patent granted to Smith Gould June 10, 1862, for improvement in stoves, and on appeal to the examiners-in-chief, United States Patent Office, under date of October 30, 1863, and under the certificate and seal of the United States

Patent Office, dated the 27th day of November, 1863, and signed D. P. Holloway.

Complainant's counsel states that the pencil marks in blue on the several pages of the document were placed there by himself in
617 the year 1863, after having received the paper from the Patent Office.

The paper is here marked "Complainant's Exhibit William E. Hagan and Smith Groom, October 30, 1863, I. B., Ex'r, August 23, 1878."

(Objected to as immaterial, incompetent, and irrelevant, and not properly proved.)

ELISHA WATERS, a witness called on the part of the plaintiff, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Elisha Waters; age 63; Lansingburgh, N. Y.; occupation, paper boat manufacturer. I formerly was in the drug business in the city of Troy.

Q. 2. You have formerly resided in the city of Troy and done business there, have you not?

A. Yes, sir; and for forty years.

Q. 3. About how long have you resided at Lansingburgh?

A. Six years this month.

Q. 4. Lansingburgh is an incorporated village immediately adjoining the city of Troy on the north, is it not?

A. Yes, sir.

Q. 5. You may state whether the business you are now engaged in is or is not an extensive business?

A. It is; our customers are scattered through the United States and other countries. There is nobody in the world making paper boats except ourselves, Elisha Waters & Sons.

Q. 6. Do you know Marcus P. Norton of this city?

A. I do.

Q. 7. You have known him for about what length of time?

618 A. Well, for about twenty years.

Q. 8. So far as you know, what has been his business in the city?

A. I have recognized him as a patent attorney.

Q. 9. Have you, during the time you have known him, employed him as solicitor or counsel in any litigated case, or other cases in the United States Patent Office, or elsewhere?

A. Yes.

Q. 10. You may name, if you remember, one or more cases in the United States circuit court where Norton acted as your attorney or counselor.

A. In the case of Percy and King, interference with a patent, or rather an infringement of a patent.

Q. 11. State, if you remember, what the result of that litigation was; I mean whether you were successful or unsuccessful?

(Objected to as immaterial.)

A. There was a judgment in my favor, and the opposition was broken up.

Q. 12. Do you know the character of Marcus P. Norton for truth and veracity in this city?

(Objected to as ambiguous.)

A. I have never known anything derogatory to it.

Q. 13. Do you consider it good or bad?

(Objected to as immaterial.)

A. Good.

Q. 14. From your knowledge of his character in this city, would you believe him under oath?

(Same objection.)

A. I would.

619 Q. 15. Did you employ Norton to do a considerable patent business for you, say from the year 1858 to 1870?

A. He was my principal counsel, and did most of my patent business.

Q. 16. Was that business conducted by him acceptably to you or not in all respects?

(Same objection.)

A. It was in every particular.

Cross-examination:

By Mr. CLARKE:

X Q. 17. Does Mr. Norton owe you anything?

A. No, sir.

X Q. 18. When did Mr. Norton last do any business for you?

A. It was about '69; that was done for Waters, Balch & Co. Since this case all our patent business has been done in the name of the present firm, E. Waters & Sons; my son George has charge of that department, so that I don't know much about it.

X Q. 19. How frequently have you heard Mr. Norton spoken of by any one in any way since the year 1869?

A. I seldom hear his name mentioned in any way, except in the line of business and with myself.

X Q. 20. And of such business you have not had much since 1869?

A. No, sir; not much.

X Q. 21. Prior to 1869, how frequently did you hear Mr. Norton spoken of by anyone in any way?

A. I could not tell you, but not very frequently.

X Q. 22. Did you ever hear of an attempt to impeach Mr. Norton's reputation for truth?

A. Yes, sir; I was witness in such a case, which was not successful.

X Q. 23. Was testimony given against his reputation in that case?

620 A. I did not hear any testimony, except what I gave myself.

X Q. 24. What was the case and when?

A. I couldn't tell you.

X Q. 25. Was it the case of Hagan against Groom, and about the year 1863?

A. I don't recollect; it seems as though Hagan had something to do with it.

X Q. 26. You say that that impeachment was not successful; how do you know that?

A. Common report.

X Q. 27. From whom did you hear that?

A. I couldn't tell.

X Q. 28. Did you ever hear of Mr. Norton being impeached in any other case?

A. No, sir.

X Q. 29. Did you ever hear of Mr. Norton being indicted for crime in the district of Columbia, about six years ago?

A. No, sir.

X Q. 30. Did you ever hear of Mr. Norton being debarred from practicing in the Patent-Office, about six years ago?

A. I heard that he was denied the privilege of search among the patents; that was all I heard.

ELISHA WATERS.

Subscribed and sworn to before me this 23 d day of August, 1878.

IRVING BROWNE,
Special Examiner.

GEORGE A. WATERS, a witness called on the part and behalf of the plaintiff, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

621 A. George A. Waters; age, 34; residence, Lansingburgh; occupation, manufacturer.

Q. 2. About how long have you been engaged in the business stated by you in your last answer?

A. Well, as a partner for thirteen years, but previously as a bookkeeper and manager for a number of years, ever since I left school.

Q. 3. About how long have you resided at Lansingburgh?

A. Six years.

Q. 4. Lansingburgh is an incorporated villa ge, immediately adjoining Troy on the north, is it not?

A. It is.

Q. 5. Previous to your going to Lansingburgh to reside, where was your place of business, and where did you reside with your family?

A. My place of business was Troy, and residence at Troy.

Q. 6. About how long had you resided in the city of Troy, and there carried on your manufacturing business, previous to your going to Lansingburgh to reside?

A. I have always resided in the city of Troy, previous to that; about twelve years engaged in business.

Q. 7. State whether the business in which you have been, and are now, engaged, is or is not a business of considerable extent?

A. Yes, sir, I think it is.

Q. 8. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 9. And you have known him for about what length of time?

A. For as long as I can remember.

Q. 10. State, if you know, what has been his business, professionally or otherwise, since you have known him?

A. I have known him as a lawyer, patent attorney.

522 Q. 11. Have you ever had any business with him in the line of his profession?

A. I have.

Q. 12. Frequently or otherwise?

A. Frequently.

Q. 13. Do you know his character for truth and veracity in this city?

A. I have never doubted his truth or veracity.

Q. 14. Do you consider it good or bad, in this city?

(Objected to because the proper foundation has not been laid.)

A. Good.

Q. 15. From your knowledge of his character for truth and veracity would you believe him under oath?

(Objected to as immaterial.)

A. I would, most assuredly.

Q. 16. In answer to question 13, you say, "I have never doubted his truth or veracity"; did you ever hear anybody in this city doubt Norton's character for truth and veracity?

A. No, sir.

Q. 17. Whenever you have occasion in your business matters to consult a lawyer, with reference to your patents, or matters connected with them, or any of them, with whom do you usually confer or consult?

A. With Marcus P. Norton.

Cross-examination:

By Mr. CLARKE:

X Q. 18. What is your business?

A. Manufacturer.

X Q. 19. Of what?

623 A. Paper boats.

X Q. 20. Are you any relative of Elisha Waters, the last witness?

A. I am the son of Elisha Waters.

X Q. 21. What dealings have you had with Mr. Norton since 1869?

A. We have consulted him with reference to a reissue of our patent on paper boats.

X Q. 22. When was that?

A. Well, I don't recollect the date; I think it was about 1869.

X Q. 23. What business have you had with Mr. Norton since 1869, and when?

A. I have had several consultations with him in regard to our patent matters, nothing definite; I think the matter of our patents has been talked about every time I have seen him.

X Q. 24. Well, how often have you seen him since 1869?

A. Well, I should think once or twice a year; we met, not by appointment, but by accident.

X Q. 25. How often have you heard Mr. Norton spoken about in any way, by anybody, since 1869?

A. It would be impossible for me to say.

X Q. 26. Why?

A. Because I can't recollect.

X Q. 27. Well, has it been very frequent?

A. No, sir.

X Q. 28. Comparatively seldom?

A. Yes; I should think so.

X Q. 29. Did you ever hear of Mr. Norton's reputation for truth being impeached, or attempted to be impeached, in any case?

A. No, sir.

X Q. 30. Did you ever hear of Mr. Norton being indicted for forgery, in the District of Columbia, some six or seven years ago?

A. No, sir.

624 X Q. 31. Did you ever hear of Mr. Norton being prohibited from practicing in the Patent Office, or as a patent agent?

A. No, sir.

Redirect examination:

By Mr. NORTON:

R. D. 32. Did you ever board, with your family, at the Mansion House, in this city?

A. Yes, sir.

R. D. 33. Did Norton and his family board there at the same time?

A. Yes, sir.

R. D. 34. What year was that, if you remember?

A. Part of '71 and part of '72.

R. D. 35. State whether you remember, during the year 1875, while Norton was boarding with his family at the Mansion House, in this city, of meeting Norton there for conference and consultation about your patent matters?

(Objected to as immaterial.)

A. I can't tell as to the year, only that it was since '72, when I left there.

R. D. 36. Do you remember by whom the appointment was made, if by anybody?

(Same objection.)

A. I think I wrote requesting the appointment, and that the meeting was the result of that letter.

R. D. 37. Do you remember the particular invention about which that conference was?

A. I think it was in relation to paper oil cans.

R. D. 38. During the last few years have you had as much business requiring the employment of a lawyer as in former years?

625 A. Not of a patent lawyer.

GEO. A. WATERS.

Subscribed and sworn to before me this 23d day of August, 1878.

IRVING BROWNE,
Special Examiner.

CHARLES L. FULLER, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. C. L. Fuller; 48 years old in September; occupation, civil engineer and surveyor; my residence is the city of Troy.

Q. 2. State about how long you have resided at the city of Troy?

A. A little over twenty-five years.

Q. 3. About how long have you been engaged in the business stated in your first answer?

A. Twenty-seven or twenty-eight years.

Q. 4. What official place, if any, have you held since you have resided in the city of Troy?

A. I have been city engineer and surveyor for a little over nineteen years.

Q. 5. State by whom you received the appointment to the official place stated in your last answer?

A. From the common council of the city.

Q. 6. You may state whether you, at this time, have any official place outside of the city of Troy; and, if you answer yea, state the same and where.

A. I had the appointment of village surveyor of Lansingburgh and of Green Island, adjoining the city of Troy.

Q. 7. Do you at this time hold any official place in any other village than those you have named?

A. I do not.

626 Q. 8. Have you at any time? and, if so, state the same.

A. I have, in the village of West Troy, for about fifteen years.

Q. 9. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 10. About how many years have you known him?

A. Somewhere from fifteen to twenty years.

Q. 11. Did he formerly, and for several years reside in this city, in the same part in which you reside?

A. He did.

Q. 12. Do you know his character for truth and veracity in this city?

A. Yes, sir.

Q. 13. Do you consider it good or bad?

A. I consider his character good—never having heard anything to the contrary.

Q. 14. From your knowledge of his character for truth and veracity, would you believe him under oath?

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 15. How do you know Mr. Norton's character for truth in this city?

A. Only as I know the character of other citizens with whom I have been acquainted for twenty years.

X Q. 16. How often have you heard Mr. Norton spoken of by anybody in any way within the last ten years?

A. Well, not very often for the past ten years, for he has been away from here more or less; I have hardly heard his name mentioned for the past six years.

X Q. 17. What part of the city was it you lived in when you lived near Mr. Norton?

627 A. In the vicinity of Fifth, Broadway, and State streets; I lived near the corner of Fifth and Broadway, and he lived near Broadway.

X. Q. 18. How long ago was that?

A. About 1866.

X Q. 19. How long did you live in Mr. Norton's neighborhood?

A. In his immediate neighborhood for about five or six years.

X Q. 20. How often did you hear Mr. Norton spoken of by anybody prior to ten years ago?

A. While he was in business in the Patent Office and our business brought us together somewhat, making drawings, then I heard his name spoken of more frequent.

X Q. 21. Did you ever hear of an attempt being made to impeach Mr. Norton's reputation for truth in any case?

A. I don't recollect of any.

X Q. 22. Did you ever hear of such an attempt made in a case in 1863, in a case in which William E. Hagan was plaintiff, and Groom, Shaver, and Potter were defendants?

A. I heard that there was some trouble between them, but I never knew that they undertook to impeach him.

X Q. 23. Did you ever hear of Mr. Norton being debarred from acting as a solicitor, or as an agent in the Patent Office some six or seven years ago?

A. I think that there was something in the paper about it, but I don't recollect what is was.

X Q. 24. Did you ever hear of Mr. Norton being indicted for forgery in the District of Columbia, some six or seven years ago?

A. I did not, that I now recollect of.

X Q. 25. Did you ever hear anything unfavorable said of Mr. Norton?

A. I may have heard something said in court when the lawyers got to quarreling, but no other time that I recollect of.

628 X Q. 26. Give the name of a person whom you ever heard say anything about Mr. Norton.

A. The draughtsman who was working for Mr. Norton, Mr. Scott, was at the same time working for me, and I have heard him speak of him very often.

X Q. 27. Do you think of anybody else?

A. I presume that I have heard five hundred men speak of him, but I could not give their names now; almost every business man in the city at one time or another.

X Q. 28. And you have never heard anything unfavorable about him except in the court-room?

A. I don't recollect that I have.

X Q. 29. Nothing in regard to financial matters?

A. I think Mr. Norton failed in some way; I know the property was sold, desks and one thing and another.

X Q. 30. Have you had any business dealings with Mr. Norton?

A. I think that I have done work for him, or it was done in my office and I assisted.

X Q. 31. What sort of work?

A. Drawing—making patent drawings.

X Q. 32. Does Mr. Norton owe you anything?

A. No, sir.

X Q. 33. What other relations did you have, if any, with Mr. Norton, aside from those incident to making patent drawings for him?

A. I may have made surveys for him in some cases.

X Q. 34. Were you on intimate social relations with Mr. Norton?

A. No, not particularly.

X Q. 35. Did you and your family call socially on him and his family?

A. No, sir.

C. L. FULLER.

Subscribed and sworn to before me the 23d day of August, 1878.

IRVING BROWNE,
Special Examiner.

629 STEPHEN F. HOYT, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Stephen F. Hoyt; age, 56; residence, Troy; and occupation, newspaper business.

Q. 2. About how many years have you resided in the city of Troy?

A. About twenty seven years.

Q. 3. About how long have you been engaged in the business stated in your first answer?

A. About twenty-seven years; I commenced that business when I first came here.

Q. 4. You supply persons residing in different parts of the city with daily and other newspapers; with magazines and other news matter, do you not?

A. Yes, sir.

Q. 5. State whether, connected with your business, you have a stationery department.

A. Yes, sir; and books.

Q. 6. State whether you supply agents and other persons residing beyond the limits of the city of Troy with various articles in which you deal, and referred to by you in answer to previous questions.

A. Yes, sir.

Q. 7. Your business is quite an extensive business, is it not?

A. Yes, sir.

Q. 8. Do you know Marcus P. Norton, of this city?

A. Yes, sir.

Q. 9. About how long have you known him?

A. Well, I should think twenty years; perhaps longer; I don't know.

Q. 10. During those years, or a greater part of them, have you in the line of your business had more or less dealings with him?

630 A. Yes, sir.

Q. 11. Do you know his character for truth and veracity in this city?

A. I never heard it questioned at all.

Q. 12. Do you consider it good or bad?

A. Good, sir.

Q. 13. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

A. Yes, certainly.

Cross-examination:

By Mr. CLARKE:

X Q. 14. Do you distribute papers and periodicals yourself?

A. No, sir; not for the past three years; we now supply agents and they distribute the papers throughout the city.

X Q. 15. Prior to three years ago, did you personally distribute the newspapers yourself throughout the city?

A. No, sir, not personally; it was done by my employees.

X Q. 16. Did you ever hear of an attempt being made to impeach Mr. Norton's reputation for truth in a case in which William E. Hagan was plaintiff and Groom, Shavor, and Potter were defendants, about fifteen years ago?

A. I do not remember of any such attempt.

X Q. 17. Did you ever hear of Mr. Norton being prohibited from practicing as a solicitor or patent agent in the United States Patent Office?

A. No, sir.

X Q. 18. Did you ever hear of Mr. Norton being indicted for forgery in the District of Columbia about six years ago?

A. No, sir.

631 X Q. 19. Did you ever hear of Mr. Norton's reputation being impeached, or attempted to be impeached, in one of the trials following the assination of President Lincoln?

A. No, sir.

X Q. 20. Did you ever hear anything unfavorably said of Mr. Norton?

A. No, sir.

X Q. 21. Did you ever hear his financial condition discussed at all?

A. I have heard people say that he was slow sometimes in payments.

X Q. 22. Does he owe you anything?

A. No, sir.

X Q. 23. How many times have you heard him spoken of in any way by anybody within the past ten years?

A. Well, perhaps half a dozen times; perhaps more; a person's name may be brought up in conversation once a week or once a month, and perhaps not more than once in five years to be remembered.

X Q. 24. Well, should you say that during the last ten years you had heard Mr. Norton spoken of seldom or frequently?

A. Very seldom, sir.

X Q. 25. In what way have you had business dealings with Mr. Norton?

A. I have sold him goods in my line; newspapers, books, etc.

X Q. 26. Is that all?

A. Yes, that is all; my business dealings have been only in a mercantile way; of course I have known him.

X Q. 27. How well or how intimately have you known Mr. Norton?

A. I have known him the same as I would any one whom I have been doing business with; I know nothing of his private business or affairs.

632 Redirect examination:

By Mr. NORTON:

R. D. 28. Counsel for the defendant, in your cross-examination, by a series of copyrighted questions about attempted impeachment, about disbarment at the Patent Office, and about indictment for forgery, has attempted to throw mud; will you state whether, if any of his statements be correct, and from your twenty years' acquaintance and dealings with Norton, it would not require evidence of the strongest character to convince you that Norton had been guilty of any such stuff?

A. Well, from my acquaintance with Mr. Norton, and all I have ever heard of him, it would require strong evidence for me to believe it.

R. D. 29. During your twenty years' acquaintance with Norton, have you known or heard of his having committed any kind of offense or crime against the laws of the State or country?

(Objected to as immaterial.)

A. I have not heard of any.

R. D. 30. Counsel for the defendant, in his cross-examination, still desiring to keep his mud-machine in operation, asked you about Norton's financial standing, as though a man overtaken by reverses of fortune, or belonging to the poorer classes, could not for those reasons speak the truth; have you ever hesitated to give Norton credit, when he desired it, in the line of your business?

(Same objection.)

A. I have not.

R. D. 31. Has he not, at all times, during your dealings with him, acted honorably and honestly with you?

(Same objection.)

633 A. Yes, sir.

R. D. 32. Counsel for defendant, still continuing to operate his mud-machine, and to slander and vilify this community as being a place of slander and of gossip, similar, perhaps, to the one in which he was born and educated, asked you a question as though you were busy making memorandums every time you heard a man spoken of, substantially asked you how many times you had heard Norton spoken of within the last twenty years; can you or do you pretend to recollect the number of times you have heard anybody spoken of within that length of time?

(Objected to for its false assumptions.)

A. No, I cannot recollect; I have no note of any such fact as that; people's names are mentioned every day, of course, in conversation.

R. D. 33. You have a large number of business and other acquaintances in this city, have you not?

A. Yes, sir.

R. D. 34. And in various and different parts of the city.

A. Yes, sir.

R. D. 35. Is there any correction in your testimony you wish to make?

A. Only this, that during this twenty years of my acquaintance with Mr. Norton, I was South two years, and I was in business in Albany two years, and my acquaintance with him was renewed on my return. I sold him goods while I was in Albany. I left Troy in '67 for the South, and I returned, I think, in '71 to Troy from Albany. I was in the South only a couple of years.

S. F. HOYT.

Subscribed and sworn before me this 24th day of August, '78.

IRVING BROWNE,
Special Examiner.

634 JAMES W. CUSACK, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is James W. Cusack; my age is 46; my occupation is a jeweler; my residence, 58 Second street, Troy, N. Y.

Q. 2. State about how long you have resided in the city of Troy.

A. Well, I was born here and have never resided anywhere else; it is my native place.

Q. 3. For about what length of time have you been engaged in the business stated by you in your first answer?

A. I have been in the jewelry business about thirty-three years; I commenced when I was thirteen.

Q. 4. And has it been in the city of Troy during all that time?

A. Yes, sir.

Q. 5. Your business, continued for the length of time you speak of, has brought you into an acquaintance with or knowledge of a large portion of the business men in the city of Troy, as well as an acquaintance with families of high social standing in this city, has it not?

A. Yes, sir.

Q. 6. You are doing a somewhat extensive business in this city, are you not?

A. Yes, sir; in the jewelry business.

Q. 7. State where your store or business place in the city is located.

A. No. 3 Times building, Troy Daily Times building.

Q. 8. On Broadway?

A. On Broadway; yes, sir.

Q. 9. About how long have you been located there?

635 A. I think it is going on six years; ever since that building was put up.

Q. 10. Previous to your going there with your business, where did you carry on business in the line stated by you in your answers to questions put to you in this examination?

A. 248 River street.

Q. 11. Do you know Marcus P. Norton, of this city?

A. I do, sir.

Q. 12. You have known him for about what length of time?

A. I think my acquaintance with him commenced in 1861.

Q. 13. Do you remember the company during the war known as the Home Guard?

A. Yes.

Q. 14. Of whom was that company of Home Guards composed; I do not ask you to state the names?

A. It was composed of the best men in the city, among them the mayor of the city, and John A. Griswold, and of the best citizens who were too old to enlist, but were banded together to put down any disturbance here at home.

Q. 15. Were you a member of that organization?

A. I was.

Q. 16. Do you remember whether Marcus P. Norton was a member of that company?

A. I am pretty certain that he was. It was pretty long ago to individualize men, but all the prominent men in the city belonged to the company.

Q. 17. Did you, during your acquaintance with Marcus P. Norton, have any business dealings with him?

A. I did.

Q. 18. To any considerable extent?

A. Yes, sir; a good many hundreds of dollars.

Q. 19. Do you know his character for truth and veracity in this city?

636 A. I don't know anything contrary to that; it is as good as anyone else's.

Q. 20. Then do you consider it good or bad?

A. I consider it good.

Q. 21. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

A. Certainly I would.

Q. 22. To save counsel for the defendant pain and trouble to inquire of you on cross-examination, I ask you whether Mr. Norton owes you anything at this time?

A. No, sir; he does not.

Q. 23. To save counsel on the other side the performance of any other painful duty on his cross-examination of you, let me ask you if you have heard that Mr. Norton was a great or small criminal of any kind?

A. No, sir; I never did.

Q. 24. To save defendant's counsel yet another painful duty on your cross-examination, let me ask you if it is your habit to recollect how many times you have ever heard any man spoken of, or whether you keep a book in your store in which you record anything and everything which you may have heard about anybody?

A. No, sir; that is too silly a question to ask a man.

Cross examination:

By Mr. CLARKE:

X Q. 25. Have you been absent for any length of time since 1861 from the city?

A. No, sir; not at any one time, except during vacations, and those are for a short time.

X Q. 26. Has Mr. Norton ever owed you anything?

A. Yes, sir.

637 X Q. 27. When last?

A. I couldn't tell you; that was a good while ago. The account has been been balanced for a great many years; that is, a number of years.

X Q. 28. Did you ever hear of an attempt being made to impeach Mr. Norton's reputation for truth, about fifteen years ago, in a case in

which William E. Hagan was plaintiff, and Groom, Shavor, and Potter were defendants?

A. It seems to me that I do recollect of something of that kind in the papers, but it had no effect upon me. I thought it was some squabble among themselves.

X Q. 29. What means have you for knowing Mr. Norton's character for truth in this city?

A. I had a great deal of dealings with him myself, and I have never found him to be untruthful when it was possible for him to fulfill his promises; he sometimes promised me money, and when the time came was unable to pay it, but paid it when he had it to pay.

X Q. 30. Do you allow rumor or report to influence you at all in determining whether his character is good or bad?

A. Not much; no, sir.

X Q. 31. When, on your direct examination, you stated that Mr. Norton's character for truth in this city was good, you based that statement upon your personal knowledge of and dealings with him, as I understand; is that correct?

A. Yes, sir.

X Q. 32. Do you allow anything else to influence you?

A. No, there was nothing else to influence me that I know of.

X Q. 33. Did you ever hear anything unfavorable said of Mr. Norton?

A. Yes, in politics; Mr. Norton was a strong partisan, and opposed to my party. I always gave him the credit of trying to do what
638 he thought was right. I gave him credit for being honest in what he said.

X Q. 34. How many times, in the last ten years, have you heard Mr. Norton spoken of in any way by anybody?

A. Very seldom.

Redirect examination:

By Mr. NORTON.

R. D. 35. To what political party does Norton belong, if you know?

A. He was a Republican, but I don't know what his party is now.

R. D. 36. Did you ever hear him make any speech in behalf of the Republican party?

A. I did, and rabid ones, too, and a good many of them.

R. D. 37. To what political party did you belong?

A. Democratic.

JAS. W. CUSACK.

Subscribed and sworn to before me this 24th day of August, 1878.

IRVING BROWNE,
Special Examiner.

ROBERT M. HASBROUCK, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Robert M. Hasbrouck; my age is 55; my residence is Troy; and occupation civil engineer.

639 Q. 2. About how long have you been engaged in the business stated by you in your last answer?

A. Since the spring of 1839—nearly forty years.

Q. 3. About how long have you resided in the city of Troy?

A. About four years.

Q. 4. About how long have you had an office there for the conducting of your business as civil engineer?

A. Since the year 1865 or 1866.

Q. 5. State whether, at the present time, you hold any official position in the city of Troy.

A. Well, I am city engineer, which is the title to that office named in the city charter.

Q. 6. About how long have you been city engineer for this city?

A. About three years and a half.

Q. 7. By whom was that appointment made?

A. By the mayor of the city, and confirmed by the common council. I have been twice appointed and twice confirmed within that time to that office by the mayor and common council.

Q. 8. Have you ever been a member of the legislature of the State of New York?

A. Yes, sir.

Q. 9. From what district, and during what time?

A. From the upper district in this county. I think it is the second district. I was elected in the fall of 1864 for the year 1865, and held the office during that year.

Q. 10. The city of Troy is in Rensselaer County, is it not?

A. Yes, sir.

Q. 11. State whether you were or were not a delegate in the Chicago convention nominating President Grant for his first Presidential term?

A. I was.

Q. 12. State what Congressional or other district you represented in that convention.

640 A. It was the district composed of the counties of Rensselaer and Washington; the number of the district at that time I don't remember.

Q. 13. State whether it is the same Congressional district now represented by Martin I. Townsend in Congress.

A. It is, and was then represented by John A. Griswold, I think.

Q. 14. Do you know Marcus P. Norton, of this city?

A. Yes, sir.

Q. 15. You have known him for about what length of time?

A. Twelve or thirteen years.

Q. 16. What have you known or understood to have been his business within that time?

A. What might be called a patent lawyer—a lawyer whose specialty was patents or patent business.

Q. 17. Do you know his character for truth and veracity in this city?

A. I never heard his character attacked. I believe it to be good.

Q. 18. Do you consider his character for truth and veracity in this city good or bad?

A. Good.

Q. 19. From your knowledge of his character for truth and veracity, would you believe him under oath?

A. Certainly.

Q. 20. Do you remember that during the latter part of 1868, or fore part of 1869, of having written a letter addressed to General Grant, President-elect, recommending him to appoint Marcus P. Norton to the office of governor of the Territory of Wyoming?

A. Yes, I recollect of writing a letter to the President-elect, recommending the appointment of Marcus P. Norton to the governorship of a Territory, and I think the Territory was Wyoming. I remember distinctly having written the letter.

641 Cross examination:

By Mr. CLARKE:

X Q. 21. Have you had any business dealings with Mr. Norton?

A. No, sir; not that I remember of.

X Q. 22. You have known him how long?

A. Thirteen years, I think.

X Q. 23. How did you become acquainted with him—under what circumstances?

A. I think I had an inquiry to make of him about that time—thirteen years ago—and I called upon him at his office, and I think that was the first acquaintance I had with him.

X Q. 24. How often have you seen him since?

A. A hundred times, I guess.

X Q. 25. In what way—by appointment, or casual meeting?

A. Sometimes by appointment—several times by appointment; that is as definite as I can be.

X Q. 26. What was the nature of the business of those appointments?

A. I don't recollect, except that some of those appointments were in relation to this appointment as governor of Wyoming.

X Q. 27. Whereabouts is your residence?

A. 271 River street, Troy.

X Q. 28. Have you been in the habit of calling upon Mr. Norton or his family, or they upon you?

A. Sometimes when he was in the city he would call at my office; how many times, I can't say; he and my family have never met, so far as I know.

X Q. 29. Have you ever heard of Mr. Norton being indicted for forgery, in the District of Columbia, some six or seven years ago?

A. No, sir; I have not.

X Q. 30. Have you ever heard of Mr. Norton being debarred from practicing as a solicitor or patent agent in the Patent Office some fifteen years ago?

642 A. No, sir; I never did.

X Q. 31. Have you ever heard of an attempt being made, in any case, to impeach Mr. Norton's reputation for truth?

A. No, sir.

X Q. 32. During the last ten years, how often have you heard Mr. Norton spoken of in any way by anybody; has it been frequently or seldom?

A. Seldom.

X Q. 33. Do you consider yourself an intimate acquaintance of Mr. Norton?

A. Not very intimate.

X Q. 34. Do you know what Mr. Norton's financial position is?

A. No, sir.

X Q. 35. Heard anything about it?

A. I think I have heard something about his financial standing.

X Q. 36. What means have you for knowing what his character for truth in this city is?

A. I don't remember, in all the time that I have known Mr. Norton, to have heard anything against him to which I attached any importance; therefore, I consider his character for truth as I have stated.

X Q. 37. Who first spoke to you about being a witness in this case, and when?

A. Mr. Kellogg, an hour ago.

X Q. 38. Were you subpœnaed?

A. No, sir.

X Q. 39. Why did you come?

A. Well, it was about 12 o'clock, and I was through the pressing business of the morning, and I could well take the time, and this gentleman told me he wanted me to come and testify as to what I knew about Mr. Marcus P. Norton.

X Q. 40. Did you have any conversation with Mr. Norton about what you have testified to in this examination?

643 A. No; not as I understand that question. I did not have any conversation with him as to what I was to testify to. I would like to explain, however, that he told me what he wanted to establish here.

X Q. 41. State what he said, as correctly as you can.

A. He said he had a suit pending in regard to a patented invention; that suit had progressed to a point where his character and standing had been attacked, and he wanted to ask me some questions; he said those questions would be as to the length of time I had known him, and as to his business standing in the community. Without any understanding as to what my answers were to be to those questions, I consented, and this is all.

X Q. 42. Did he say anything else?

A. That is the purport of what he said.

X Q. 43. Well, do you recollect anything else that he said?

A. Yes, sir.

X Q. 44. Let us have it all.

A. He said that this patented invention had been in use by the government—by the Post-Office Department—a number of years; that the question involved a large amount of money; that the suit had been continued for some time—had been commenced some time ago; that is all I recollect now.

Redirect examination:

By Mr. NORTON:

R. D. 45. Counsel for the defendant has been pleased to inquire about Norton's financial standing in this community, evidently for the purpose of operating one of his mud-machines; may I ask you if it is not possible for a man without means to be a truthful and honest man?

A. In my opinion it is.

R. D. 46. Do you remember of an instance recorded where it

644 was said, substantially, "the foxes have holes, and the birds of the air have nests, but the Son of Man hath not where to lay his head'?

A. I think I remember of having read that in the Bible.

R. D. 47. Do you remember of an instance where it was also recorded that "it is easier for a camel to pass through the eye of a needle than for a rich man to enter into the kingdom of heaven"?

A. Yes.

R. H. HASBROUCK.

Subscribed and sworn to before me this 24th day of August, 1878.

IRVING BROWNE,
Special Examiner.

JEROME B. PARMENTER, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Jerome B. Parmenter; age, 41; residence, Troy; occupation, newspaper publisher and editor.

Q. 2. About how long have you resided in the city of Troy?

A. Twenty years and upwards.

Q. 3. About how long have you been engaged in the business stated in your first answer?

A. Eleven years.

Q. 4. Previous to your commencing the business of newspaper publisher and editor, what business were you engaged in, if any?

A. I practiced law for seven years; before that I was at school.

Q. 5. State whether you are, at this time, engaged in the conducting of a daily and weekly newspaper in this city?

645 A. I am.

Q. 6. What is the name of those papers?

A. The Troy Daily Press and the Troy Weekly Press.

Q 7. Have they not a considerable circulation in the city and county?

A. They have a large circulation, and also throughout the State, and the Weekly throughout the United States.

Q. 8. You are not only the editor, but the proprietor of those newspapers?

A. I am.

Q. 9. What are the politics of those papers?

A. Democratic.

Q. 10. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 11. About how long have you known him?

A. Since 1852.

Q. 12. Have you ever been a student with him, and where, if you remember?

A. I have, at the Troy Conference Academy at Poultney, in Vermont, in 1852, and from 1854 for several years at Union College, Schenectady, New York; I have known him ever since in Troy intimately.

Q. 13. Do you know his character for truth and veracity in this city?

A. Why, yes, I think I do.

Q. 14. Do you consider it good or bad?

A. I consider it good.

Q. 15. From your knowledge of his character for truth and veracity in this city, and also from your long and continued acquaintance as stated by you, would you believe him under oath?

(Objected to because the basis stated for the question is improper.)

A. I would unhesitatingly.

646 Cross-examination:

By Mr. CLARKE:

X Q. 16. What are your means for knowing Mr. Norton's character for truth and veracity in this city?

A. I have known him for a long time; I have often heard him talked about, and never to my recollection have I heard his character for truth and veracity questioned.

X Q 17. Did you ever hear of Mr. Norton being indicted for forgery in the District of Columbia, some five or six years ago?

A. I never have, to my recollection.

X Q. 18. Did you ever hear of an attempt to impeach Mr. Norton's character for truth in any case except this?

A. Never to my recollection.

X Q. 19. Did you ever hear of Mr. Norton being debarred or prohibited from practicing in the Patent Office, some six or seven years ago?

A. My recollection is that, some six or seven years ago, I heard some such statement as that, but I had no knowledge of the fact then, and have none now.

X Q. 20. Can you reconcile your intimacy with Mr. Norton, with the existence of the several facts stated in my last questions, supposing them to exist?

A. I can, sir; I don't follow up all the rumors I hear about my acquaintances. and learn whether they are true or false; I had no possible interest in them.

X Q. 21. Well, if you had been as intimate as you say with Mr. Norton, would you not have been likely to have heard of these things?

A. Well, I don't know what is meant by the words "these things," whether it refers to the last alleged charges, which I state that I
647 think I heard a rumor of, or to the former alleged charges, which I state I have no recollection of having heard of.

X Q. 22. Well, the indictment and the impeachment.

A. I have no recollection of having heard of the indictment and the impeachment; I may have heard of the indictment and the impeachment, but I have no recollection of them; it is not remarkable if I should not know of the indictment of Mr. Norton in the District of Columbia, even though I may have known him intimately.

X Q. 23. Well, if there has been an indictment which you have not heard of, and an attempted impeachment which you have not heard of, may there not also exist in this community reports against the reputation of Mr. Norton for truth and veracity, which you know nothing of?

A. For aught I know, there may be people in the city of Troy who would not believe him under oath, but I have often heard his character discussed, and I have heard him offensively spoken of, but to the best of my recollection I never heard his character for truth and veracity questioned. I have heard him spoken of as extravagant in fitting up his offices, and in his gifts to churches, among other things, and of not paying his debts; this is what I mean by saying that I have heard him offensively spoken of.

Redirect examination:

By Mr. NORTON:

R. D. 24. Did you ever hear or know of Norton refusing to pay a just and honest debt?

A. I am unable to answer the question, because I did not know whether the debts were honest or not, and I did not know whether he refused to pay or not. I only know that that was one of the charges brought against him.

648 R. D. 25. Should it appear in evidence in this case that Norton kept an account with the National State Bank in this city, and that between the years 1860 and 1871 he had deposited there to his credit between three hundred and twenty-five thousand and three hundred and sixty thousand dollars, would it not be quite likely in your judgment that he would be apt to pay some debts, if not all given away to churches, and for other charitable purposes?

A. I should think it highly probable.

JEROME B. PARMENTER.

Subscribed and sworn to before me this 24th day of August, 1878.

IRVING BROWNE,
Special Examiner.

PELATIAH J. MARSH, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Pelatiah J. Marsh; age is 48; residence is Lansingburgh, Rensselaer County, New York; my occupation at present is general brokerage; formerly I was engaged in commercial business.

Q. 2. About how long have you resided in Lansingburgh?

A. Ten years last April.

Q. 3. About how far from the north line of the city of Troy?

A. Within 1,200 feet.

Q. 4. Previous to your going to Lansingburgh to live, where did you reside and carry on business?

A. Troy, New York.

649 Q. 5. Is your present business carried on in the city of Troy?

A. My office and place of business has been in the city of Troy since I lived in Lansingburgh.

Q. 6. Have you been subpœnaed to-day to attend as a witness in this case?

A. I have.

Q. 7. Were your per diem and mileage fees paid you?

A. They were.

Q. 8. Do you know Marcus P. Norton, of the city of Troy?

A. I do.

Q. 9. And you have known him for about how many years?

A. For about twenty-five years.

Q. 10. Where did you first become acquainted with Norton?

A. I was introduced to him in Union College in 1854, but my acquaintance did not amount to anything until I came to Troy.

Q. 11. You are a Union College graduate?

A. Yes, sir.

Q. 12. Of what class?

A. Class of 1853.

Q. 13. And a few years after that you became acquainted with Norton in Troy?

A. I did.

Q. 14. Do you know a person in this city by the name of Frederick G. Ransford?

A. I do.

Q. 15. Do you know a person in this city by the name of Jeremiah D. Green?

A. I do.

Q. 16. Did Frederick G. Ransford and Jeremiah D. Green ever call upon you and ask you to be a witness in this case and against Marcus P. Norton?

A. Mr. Ransford called at my office, and Mr. Green met me on the street, and each asked me to be a witness in the case against Norton.

650 Q. 17. What did each of them ask you to testify to against Norton?

A. If I would testify that I would not believe him under oath, or words in substance to that effect.

Q. 18. Did they urge you to come and so testify?

A. They did.

Q. 19. What reply, if any, did you make?

A. I told them that I did not want to do that, and that I could not do that, and that they must let me off, or words in substance to that effect. They talked about old friendship, etc., but I told them they must let me off.

Q. 20. State, if you remember, whether anybody was with them, or either of them, on those occasions?

A. There was a gentleman with Mr. Green, and to the best of my recollection it was the defendant's counsel now present; but I am not sure of it. The gentleman made a motion to either put down my name on a paper from his pocket, or else to take a subpœna from his pocket, but I said that I declined to serve as a witness; that I had in previous years been called as a witness to sustain Mr. Norton's reputation, and would not now testify against him.

Q. 21. Did Mr. Ransford make an appeal to you to be a witness in this case and against Norton?

A. He did.

Q. 22. You may state as near as you remember the substance of that appeal?

A. He wanted to know if I would swear that I wouldn't believe Norton under oath; I stated to him that I would not swear to anything of that kind; that only a few years ago I swore that I would believe him under oath, and that I could not comply with that request. He appealed to me as his an old friend to help him in the emergency; I told him that I could not do it. That is the substance of the conversation between us.

Q. 23. You have had some business dealings with Norton since your acquaintance with him, have you not?

651 A. I have.

Q. 24. Did you find him in those dealings honest and trustworthy, or not?

(Objected to as immaterial.)

A. Between us it was.

Q. 25. He was attorney or counsel for you in some patent case a few years ago, was he not, and other patent matters, that you were interested in?

A. Yes, a number of them.

Q. 26. Do you remember what the suit was about in which Norton was counsel for you?

A. It was against the Wheeler & Wilson Sewing Machine Company. He also obtained a patent on a machine for cutting locks and barrel hoops, which machine was invented by a Mr. Sanford Littlefield, in my employ. And Norton also obtained a patent on an improvement in sewing machines invented by the same man, and that is the same patent on which the suit was afterwards brought against the Wheeler & Wilson Sewing Machine Company.

Q. 27. Did you also consult with Norton about other patent matters? And, if so, state what.

A. I did. I consulted with him in regard to my purchase of a portion of Densmore's patent on feathering steamboat paddle-wheels; I also frequently consulted with him on other patent inventions. And I occasionally loaned him money, and he always paid it.

Q. 28. What advice, if any, did he give you about the paddle-wheel patent?

A. He told me to keep out of it, that there were so many patents on the same thing, he did not believe the thing would be a success.

Q. 29. Did you afterwards take an interest in that patent?

A. did.

Q. 30. Did you make or lose on the investment?

A. I lost five thousand dollars on the investment before I got through.

652 Q. 31. If you know anything about the business carried on by Mr. Norton in the line of his profession in this city, you my state such as you remember about it.

A. Only in a general way, that for a number of years he apparently had all the patent right business that he and a number of clerks could attend to, and apparently he was in very flourishing circumstances, and stood high in the estimation of the community as a patent right lawyer.

Cross-examination:

By MR. CLARKE:

X Q. 32. What emergency did Ransford say he was in when he came to see you?

A. In substance, I understood him to say that taking evidence in a stamp suit, Norton was trying to swear his interest away from him. This I understood to be his emergency.

TROY, N. Y., *Monday, August* 26.

Met at 9 a. m., pursuant to adjournment of Saturday last.

Same counsel as before.

Cross-examination resumed:

By MR. CLARKE:

X Q. 33. Did Ransford use the term "emergency"?

A. Well, I would not swear positively, but he used expressions equivalent to it, if he did not use that word.

X Q. 34. Did he use the term "help me"?

A. Or the words "assist me"; he used one word or the other; he appealed to me for assistance.

653 X Q. 35. Did he clasp his hands and get down on his knees, and appeal to you for assistance?

A. He did not.

X Q. 36. What did he do when he appealed to you?

A. After talking with me a few moments he left me; merely a matter of words or conversation in which he made his petition. He came into the store and made this request of me.

X Q. 37. He shed some tears, didn't he?

A. His ordinary way of talking is a whining way of talking, especially when asking a favor; I don't say that he expressed any more grief at that time than at any other time in conversation.

X Q. 38. When was this?

A. Well, it is, according to my recollection, in July, 1878, within two months at any rate.

X Q. 39. What day of the week was it?

A. I could not say what day of the week.

X Q. 40. Where was it?

A. It was in the premises of No. 273 River street, Troy, N. Y., in the store where I have my desk.

X Q. 41. Did Ransford have any other business there that day?

A. He did not, with me.

X Q. 42. Who spoke first in the interview?

A. Mr. Ransford.

X Q. 43. What did he say?

A. Well, I can't say what he did say, the first word, but the conversation "from the word go" commenced on the subject that Norton was endeav'ing to swear him out of his interest in this patent. A general conversation ensued on this subject as I stated above; we were together but a few moments when he left.

X Q. 44. In that interview which you said you had with Mr. Green, was any appeal made to you on the score of old friendship or of anything else?

A. No, sir; there was not from Green.

X Q. 45. Was there from anybody?

654 A. Not at that time.

X Q. 46. How many interviews have you had with Green on this subject?

A. Only at that time.

X Q. 47. In answer to question 18, you say they urged you to come and testify; what urging was done by Mr. Green at the time of your interviewing with him?

A. He asked me to become a witness, and repeated the request several times.

X Q. 48. State what your business is in detail?

A. Four years ago I retired from regular commercial business, from the then firm of Danchy, Travis & Co., wholesale dealers in oils, paints, etc.; since that time by business has been in leasing and collecting rents from my real estate; building on my real estate; buying and selling real estate for myself; buying bonds and mortgages for myself, and selling the same; discounting commercial paper.

X Q. 49. Did Mr. Ransford say that he had any interest in the pending suit at the time that you talked with him?

A. He did.

X Q. 50. What interest?

A. He didn't describe to me how much or what extent of interest he had in this suit, but said that Norton was either trying to cheat or swear him out of his interest in this stamp patent that he had. He didn't explain as to what interest he had in this patent. And I think he appealed to me and said that "you know that I have had an interest in this patent for some time, and Norton is trying to swear me out of my interest in it."

X Q. 51. Are you sure that Ransford said that he had an interest in this suit; didn't he say that he had an interest in the post-office stamp?

A. Well, I won't be certain as to how he used the expression; whether he used one of the phrases, "the stamp" or "suit," or both of them;

655 but I inferred from his remarks made at that time that the results of this suit would determine whether he would ever receive anything from the stamp or not; that if this suit went in favor of Norton he would never get anything from it, but that if he was unsuccessful he would get something; that was what I inferred from the conversation.

Redirect examination:

By Mr. NORTON:

R. D. 52. On your cross-examination you speak of having had conversation with Mr. Ransford about this suit or the patent on which the suit is founded, that Ransford claimed to have some kind of an interest in it, and that he wanted you to come in before this referee and testify against Norton; what, if anything, did he tell you that he wanted you to do against Norton?

A. He wanted me to swear that I would not believe him under oath.

R. D. 53. Did he indicate to you in any way the necessity of destroying Norton's character in this case?

A. The general character of our conversation was to that effect, he led me to infer.

R. D. 54. How many interviews has Mr. Ransford had with you on this subject within the past three or four months?

A. Only that one.

R. D. 55. What, if anything, did he ever say to you on that or any other occasion about putting Norton through?

(Objected to as not within the scope of the direct examination.)

A. At that conversation I don't recollect of his having made use of any expression of that nature, of putting Norton through; yet it
656 is quite possible that he may have, as he has made use of that expression, or words to that effect, a number of times within the last eight or ten years.

R. D. 56. State generally what you may now remember of having heard Ransford say about or against Norton during the last eight or ten years.

(Same objection.)

A. I cannot state anything only in a general way, and that to the effect a part of the time he would make statements highly in favor of Norton, that parties were trying to cheat him, and trying to rob Norton, and get his patents away from him; then subsequently he was very venomous on him—the biggest cheat or fraud there was in the country; he was at the two extremes; I don't claim to use his words, only the substance of them; always claiming that he, Ransford himself, had a wonderful "bonanza" locked up in this matter in some shape; that he had got Jerry D. Green in his employ, and that he would pull him through all right; that is the substance of it.

R. D. 57. What, if anything, did he say about Jeremiah D. Green's ability to pull him through and help him to this big bonanza, of which you speak in your last answer.

(Same objection and as immaterial.)

A. That green was "hell" like a dog by the root, and would never give it up until he had pulled him through, and received the large sum which he claimed, from a million to a million and a half dollars.

R. D. 58. If you remember, state whether Ransford said anything about having employed Jeremiah D. Green to act for him in the city of Washington, District of Columbia, in connection with the patent.

(Same objection.)

657 A. He said he had; I laughed at him for employing a man with a limited experience that Green must necessarily have, in regard to patent-right laws, and the general United States law governing such matters, and to which he made the reply stated above.

R. D. 59. Did Ransford say to you anything about having sent Jerry D. Green to the United States Patent Office, to there attend to business concerning this patent or stamping device?

(Same objections.)

A. Yes, he did, and this conversation was about matters at the Patent Office; I refer to the conversation above stated.

R. D. 60. About how long ago do you think this was?

A. Within the last seven or eight years.

R. D. 61. If I understand you correctly on your cross-examination, when Mr. Ransford applied to you for your friendly assistance to him, to help break down Norton, in an effort to impeach him for truth and

veracity, you told him you would not do that; am I correct in this understanding of your testimony?

A. You are.

R. D. 62. Did you assign to him at that time any reason for that refusal?

(Same objection.)

A. I did.

R. D. 63. State the reason you then assigned.

(Same objection.)

A. That only a few years ago I swore that I would believe Norton under oath.

R. D. 64. In what case was it that you so swore?

(Same objection.)

658 A. In a case before the United States commissioner, in interference of William E. Hagan against Jacob Shavor, Lewis Potter and Smith Groom; I was examined in that case on the 8th day of April, 1863, as appears from a printed record now shown me.

R. D. 65. Have you, since your examination in that suit, notwithstanding all you may have heard against Norton, from any source whatever, changed your opinion of Norton's character for truth and veracity, as you then and there expressed it?

(Objected to as immaterial and not within the scope of the direct examination.)

A. No, I have not.

R. D. 66. Without any hesitation to-day, are you willing here to testify that you would believe him under oath?

(Same objections.)

A. I am.

R. D. 67. And you do so testify, do you not?

(Same objections.)

A. I do.

R. D. 68. If I understood you on your cross-examination, you have stated in substance that Mr. Ransford had at one time, years ago, been a partner of yours in some business transactions; if I am correct in that, in what year was it?

(Same objections.)

A. Year 1864 or '65, or both years; my partnership was only temporary with him.

659 R. D. 69. Is Ransford at this time engaged in any business in this city, that you are aware of?

(Same objections.)

A. Not that I am aware of.

PELATIAH J. MARSH.

Subscribed and sworn to before me this 26th day of August, 1878.

IRVING BROWNE,
Special Examiner.

WILLIAM H. LAWTON, a witness called on the part of the plaintiff, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is W. H. Lawton; age, 47; residence, Troy, N. Y.; occupation, clothing merchant.

Q. 2. About how long have you resided in the city of Troy?

A. Since about 1850, twenty-eight years.

Q. 3. State the street and number on street of your store in this city.
A. 292 River street.
Q. 4. And you have been located there about how many years?
A. About twenty-five years.
Q. 5. In what part of the city is your residence?
A. 31 Seventh street.
Q. 6. Have you formerly held an official place in the militia of this State?
A. I have.
Q. 7. What was it?
A. Well, I held several.
Q. 8. Name, as near as you remember.
A. I have been paymaster of the Tenth Brigade, with the rank of captain; lieutenant-colonel commanding the Twenty-fourth Regiment; I was inspector of the Tenth Brigade, with the rank of major;
660 now I hold the position of inspector of the Third Division, with the rank of colonel.
Q. 9. State whether you are at this time one of Major-General Joseph B. Carr's staff officers.
A. I am.
Q. 10. Do you know Marcus P. Norton of this city?
A. Yes, sir; I do.
Q. 11. About how long have you known him?
A. I should say fifteen years or more, I can't say positively.
Q. 12. State whether your family and his resided in the neighborhood of each other at one time in this city.
A. They did.
Q. 13. Do you know his character for truth and veracity in this city?
A. Well, I never heard anything against it.
Q. 14. Do you consider it good or bad?
A. I consider it good.
Q. 15. From what you know of his character for truth and veracity in this city, would you believe him under oath?
A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 16. How did you become acquainted with Mr. Norton?
A. I couldn't positively say.
X Q. 17. Give your best recollection.
A. Well, my impression is I met him in my uncle's store.
X Q. 18. What was he doing in your uncle's store?
A. Well, my impression is that he was making a friendly call or business call, I couldn't tell which.
X Q. 19. What year was that?
A. I could not say.
661 X Q. 20. Give your best recollection.
A. I should say it was fifteen years or more ago.
X Q. 21. When did you next meet him?
A. Well, I couldn't say positively.
X Q. 22. Did you meet him frequently after you met him on that occasion?
A. Yes, sir; I met him frequently on the street and other places.
X Q. 23. Did you have any business with him?
A. No, sir.
X Q. 24. Never had?

A. I think not.

X Q. 25. When you met him, it was a casual, a chance meeting?

A. Yes, sir.

X Q. 26. You would bow to him and say "Good day," and that was about all, was it?

A. I met him as I met other of my acquaintances.

X Q. 27. How often have you met him, should you say, within the last ten years?

A. Well, I could not say, sir.

X Q. 28. Frequently or seldom?

A. Well, not very often of late.

X Q. 29. Did you ever hear of an attempt being made in this city, about fifteen years ago, to impeach Mr. Norton's reputation for truth, in a case in which William E. Hagan was plaintiff, and Groom, Shavor and Potter were defendants?

A. I remember of testifying in a case about ten or fifteen years ago; I don't recollect what the case was.

X Q. 30. Well, did you hear that Mr. Norton's reputation for veracity was then attacked?

A. No, sir; I did not know what the case was, at least I don't remember.

X Q. 31. Did you ever hear of Mr. Norton being debarred or prohibited from practicing as a solicitor or patent agent in the United States Patent Office about six or seven years ago?

A. No, sir.

662 X Q. 32. Did you ever hear of an attempt being made to impeach Mr. Norton's reputation for truth in any suit?

A. If I did, I don't remember.

X Q. 33. Did you ever hear of Mr. Norton being indicted for forgery in the District of Columbia, some six or seven years ago?

A. No, sir.

X Q. 34. Do you know what Mr. Norton's financial standing is now?

A. No, sir.

X Q. 35. Or what it has been within the past five or six years?

A. No, sir; I do not.

X Q. 36. Have you ever heard anybody say anything about Mr. Norton?

A. Well, I don't know that I have heard any one in particular, any more than I would hear about other parties.

X Q. 37. How many times have you heard Mr. Norton spoken of by anybody in any manner?

A. I could not say, sir.

X Q. 38. Has it been frequently or seldom?

A. Seldom, I should think.

X Q. 39. Do you think that you know what his reputation for truth is?

A. Well, I have no reason to doubt his truthfulness.

X Q. 40. When was it that you lived in the same neighborhood with Mr. Norton?

A. At one time it was twelve or fifteen years ago; at another time, I should think, it was just about eight years ago.

X Q. 41. What sort of clothing do you deal in?

A. We manufacture and sell ready-made clothing.

W. H. LAWTON.

Subscribed and sworn to before me this 26th day of August, 1878.

IRVING BROWNE,
Special Examiner.

663 CHARLES L. MACARTHUR, a witness produced on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Charles L. MacArthur; age, 54; residence, Troy, N. Y.; occupation, editor and deputy collector of customs.

Q. 2. You are editor and proprietor of what newspaper in this city?

A. Troy Northern Budget (the firm is C. L. MacArthur & Son).

Q. 3. That is a newspaper having a considerable circulation in the city, county, State, and elsewhere?

A. Yes, sir.

Q. 4. About what length of time have you been conducting that newspaper as stated by you in previous answers?

A. Since 1847, with the exception of a few years, mainly during the war.

Q. 5. About how many years has that newspaper been published in this city by you and by others?

A. Some eighty-odd years.

Q. 6. You are at the present time United States chief officer for the collection of customs for the port of Troy, are you not?

A. Yes.

Q. 7. Have you heretofore held any official position in the city of Troy?

A. I have.

Q. 8. You have resided in the city of Troy for about how many years?

A. Since 1847.

Q. 9. Your position as chief officer of the port of entry of Troy, and the management of your newspaper business in Troy, has brought you into contact with many of the business and official men of the city, has it not, for many years past?

A. It has.

664 Q. 10. You have frequently represented the political party, to which you belong, in conventions and such like, in this city and elsewhere in the State, have you not?

A. I have.

Q. 11. Do you know Marcus P. Norton, of the city of Troy?

A. Yes, sir.

Q. 12. About how long have you known him?

A. Some twenty years; perhaps more.

Q. 13. To save defendant's counsel any painful anxiety, or trouble to inquire of you, may I ask you if you recollect several years ago of an attempt, in the case of William E. Hagan against Jacob Shavor, Lewis Potter, and Smith Groom, an interference case in the United States Patent Office, to impeach the character of Norton for truth and veracity?

A. I remember such an attempt; I don't remember the case.

Q. 14. Do you remember about how many years ago it was?

A. The only way that I can recall the case is that it was during Judge Gould's lifetime, and that he was either a party witness or counsel in the case.

Q. 15. Were you present during any part or portion of that trial?

A. No, I think not.

Q. 16. Do you know Marcus P. Norton's character for truth and veracity in this city?

A. Yes, sir.

Q. 17. Do you consider it good or bad?

A. I consider it good.

Q. 18. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

A. Yes, sir.

665 Cross-examination:

By Mr. CLARKE:

X Q. 19. What means have you of knowing Mr. Norton's character for truth and veracity in this city?

A. Nothing, only general report, and some personal acquaintance with him.

X Q. 20. What do you understand by a man's character for veracity?

A. One whose word would be believed under oath.

X Q. 21. When on your direct examination you said Mr. Norton's character for truth in this city was good; did you mean anything more by that than that his reputation for speaking the truth when under oath was good?

A. No, that was what I understood by it; I did not understand that the question embodied any more than that.

X Q. 22. Now, assuming that a man's character for truth is not solely derived from what he states under oath, but from statements in business and every day association with his neighbors as well, please state what Mr. Norton's reputation for truth is in this community?

A. Outside of promises to pay, I think that his character for veracity stands good.

X Q. 23. Well, as a whole, is it good or bad, so far as you know it?

A. As a whole, I think it is good.

X Q. 24. Have you heard it impugned?

A. Never, outside of those having business difficulties with him.

X Q. 25. I understand that you mean from men having associations with him in business, you have heard things derogatory to his reputation for truth; is that correct?

666 A. I have heard some parties who have had business difficulties with him impugn his character for truth.

X Q. 26. Did you ever hear of Mr. Norton being debarred or prohibited from practicing as a patent agent or solicitor in the Patent Office?

A. I heard of his having difficulties in the Patent Office, but the details I don't know anything about.

X Q. 27. Did you hear of Mr. Norton being indicted for forgery in the District of Columbia, some six or seven years ago?

A. No, sir, I never did; if I did I have forgotten it.

X Q. 28. Did you ever hear of Mr. Norton being pushed by his friends for the governorship of the Territory of Wyoming, during the first part of President Grant's administration?

A. I heard of his being pushed either for the governorship or judgeship of some western territory.

X Q. 29. Did you ever hear of Mr. Norton being pushed for the nomination of United States Senator, at the time Senator Conkling was nominated?

A. Yes, sir; but it was before the assembly was elected or the caucus held which nominated Conkling.

X Q. 30. In answer to question twenty-five, you say you have heard persons who have had business difficulties with Mr. Norton impugn his character for truth.

A. Yes, sir.

X Q. 31. Those statements were made running over how many years back?

A. Perhaps half a dozen years.

Redirect:

By Mr. NORTON:

667 R. D. 32. Name all the persons referred to in your cross-examination who, having had business difficulties with Norton, impugned his character for truth?

A. Frederick G. Ransford; J. D. Green is another, I think; I think Mr. Henry Burden has complained to me at one time during his lifetime of business difficulties with Mr. Norton; and I have heard others in cases where Mr. Norton had not paid them, and they claimed his word was not good in that sense.

R. D. 33. Of the truth of any statement made by those persons to you, had you any knowledge of your own?

(Objected to as immaterial.)

A. No, sir; no personal knowledge.

R. D. 34. Has Norton ever, in any way, falsified his word to you in any manner or nature whatever?

(Same objection.)

A. No, sir.

C. L. MACARTHUR.

Subscribed and sworn to before me this 26th day of August, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned until Tuesday, August 27th, 1878, at 9 o'clock a. m.

668 TROY, N. Y., *August 27th*, 1878.

Met pursuant to adjournment.

Same counsel present as before.

WILLIAM KEMP, a witness produced on behalf of the plaintiff, and duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. William Kemp; nearest birthday is fifty; my occupation is a variety of things, manufacturer; residence, Troy, N. Y.

Q. 2. About how long have you resided in the city of Troy?

A. I was born here, and have been here ever since, with the exception of about two years during my boyhood.

Q. 3. In your answer to the first question you say you are a manufacturer; in what kind of business are you engaged as a manufacturer?

A. I manufacture chain cables, called the American Chain Cable Works; I am proprietor of the Troy Brass Foundry.

Q. 4. About how far apart are your chain cable works and your brass foundry situated?

A. About a mile and a quarter.

Q. 5. And these two works are situated in the city of Troy, are they not?

A. They are.

Q. 6. And about how long have you been engaged in the business stated by you?

A. Since 1851, in the Troy Brass Foundry, and about twelve years in the chain business.

Q. 7. Do you know General Joseph B. Carr, of this city?

A. I do, and he is a partner of mine in the chain works.

669 Q. 8. Are you at this time president of the Mutual National Bank of this city?

A. I am.

Q. 9. Are you also one of the board of directors of that bank?

A. Yes, the law requires that.

Q. 10. Were you ever president of the board of education of this city, and if you answer yea, state the year or years.

A. Yes. I should think from 1858 to 1871.

Q. 11. Have you ever been mayor of the city of Troy?

A. I have, from 1872 to '74.

Q. 12. Are you president of the Troy and Lansinburgh Railroad Company?

A. I am.

Q. 13. In what part of the city is your residence?

A. 62 North Third street, near Christ Church.

Q. 14. In what part of the city is the bank located of which you are president?

A. Corner of State and First streets.

Q. 15. Do you know Marcus P. Norton, of the city of Troy?

A. I do.

Q. 16. About how long have you known him?

A. Since 1860.

Q. 17. Do you remember in the year 1868, or in the fore part of 1869, of having written a letter to General Grant, then President elect of the United States, recommending Norton to the position of governor of the Territory of Wyoming?

A. I have a recollection of something of the kind.

Q. 18. Do you know Marcus P. Norton's reputation for truth and veracity in this city?

A. I think I do.

Q. 19. Do you consider it good or bad?

A. I have no reason to believe it anything but good.

670 Q. 20. From your knowledge of his character for truth and veracity here, would you believe him under oath?

A. Yes.

Cross-examination:

By Mr. CLARKE:

X Q. 21. What did you understand by the phrase "reputation for truth and veracity in this city," when you answered the question 18?

A. What I know about him personally, and not from what others said about him.

X Q. 22. I understand you to mean that you allow nothing else but your personal acquaintance with Mr. Norton to influence you in determining whether his reputation for truth is good or bad; is that correct?

A. Yes.

X Q. 23. Do you not allow yourself to be influenced at all by report or rumor?

A. Not in his case, for many were prejudiced against him on account of eccentricities of his.

X Q. 24. Have you ever had any personal dealings with Mr. Norton?

A. I never have had any financial transactions with him.

X Q. 25. How close has been your association with him?

A. Not very close. I knew him as I knew hundreds of others, socially

and pleasantly; we were connected in or attended the same church in the early part of our acquaintance.

Redirect examination:

By Mr. NORTON:

R. D. 26. Considering anything and everything which you may
671 have heard of Norton, which you have termed "eccentricities," yet would you hesitate to believe Norton under oath, having personally known him for the many years spoken of by you in your direct examination?

(Objected to because it is not proper to make witness' personal knowledge of Mr. Norton a basis of the question, and also because it is not a proper redirect question.)

A. I would not hesitate to believe him under oath.

R. D. 27. Do you remember, while you were mayor of the city, of Norton arguing a case before you as mayor, involving an alleged claim againt the city of Troy?

A. I do.

R. D. 28. In what year was that; do you remember?

A. I think that it was in '73.

R. D. 29. In your cross-examination you have spoken of Christ Church in this city; what official place, if any, have you held in that church?

A. I am one of the wardens of that church.

Recross-examination:

By Mr. CLARKE:

R. C. 30. Suppose Mr. Norton were largely interested in a case, and suppose his testimony in his own favor were in flat conflict with that of another man who, in every respect, stands perfectly fair in the community, against whom nothing is said on account of any "eccentricities;" state which of the two men you would believe.

672 A. I can't answer that question without knowing the circumstances definitely.

WILLIAM KEMP.

Subscribed and sworn to before me this 27th day of August, 1878.

IRVING BROWNE,
Special Examiner.

LEMUEL H. TUPPER, a witness produced on behalf of the plaintiff, being first duly sworn, testifies:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Lemuel H. Tupper; 75 years old; I reside in the city of Troy, county of Rensselaer, and State of New York; my business used to be that of steamboat operator, now it is nothing.

Q. 2. Have you heretofore been superintendent of the Rensselaer and Saratoga Railroad Company?

A. I was for twelve years.

Q. 3. Where was your office as superintendent located?

A. After 1854 it was in the new union railroad depot; previous to that it was in River street, in the city of Troy.

Q. 4. Previous to your being superintendent of the railroad company, were you captain on one of the boats of a steamboat line between the cities of Troy and New York?

A. No, sir; I was general manager and agent of that line from 1833 to 1853.

Q. 5. You have resided in the city of Troy, then, for about how long?

A. Since 1808, with the exception of about one year.

Q. 6. In what part of the city of Troy is your residence located?

673 A. 10 Washington Place.

Q. 7. And it has been there about how many years?

A. Fourteen years.

Q. 8. Do you know Marcus P. Norton, of the city of Troy?

A. I do.

Q. 9. For about how many years?

A. Well, in the neighborhood of twenty.

Q. 10. Do you know Levi Smith of this city, who was a member of the firm of Beach & Smith, of this city, some years ago?

A. I do.

Q. 11. While Beach & Smith were in business together, was that firm one of the attorneys and counselors for the Rensselaer and Saratoga Railroad Company, while you were a superintendent of the same?

A. They were; Beach & Smith were the attorneys of the road.

Q. 12. Did you ever hear Levi Smith speak of Marcus P. Norton in a defaming or derogatory manner as to his character for truth or anything else?

(Objected to as immaterial.)

A. I don't recollect of Smith saying much about Norton; he may have talked about him, but I have forgotten it, it is so long ago.

Q. 13. Anybody of that firm?

A. William Augustus Beach, Mr. Smith's former partner, I have heard speak of him.

Q. 14. What did you hear Mr. Beach say about Mr. Norton, and what was the occasion?

(Same objection.)

A. Mr. Beach wanted me to come forward as a witness to im-

674 peach Marcus P. Norton; I did not want to do it, and he pressed me to do it, and said that such men as I ought to come forward and impeach such men as Norton, or words to that effect. I told him I did not want to do it, as I had not much acquaintance with Mr. Norton; therefore, I told him my testimony would not be of much use to him. He afterwards sent an officer, who came to my house with a subpœna, and said I must come; I went to his office and told him I was going to New York that day, and could not well attend. He asked me when I would be back from New York; I told him not before Saturday; he said, then we will take your testimony on Saturday. Well, I told him I would come then.

Q. 15. In what case was this?

(Same objection.)

A. I do not recollect the title of the case.

Q. 16. Did not William E. Hagan have anything to do with the case?

A. I think so; I understood so at the time.

Q. 17. Did you not also understand then that Beach & Smith were the attorneys for William E. Hagan in that matter?

(Same objection.)

A. I don't know; I couldn't say; I was called for a specific purpose, and I got away as soon as I could.

Q. 18. Were you sworn and examined as a witness against Norton in that case?

(Same objection.)

A. I was.

Q. 19. Where, or in whose office was that examination conducted?

A. In the office corner of State and First; I think it was Beach & Smith's office.

675 Q. 20. What attorney conducted your examination for William E. Hagan, on that occasion?

(Same objection.)

A. Levi Smith on one side, and I think Judge Ingalls on the other, or he and Mr. Norton together; Norton cross-examined me.

Q. 21. Previous to that examination, had any one else called upon you to be a witness in that case, other than the office of Beach & Smith?

(Same objection.)

A. Henry Burden spoke to me on that subject.

Q. 22. Do you remember in substance what you testified to on that occasion?

(Same objection.)

A. I remember I testified that, upon information and belief, I would not believe Marcus P. Norton under oath.

Q. 23. Do you remember to have testified from whom you received the information which led you to testify on that occasion that you would not believe Norton under oath?

(Same objection.)

A. I do.

Q. 24. Name the persons from whom you received such information.

A. Henry Burden was the principal and main one, and also from William A. Beach.

Q. 25. Had you at that time heard anything from anybody, other than those two persons, against Norton's reputation for truth and veracity?

(Same objection.)

676 A. I don't recollect of anything else from anybody else.

Q. 26. You distinctly remember that Henry Burden and William A. Beach spoke to you in terms derogatory to the character of Norton?

(Same objection.)

A. I do.

Q. 27. Was not the firm of Beach & Smith attorneys or counsel for the firm of Henry Burden & Sons.

A. I understood they were.

Q. 28. Did you not also understand at the same time that Mr. Norton was one of the counsel for Corning, Winslow & Company against Mr. Norton?

(Same objection.)

A. I think I did.

Q. 29. In what year was this, and, if you cannot recollect, state about how long ago it was?

(Same objection.)

A. About fifteen years ago.

Q. 30. Since that occasion you have become much better acquainted with Norton than at the time you testified against him?

A. Yes.

Q. 31. You have had since then, and at different times since, some business transactions with him, have you not?

A. I have.

Q. 32. You have occasionally loaned him money, have you not?

A. I have.

Q. 33. At one time you loaned him two thousand dollars in cash, did you not.

A. I did.

677 Q. 34. Exclusive of interest, how much of that sum remains unpaid to you?

A. Between four and five hundred dollars.

Q. 35. Do you remember the occasion in 1870, or 1871, when an effort was made to put Norton in to bankruptcy in the United States court in this district?

A. I do.

Q. 36. Were you one of the assignees elected by the creditors in that matter?

A. I was elected an assignee.

Q. 37. Who was the other assignee, if you remember?

A. William H. Young, I think.

Q. 38. Have you ever heard Frederick G. Ransford of this city speak of Norton in terms derogatory to his character?

A. I have.

Q. 39. About how long since?

A. Well, I guess within the past year.

Q. 40. Do you remember the substance of anything you may have heard him say concerning him within that time?

A. He said that he would not believe him under oath, and the substance of what he said amounted to that he was a rascal in a business point of view.

Q. 41. About how frequently have you heard him make such or similar remarks within the past few years?

A. Perhaps half a dozen times.

Q. 42. Did he use any profane language on those occasions

A. I do not recollect.

Q. 43. How did he seem to appear to you?

A. He seemed to think that you had interfered with the stamp patent to his injury, and prevented his getting a large sum of money on it.

Q. 44. Judging from appearance, did you think that he was happy or unhappy over that matter?

(Objected to as leading and as immaterial.)

678 A. Well, he seemed unhappy.

Q. 45. Do you know Jeremiah D. Green of this city, and if so, how long have you known him?

A. Yes, for fifteen or twenty years.

Q. 46. Did you ever hear him say anything concerning Norton or his character?

A. I have heard him speak derogatory of his character.

Q. 47. About how long ago?

A. Well, within the past year.

Q. 48. State, if you remember, what you heard him say.

(Objected to as immaterial.)

A. Well, the substance of it was that Norton stood in the way of their settlement of the stamp matter with the government, and prevented their getting large sums of money for the stamp patent.

Q. 49. Well, from appearance, did Green seem about as unhappy as Ransford about it?

A. Well, he didn't seem particularly happy about it; he was not pleased with it.

Q. 50. Do you know whether the attempt made in the Hagan matter, when you were examined as an impeaching witness, was a successful, or unsuccessful undertaking?

(Objected to as immaterial.)

A. I don't recollect what the decision was, but I think it was unsuccessful.

Q. 51. Do you know of any reason to-day why you should not believe Norton under oath?

(Objected to as an improper question.)

A. No, I don't know of any; I don't speak from hearsay, but personal knowledge.

679 Q. 52. I have asked you about a balance still due you from Norton; you say it is between three and four hundred, with interest from 1870 to the present time; has there been any payment made on that within the last eight years?

A. Not any; no, I think not within the last seven years.

Q. 53. Do you remember, during last winter, of Norton calling upon you in this city, and stating to you in substance that the statute of limitations had run upon that claim, and of his expressing a desire that you should embody it in the form of a note, and take it out of the statute of limitations?

A. I do; he told me to compute the interest and make a new note, and he would sign it.

Q. 54. Have you that faith, trust, or confidence in Norton that should he become possessed of means sufficient, he will pay you the principal and interest your due on that matter?

A. I think if he becomes possessed of a surplus of money he will pay his debts, and mine among them.

Q. 55. You were frequently in the law offices of Norton in this city while located in Wotkyns' block, and also of Norton & Cowen; state what you observed, if anything, with reference to the business being carried on there.

A. I thought he was doing quite a large business, and had the largest patent business in the city of Troy at that time.

Q. 56. Norton continued there until the bankruptcy proceedings, did he not?

A. Yes, until he was slaughtered by his creditors.

(Complainant's counsel stating that he is through with the examination of the witness, defendant's counsel states that he does not desire to cross-examine the witness.)

Q. 57. Complainant's counsel, further desiring to examine the
680 witness, asks him if he was to-day subpœnaed by the complainant to come here and testify, and also whether his fees per diem and mileage were duly paid him.

A. I was; and my fees were duly paid me.

L. H. TUPPER.

Subscribed and sworn to before me this 27th day of August, 1878.

IRVING BROWNE,
Special Examiner.

WILLIAM E. HAGAN, a witness called on the part of the plaintiff, being first duly sworn, testifies as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is William E. Hagan; I reside at Troy, New York; age is 51; my business is that of a mechanical and chemical expert.

Q. 2. About how long have you resided in the city of Troy?

A. I was born here, and have resided here ever since.

Q. 3. About how long have you been engaged in the business stated in your first answer?

A. Since 1863.

Q. 4. Previous to that time, and for a number of years before, what had been your business?

A. I had previously been engaged as an apothecary and chemist for about twenty years in this city.

Q. 5. Do you know Marcus P. Norton, of this city?

A. I do.

Q. 6. You have known him for about how many years?

681 A. I have known him since 1860.

Q. 7. Do you remember an interference case before the Commissioner of Patents of William E. Hagan versus Jacob Shavor and Louis Potter, assignees, and Smith Groom, patentee, happening in this city, some years ago?

A. I do remember it.

Q. 8. Were you the party plaintiff in that proceeding?

A. I was.

Q. 9. State, if you remember, what that case was about—I mean the subject-matter of the invention.

A. It was an interfering application for a patent for the use of steam to aid in the combustion of fuel.

Q. 10. You succeeded in that application in obtaining a patent on your invention, did you not?

A. I did.

Q. 11. Was that patent subsequently reissued in two divisions by you?

A. It was.

Q. 12. Did you confer with Norton, and did he ossist you about the reissuing of that patent in two divisions?

A. I think I did; and further think that he drew up one of the claims which appear in it at the present time; and, further, I would state that he had charge of the application at Washington subsequently, and up to its issue.

Q. 13. Was the validity of that patent reissue sustained by Judge Blatchford in his suit in the United States circuit court for the southern district of New York?

A. It was.

Q. 14. Did you personally know Smith Groom, who had previously obtained the patent, and which had been put into interference with your application for a patent in 1862, or the forepart of 1863?

A. I was acquainted with him partially prior to the interfer-
682 ence, and became better acquainted with him after the decision of the point at issue after that interference.

Q. 15. Is Smith Groom now dead, or is he living?

A. He is dead. I think he died in the year 1866 or 1867.

Q. 16. In the progress of that interference case, was Marcus P. Norton examined as a witness for the defendants in that issue?

A. He was.

Q. 17. After his examination, did you undertake to impeach his character for truth and veracity?

A. I did.

Q. 18. On that issue were you successful?

(Objected to on the ground that it is a matter of record.)

A. So far as the matter of impeachment was concerned, I was not. My best recollection of it is that Mr. Norton's evidence was not affected

by the testimony presented on that point, the general features of the case being decided upon other evidence than his, so that his became immaterial.

Q. 19. State whether, subsequent to your obtaining a patent in that case against the outstanding patent of Smith Groom of June 10, 1862, you had any conversation with Smith Groom, the patentee, with reference to any of the issues which were involved in that case?

(Objected to as immaterial.)

A. I did have a conversation with him a few days before his death, at which time he sent for me to come and see him.

Q. 20. Was Groom, at the time of the interview with him, in answer to his request, then in his last sickness?

A. He was.

683 Q. 21. You may state, as near as you remember, the conversation between you and Mr. Groom on the occasion of which you speak.

(Objected to as immaterial, irrelevant, and incompetent.)

A. Mr. Groom said that he had sent for me to correct an impression existing in my mind in regard to Mr. Norton's evidence given in the interference case; that, while his evidence was untrue, it was not intentionally false, for he, Groom, had deceived Mr. Norton in regard to the model and its internal condition at the time Mr. Norton testified that he saw it. He said that he wished to do justice to him, Mr. Norton, as between Mr. Norton and myself, before he died. I have stated the substance of the conversation. I do not remember its exact language.

Q. 22. And Groom died a few days after that, did he not?

A. My best recollection is that he did die at least within a week of that time.

Q. 23. State whether you, soon after the death of Groom, communicated to Norton the substance of the matter stated in your last answer but one?

A. I believe that I did.

Q. 24. Who were your counsel in that interference suit?

A. Gale & Alden and Beach & Smith, of the city of Troy, and Charles M. Keller, of the city of New York.

Q. 25. In the attempted impeachment matter, who conducted the examination for you?

A. Beach & Smith.

Q. 26. After the decision in that case, giving you a patent as against Groom's patent, and sustaining Norton on the question of his truth and veracity, did you become better acquainted with Norton than you were at the beginning of those proceedings?

684 (Objected to as assuming the fact that the decision sustained Mr. Norton's character for truth, the examiner-in-chief having explicitly stated that they did not wade through the testimony.)

A. I did.

Q. 27. What have been your relations with Norton from that time to the present?

A. They have been friendly, and I have acted as an expert in six or more cases in which he was counsel.

Q. 28. Since the time referred to in the last question, have you personally known anything against Norton or his character for truth and veracity, or anything else, that would justify you in testifying under oath that you would not believe him on his oath?

(Same objections.)

A. I have not.

Q. 29. Were you subpœnaed to appear here to-day, and were your per diem and mileage fees paid you.

A. I was subpœnaed and paid the usual fees for attendance and mileage.

Cross-examination:

By Mr. CLARKE:

X Q. 30. State, if you know, what Mr. Norton's reputation is in this community in respect to truth and veracity.

A. I do not know at the present time what it is, any further than my own knowledge makes up a part of public opinion. Mr. Norton has been away from his home in Troy for a good deal of the time, and
685 until last year most of my time was spent in New York City, where there was no opportunity of hearing his character discussed.

X Q. 31. If you ever knew, state what Mr. Norton's reputation was at the time you knew, and when you knew, and how you knew.

A. At the time I introduced witnesses to impeach his reputation for truth and veracity, Mr. Norton was involved in financial trouble. I knew his evidence was untrue, and I availed myself of the sentiment against him in the community, and amongst those with whom he had had difficulty, to obtain such testimony. With the fact of obtaining witnesses for that impeachment I had very little to do personally; some of them I was not personally acquainted with, and did not know them until they came on to the witness stand and I heard them testify. Since that time I have had no opportunity for hearing his character publicly discussed as regards his truth and veracity, or to a sufficient extent to testify as to what it now is, further than my own personal acquaintance and knowledge.

X Q. 32. Were you a witness against Mr. Norton yourself?

A. I was not as to his public character for truth and veracity, to the best of my recollection.

Redirect examination:

By Mr. NORTON:

R. D. 33. You state on your cross-examination substantially that you took a very little part, if any, in procuring witnesses against Norton at the time of the attempted impeachment spoken of. Who did that business for you, if you remember?

A. I think George T. Blair did the most of it; at least, I paid him for his time as a lawyer in the case for doing it.

R. D. 34. Was Marcus Ball examined as a witness in that case?

A. He was.

686 R. D. 35. Was Henry G. Giles examined as a witness in that case?

A. He was.

R. D. 36. Was Levi Smith examined as a witness in that case?

A. I do not remember whether he was or not.

R. D. 37. Give your best recollections of it.

A. I have no recollection that he was, Mr. Norton, as I tax my memory in regard to it.

R. D. 38. Was Mr. William A. Beach examined as a witness in that case?

(Same answer in regard to Mr. Beach.)

R. D. 39. Was Lemuel H. Tupper examined as a witness in that case?

A. He was.

R. D. 40. All of the witnesses that I have named in my last several questions, that were examined as witnesses, were for the purpose of impeaching Norton for truth and veracity, were they not?

A. They were so examined.

R. D. 41. State, if you remember, the number that was called for that purpose in the city of Troy.

A. Think the whole number was some eight or ten. I will not be positive about it. I don't think that I can recall more than ten, if as many.

R. D. 42. Your counsel deemed it prudent to go to some other places for testimony in that case, did they not, and on that question?

A. I think they did.

R. D. 43. Do you remember how many witnesses were called in the city of Troy by Norton to sustain his reputation for truth in the city of Troy?

A. I don't know. My impression is that there were over thirty, but I am not certain. There may have been fifty.

R. D. 44. The testimony taken by you was printed, was it not?

A. Yes, sir.

687 R. D. 45. You had several copies in your possession after the decision in the interference suit, did you not?

A. I did not.

R. D. 46. What has become of those copies, if you know?

A. I destroyed them.

R. D. 47. About how long after the determination of those proceedings?

A. I think within a year, or a year and a half at the outside.

R. D. 48. Have you, within a year past, been applied to by anybody for that evidence?

A. I think I have. I think Mr. Norton asked me for a copy of it, and a gentleman whom I did not know—a stranger—called upon me, and told me Mr. Groom had sent him for a copy of it.

R. D. 49. Do you remember whether the first seven witnesses called were cross-examined?

A. I do not.

R. D. 50. Do you remember whether William F. Burden was called as a witness against Norton on the question of impeachment?

A. He was.

R. D. 51. State whether Corning, Winslow & Co. and the Burdens were not involved in litigation between themselves over spike and horseshoe machinery at that time.

A. They were.

R. D. 52. State whether Norton was not one of the counsel for Corning, Winslow & Co. in those matters and at that time.

A. He was.

R. D. 53. Was not Beach & Smith counsel for the Burdens in those and other matters?

A. They were.

W. E. HAGAN.

Subscribed and sworn to before me this 27th day of August, 1878.

IRVING BROWNE,
Special Examiner.

688 REUBEN COMINS, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Reuben Comins; of the city of Troy; bridge builder by profession; age is 60; I mean my sixtieth year.

Q. 2. About how long have you been engaged in the business of bridge building?

A. Forty years.

Q. 3. What kind of bridges?

A. For railroads principally; for railroads and highways of towns; sometimes in iron, but principally of the Howe style in wood.

Q. 4. About how long since you have resided in the city of Troy?

A. Since July 4th, 1850.

Q. 5. In what part of the city is your office?

A. At the present time 271 River street.

Q. 6. Whereabouts in this city do you reside?

A. At the American House, in this city.

Q. 7. Do you know Marcus P. Norton of this city?

A. I know Marcus P. Norton, but I don't know whether he is of this city or not.

Q. 8. What do you mean to be understood by the latter part of your last answer?

A. That is, I don't know whether you still reside in the city of Troy; I knew that you resided in the city of Troy formerly.

Q. 9. Well, how long ago, about?

A. Well, eighteen years.

Q. 10. What was his business in the city, so far as you know of it?

A. Lawyer; so far as I had any knowledge or understood it.

Q. 11. Did you ever have any business transactions with him in the line of his profession?

689 A. I did.

Q. 12. State whether they were suits on patents, extension of patents, or reissue of patents.

A. Reissue and a suit, or a defense in a suit.

Q. 13. So far as Norton has ever transacted any business for you in his profession, state whether it was done to your entire satisfaction or not.

(Objected to as immaterial.)

A. I never made any complaint nor found any fault.

Q. 14. Did you know his character for truth and veracity here while you knew him here, as a lawyer practicing?

A. I knew nothing to the contrary.

Q. 15. Did you know anything against it at that time?

A. I knew nothing against it then.

Q. 16. Do you of your own knowledge know anything against it now?

A. I do not.

Q. 17. So far as you yourself know, do you consider it good or bad for truth and veracity?

(Objected to on the ground that it is immaterial, since the witness should be inquired of as to the general reputation of Mr. Norton, and not as to what the witness knows himself.)

A. It is good, so far as I know.

Q. 18. From your knowledge of Norton's character for truth and veracity, would you believe him under oath?

(Objected to because the proper foundation has not been laid.)

A. I have no reason to disbelieve him except by report.

690 Cross-examination:

By Mr. CLARKE:

X Q. 19. How much have you known of Mr. Norton for the last ten years?

A. Very little for the last ten years.

X Q. 20. Have you heard him spoken of seldom or frequently in any way, by anybody, within that time?

A. Seldom.

X Q. 21. In answer to question 18 you say you have no reason to disbelieve him except by report. Explain what you mean by that.

A. I have heard it questioned in regard to truth and veracity in some court or trial or other—I don't remember what—from newspaper reports, or something of the kind.

X Q. 22. When, in answer to question 17, you say Mr. Norton's character for truth is good, so far as you know, I understand you to be speaking then only from your personal knowledge and experience, and not from any hearsay report or rumor?

A. That is so.

X Q. 23. When did you last have any business connection with Mr. Norton?

A. About eighteen years ago.

X Q. 24. Does the knowledge that you then gained of Mr. Norton embrace all that you know of your own knowledge as distinguished from hearsay concerning him?

A. It does.

X Q. 25. Over what period of time did your business connection with him extend?

A. Perhaps two or three years.

Redirect examination:

By Mr. NORTON:

691 R. D. 26. Have you had any patent suits, or suits about patents, since the time specified in your last answer?

A. I have not.

R. D. 27. How do you judge of any man's character for truth and veracity in this community or any other community?

(Objected to as immaterial.)

A. Both from personal knowledge and reputation.

R. D. 28. Name any person that you ever heard say anything against Norton in this community.

A. I can specify none.

R. D. 29. Whatever you did hear was a mere idle rumor running around, about the truth of which you had no personal knowledge, was it not, so far as you know?

(Objected to on the ground that it improperly characterizes the report.)

A. It was, so far as I know.

R. D. 30. State anything that you have ever heard against Norton s character for truth and veracity.

A. I have nothing to state; I have no recollection of details, or of general statements.

R. D. 31. How many years ago was it that you caught a faint glimpse of these idle rumors, of which you have been interrogated?

A. I do not recollect.

R. D. 32. Was it as many as fifteen years ago?

A. I cannot say.

R. D. 33. Did you believe any of them at the time to be true?

A. That I don't know.

R. D. 34. They do not have any influence over you on this occasion?

A. No; they do not.

692 R. D. 35. Were you sitting as a juror in a case, what would be the rule you would adopt as to accepting or believing the testimony of any man given before you?

(Objected to as immaterial.)

A. I suppose I should have to take it, unless it was impeached.

R. D. 36. Now, suppose you were called upon to testify as to whether you would believe any man, under oath or not, in any case or suit, what would be the rule you would adopt in giving testimony as to whether you would or would not believe that person under oath?

(Objected to as immaterial.)

A. Circumstances.

R. D. 37. What circumstances do you refer to in your last answer?

A. A man's reputation, standing, or character.

R. COMINS.

Subscribed and sworn to before me this 27th day of August, 1878.

IRVING BROWNE,
Special Examiner.

TROY, N. Y., *August* 28, 1878.

Met at 9 a. m., pursuant to adjournment of August 27.

Present, same counsel as above.

ASAHEL D. LYON, called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

693 A. My name is Asahel D. Lyon; I am 50 years of age; my residence is Troy; I am a lawyer by occupation.

Q. 2. About how long have you resided in the city of Troy?

A. About twenty-seven or eight years.

Q. 3. You are a member of the bar of the courts of this State, are you not?

A. I am.

Q. 4. And have been for about how many years?

A. Since December, '59.

Q. 5. How long have you been engaged in the practice of your profession in this city?

A. Since I was admitted, and I am engaged in it now.

Q. 6. You are holding an official position in the North Second Street Methodist Episcopal Church of this city, are you not?

A. I am.

Q. 7. State what it is, and about the length of time you have held it.

A. I am steward in that church, and prior to that time I was class-leader for a number of years.

Q. 8. Your official position in that church, as well as the practice of your profession, has brought and brings you into an acquaintanceship with many of the prominent business men of this city, has it not, and does it not?

A. It has and does.

Q. 9. Where in this city is your office located?

A. Number 53 Congress street, nearly opposite the court-house.

Q. 10. In what part of the city is your residence located?
A. Number 48 North Fourth street.
Q. 11. Do you know Marcus P. Norton of this city?
A. Yes, sir.
Q. 12. About how long have you known him?
694 A. Well, I have known him for twelve, fifteen, or eighteen years; I can't state the exact number.
Q. 13. What has been his business in this city, so far as you know, in your acquaintance with him?
A. A lawyer.
Q. 14. Do you know his character for truth and veracity in this city?
A. I think I do.
Q. 15. Do you consider it good or bad?
A. I consider it good.
Q. 16. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?
A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 17. Have you had any personal dealings with Mr. Norton?
A. I don't remember that I ever have; I don't know but that some years ago a small claim of fourteen dollars was given me for collection against Mr. Norton; I presented it to him and he paid me, and I don't remember of any other personal dealings that I have had with him, unless he stepped in and made an affidavit before me as notary or commissioner of deeds.
X Q. 18. How intimate has been your acquaintance with Mr. Norton?
A. I have met him frequently in the street, and have been in his office from time to time, and he has been in my office.
X Q. 19. How long ago was it that you were thus intimate with Mr. Norton?
A. Since I was admitted to the bar, and, I think, while he was occupying an office in Wotkyns' block in the city of Troy, and I have met him since and shook hands with him.
695 X Q. 20. That was twelve or fifteen years ago, was it not?
A. I don't remember the exact time; he was then in that building for a number of years; and I have seen him frequently since he had an office in that building.
X Q. 21. Your meetings have been casual meetings, I take it, nothing else?
A. Yes, sir: I think he has been at my office several times since he left that building to have me take an affidavit.
X Q. 22. Give your best recollection as to how long ago that was.
A. It is not anything that I charged my memory with; I should say from four to six years; I don't undertake to give the exact time, and perhaps it is longer than that time.
X Q. 23. You say that you think you know Mr. Norton's character for truth and veracity in this city; what do you understand by the phrase "character for truth and veracity in this city"?
A. I understand that he is to be believed by the majority of the people; that they believe him a truthful man; that his word is to be relied on; that he is to believed by the most of the people with whom he is acquainted.
X Q. 24. What are your means of knowing that a majority or most of the people with whom he is acquainted believe him to be truthful?

A. Well, I have no special means of knowing, but I have heard of his doing a large business here as a patent lawyer, and having been employed by large firms and dealers in the city, and perhaps my opinion, in a measure, has been based upon that.

X Q. 25. Have you not also heard that he has ceased to do that large patent business here?

A. I haven't heard of his doing so much business here for the last three or four years as I had heard that he formerly did; I don't
696 know that I have heard that he ceased to do a large patent business here.

X Q. 26. Where is his office in this city?

A. I don't know that he has an office in this city, personally.

X Q. 27. Will you swear that you have heard of Mr. Norton being employed by any large firm or dealer in this city within six years?

A. I won't swear positively; he may have done so; I may have heard that he was employed, but won't swear positively.

X Q. 28. Did you ever hear that about six years ago Mr. Norton was debarred from practicing as an attorney or solicitor in the Patent Office at Washington?

A. I won't swear that I ever did; and I don't know that it was the fact that he ever was.

X Q. 29. Did you ever hear of any such thing, or anything of that kind?

A. Well, I won't swear positively that I ever did; I think I heard that in some case in which Mr. Norton was engaged, or had something to do, that he had some trouble or difficulty at Washington; but I don't now remember what it was exactly.

X Q. 30. Did you ever hear that Mr. Norton was indicted for forgery in the District of Columbia some six years ago?

A. I don't now remember that I ever did.

X Q. 31. Did you ever hear of an attempt being made in any case but this to impeach Mr. Norton's reputation for truth?

A. I have.

X Q. 32. When was it, and what was the case?

A. I don't recollect the time exactly; it was some years ago, and I don't recollect the case; it occurred here in Troy, as I understood; and at the time I might have heard the title of the cause; but it has now gone from me.

X Q. 33. Give your best recollection as to how long ago that was.

697 A. Well, it must have been as many as eleven, or twelve, or more years since.

X Q. 34. Do you recollect whether it was a case in which Mr. William E. Hagan was plaintiff?

A. I can't say that he was plaintiff; but I think I heard that he was connected with it in some way.

X Q. 35. Have you ever heard anybody say anything against Mr. Norton being a truthful man?

A. I don't remember that I ever have, except something in connection with that case; something pertaining to it.

X Q. 36. Did you hear such things at that time?

A. In relation to this Hagan suit, I heard conversation about this attempt to impeach Mr. Norton, either at the time, or subsequently.

X Q. 37. Well, aside from the Hagan suit, have you ever heard Mr. Norton's reputation for truth and veracity in this city discussed?

A. I don't remember that I ever have; I don't think I ever heard his veracity called in question in any way except in relation to that;

at the time I heard his veracity called in question in relation to the Hagan suit, I deemed it very singular that any gentleman could get on the stand and undertake to impeach him that was acquainted with him; and if he had called upon me, or either party had, to testify in that suit, as to his character for truth and veracity, I should have testified the same as I have to-day, that it was good.

X Q. 38. Have you ever heard any one say anything in favor of Mr. Norton being a truthful man?

A. I don't know that I can add anything to what I have already testied to; I don't know that I ever heard his character for truth and veracity called in question in any way, or at any time, except in relation to the suit in which Mr. Hagan was interested.

X Q. 39. You say that, in your opinion, the most of the people with whom Mr. Norton is acquainted with believe that he is truth-
698 ful, and the only reason that you give for that is that you have heard of Mr. Norton being employed by large firms and dealers, and of his doing a large patent business; you have not heard any one say anything in favor of his character; you have heard it impugned; and you cannot swear that your main reason for supposing his character good, his employment by large firms, etc., has existed for six years; do I state your position correctly?

(Objected to as not being a truthful statement of the record of this witness' evidence already rendered, and therefore improper.)

A. I didn't intend to state in my testimony that I never heard any one speak in favor of his character. When it was spoken of in relation to the Hagan suit, I, perhaps, heard as much in favor of his character being good as I did against it, and the fact that I have never heard it questioned in any way outside of that one case, is another reason that I give why I deem it good.

(In view of the answer, the objection to the last question is withdrawn.)

X Q. 40. What occasions, if any, have there been since the Hagan suit, in which the people who have spoken with you about Mr. Norton would naturally have referred to his character for truth, if, in their opinion, it had been tainted?

A. I don't know as there has been any special occasion; but from what I have heard in relation to his business from time to time, I think that people must have had confidence in him, and having seen him in my office from time to time, making affidavits and swearing to papers.

X Q. 41. Have you heard him spoken of in late years as frequently as formerly?

699 A. Well, perhaps not as frequently as formerly; I should say not.

X Q. 42. Do you know what the reason of that is?

A. I am not positive what the reason is.

X Q. 43. What do you understand to be the reason?

A. I have no special understanding about the reason or reasons.

X Q. 44. Will you swear that you have heard him spoken of by anybody, in any way, ten times within the last five years.

A. I won't swear positively; but my recollection is that I have heard him spoken of more than ten times within less than five years.

X Q. 45. Have you heard any of these large dealers speak of or say anything about Mr. Norton?

A. I now don't recollect.

X Q. 46. Have you ever heard anybody speak about him, who had had any important business transactions with him?

A. They may have done so; but I don't now recollect who or when.

X Q. 47. Do you recollect that you have, though you may not recollect the name?

A. I don't say positive that I have; though I may have.

X Q. 48. Do you recollect of having so heard?

A. I don't, this minute, positively recollect.

Redirect examination:

By Mr. NORTON:

R. D. 49. The counsel for the defendant has put to you several questions prepared in his New York mud-machine, with reference to disbarments, indictments, and some other things in that line, in reference to Norton. We will suppose, for the benefit of the counsel on the
700 other side, that you had heard of the tremendous things of which he speaks in some of his questions to you; from your long and continued acquaintance with Norton, in the same profession, and as a citizen, would it not have required positive and unimpeachable evidence to convince you of the truth of those statements?

(Objected to as assuming that the matter of the disbarments, indictments, and impeachments originated with defendant; whereas the record in evidence in this case shows that they were occasioned by no other mud-machine than Mr. Norton's own.)

A. I don't think that any rumor of that nature would change my opinion of Mr. Norton's character for truth and veracity, nor any newspaper publication on the same subject.

R. D. 50. Do you remember to have ever heard the result of the attempted impeachment of which you have spoken on your cross-examination; I mean the success or unsuccess of that attempt?

A. I may have heard what it was, but I am unable now to state.

A. D. LYON.

Subscribed and sworn to before me this 28th day of August, 1878.

IRVING BROWNE,
Special Examiner.

701 JOHN MILLER, a witness called on the part and behalf of the plaintiff, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John Miller; age is 49; residence, Green Island, New York; my occupation, molder or foundryman.

Q. 2. How far is Green Island from the city of Troy?

A. They are about a quarter of a mile apart, and are connected by a bridge.

Q. 3. About how long have you resided on Green Island?

A. About twenty-seven years.

Q. 4. Green Island is a village of a large number of inhabitants, is it not?

A. Yes, sir; about five thousand inhabitants; I think that is the number of it now.

Q. 5. About how long have you been engaged in the business of molder or foundryman?

A. About thirty-two years.

Q. 6. Nelson Pramer has been called and examined as a witness for defendant in this case, and, among other things, he testified substantially that he was in the foundry business on Green Island, and had a

partner by the name of John Miller; do you know any person by the name of Nelson Pramer?

A. Yes, sir; I do.

Q. 7. Is that Nelson Pramer, whom you say you know, at the present time a member of the common council of this city, from one of the outer wards?

A. Yes, sir, I believe he is; from the fifth ward.

Q. 8. Were you ever a partner of his in the foundry business on Green Island?

A. I was.

702 Q. 9. When did that partnership commence, and when did it terminate, if at all?

(Objected to as immaterial and irrelevant.)

A. It commenced in March of this year; it terminated in the last of last July.

Q. 10. How much capital did Mr. Pramer undertake to put in this firm —I mean in the partnership business of Pramer & Miller?

(Same objection.)

A. He did not really put in any money of his own; Mr. Morrison put in a thousand dollars for him, and his wife gave security for that thousand dollars on her property.

Q. 11. While you were a partner with Pramer, did he deal with you in a fair, square, and honorable manner?

(Same objection.)

A. No, sir; he did not.

Q. 12. From your acquaintance with Pramer, and from all you know of him personally, and from what you may have heard concerning him, you may state what kind of a man you regard him to be.

(Same objection.)

A. As far as I have had dealings with Pramer, he has misrepresented everything with which he had to do; he has shown them in a false light, and I don't think there is really anything honest or honorable about the man.

Q. 13. While you were a partner of his at that foundry on Green Island, state whether women of doubtful character did not frequently call upon him in that foundry.

(Same objection.)

703 A. There was. The first I saw of it was that there was a woman introduced to me as his friend, and there were two or three men hanging about her, and he was showing her about the shop, and afterward I saw the men in the foundry watching her and looking at her movements. I went up to one of the men and asked him what was the matter of this woman, that they were looking so sharp after her, and he asked me if I didn't know the woman; I told him that I did not; that I had not seen her before, to my knowledge; he said she was a bad character. After she went away, I spoke to Mr. Pramer, and I told him I did not like to have such characters come around the foundry; that I did not want him to bring any more.

Q. 14. State whether there was any other similar occurrence at that foundry while you were there as a partner of Pramer?

(Same objection.)

A. There was one other woman came over there.

Q. 15. Did you call Mr. Pramer's attention to the appearance in your foundry of the disreputable women, while you were his partner, any other than as already stated by you?

(Same objection, and also for its assumption.)

A. No; but Mr. Morrison came over another day, and in the office he saw a lady, and he told me that he thought Mr. Pramer had a good many lady friends.

Q. 16. What reply did you make to Mr. Morrison at the time about that?

(Same objection.)

A. I don't exactly remember what I did say.

704 Q. 17. How soon after the partnership commenced was it that these women first came there?

A. I don't think that it was before the first of May that they came there.

Q. 18. When you called Mr. Pramer's attention to the first woman that came there, and in substance requested him not to allow any more women of that character to come there, what reply, if anything, did Pramer make to it?

(Same objection.)

A. He laughed at me and said it did not amount to much.

Q. 19. Was it not generally understood or suspected among your workmen that there were a good many women of doubtful character as to virtue, calling on Pramer, or of his having something to do with them, other than those you have stated?

(Same objection.)

A. No; the workmen that I had, they knew very little about Pramer. Wolfe & Company's men were the ones that watched the most on that subject.

Q. 20. Wolfe & Company's men were laborers in that same foundry, were they not?

A. Yes, they used to do their shipping from that foundry.

Q. 21. They knew more of Pramer's "ways that were dark and his tricks that were vain" than your men, did they not?

(Same objection.)

A. Yes, sir.

Q. 22. Have you recently heard anything with reference to the vote of this man Pramer, in the common council of this city, on the
705 question known as the "water supply" question, or for furnishing an additional supply of water to this city, from either the Hudson or Poestenkill Rivers?

(Same objections and as asking for hearsay.)

A. Yes, sir.

Q. 23. State what that was, as near as you can remember it.

(Same objections.)

A. I was in an office or store in this city a little over a week ago; the question was asked me if I had left Pramer. I stated that I had. They said that Pramer would have a little money now, that I ought to have stayed with him a little longer. I asked how he came by the money. They said the Holly Water Company was buying up the common council, and that Pramer was one of them.

Q. 24. Was it stated there that it was rumored that Pramer had sold his vote on the water question?

(Same objections.)

A. Yes, sir; and I heard this in one other place.

Q. 25. Do you regard Pramer as a man of any money or property responsibility at all?

A. No, sir; not at all.

Q. 26. Is the foundry that you speak of the property of Mr. James Morrison?

A. Yes, sir; that is Mr. Morrison's property.

Q. 27. Do you think that a man can do a very large business in a foundry on a borrowed capital of a thousand dollars?

(Same objections.)

A. No, sir; that thousand dollars was used up long ago.

706 Q. 28. You were subpœnaed and your fees paid you, such as per diem and mileage, to come here to-day and give evidence, were you not?

A. Yes, sir.

(No cross-examination.)

Q. 29. What led to the dissolution of your firm? I mean the firm of Pramer & Miller.

(Same objections.)

A. I was advised by friends of mine to leave him, as he was not an honest man; I had made up my mind to do so anyway.

Q. 30. You found, from association with him, that he was not an honest man, but a dishonest one, did you not?

(Same objections, and as leading.)

A. Yes, sir.

Q. 31. On association with Pramer in business, what did you find him to be; honest or dishonest?

A. Dishonest—tricky.

JOHN MILLER.

Subscribed and sworn to before me this 28th day of August, 1878.

IRVING BROWNE,
Special Examiner.

707 RUFUS M. TOWNSEND, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Rufus M. Townsend; age is seventy-one; I reside in the city of Troy, Rensselaer County, and State of New York; I am a farmer, and have practiced law for over forty years.

Q. 2. About how long have you resided in the city of Troy?

A. Between forty and fifty years.

Q. 3. About how long have you been engaged in the practice of your profession in this city?

A. Over forty years.

Q. 4. What is the law firm by name with which you are connected in this city since you have been in the city of Troy?

A. I first practiced by my own name alone for a series of years, R. M. Townsend; then I practiced under the name of R. M. & M. J. Townsend for a number of years; then I practiced under the name of Townsends & Kellogg, until about the year 1857, and then I practiced under the firm name of Townsends & Browne until a very recent period.

Q. 5. Is Martin I. Townsend, the present member of Congress from this district, your brother?

A. He is.

Q. 6. Is Mr. Irving Browne, the special examiner before whom you are examined, the gentleman who was a partner of yours for twenty years?

A. Mr. Irving Browne, the person referred to in the last question, is the Mr. Brown of said firm of Townsends & Browne.

Q. 7. The professional business of the several firms stated by you in answer to questions, has brought you into an acquaintance w th many

of the leading business and professional men of this city, has it not, and does it not?

708 A. Yes, sir.

Q. 8. Do you know Marcus P. Norton, of this city?

A. Yes, sir.

Q. 9. You have known him for about how many years?

A. I can't tell you the number of years, but I have known him from the time he first came to Troy to live, which is many years ago.

Q. 10. Have you, or any of the firms named by you, had any suits or other professional business with Norton during the time you have stated?

A. The said firm of Townsends & Browne were employed some years ago to defend a patent suit brought in the United States court against Mr. Schoonmaker, of Troy, a photographer, by a man by the name, I think, of Alden, for an alleged infringement by the defendant of a patent granted to a man by the name of Southworth, in or near Boston, for a patent securing to Southworth the right to make more than one picture on the same plate during one continuous operation. Said patent was granted to Southworth, I think, about 1853, and it was alleged that said Alden, if that was his name, owned the territory in which Troy was under said patent. This suit was brought to test the right of the plaintiff to said machine under said patent, and said firm of Townsends & Browne defended said suit for defendant through a number of years, and took testimony coming from France, Germany, and England, and many portions of the United States, and we were connected with the defense until the decision of the Supreme Court of the United States at Washington, in the District of Columbia. We may have had other suits of lesser importance, but I don't recollect them. In the said suit of Alden and Schoonmaker, I had the sole charge of the case, and took the testimony. Mr. Norton brought said patent suit for said complainant, and took most of the testimony. Sometimes Mr. Cowen took the testimony. Mr. Cowen was his partner at the time.

709 Q. 11. Do you remember the suit on a paper box invention patented to Elisha Waters, of this city, on which patent Norton brought suit against Percy & King, of this city, and defended by Townsends & Browne, of this city, some years ago?

A. I remember hearing much of it at the time the suit was pending.

Q. 12. In the line of your profession, have you not recently had a suit against Norton in person in the justice's court of this city, for a client of yours?

A. Yes, sir.

Q. 13. What was that suit about, if you remember?

A. For the pay for newspapers and periodicals furnished by the plaintiff to and for Mr. Norton, at one of the hotels in the city of Troy, where Mr. Norton sometimes boarded. They were said by the plaintiff to have been delivered at the hotel while Mr. Norton was out of town at some country residence.

Q. 14. Norton defended that suit on the ground that he had not received those articles, and ought not to pay for them, did he not?

A. Yes, mainly, I believe, and also on the ground that he had given notice to the hotel that the papers must not be delivered, and that he had requested the hotel to notify the plaintiff.

Q. 15. About how long is it since that suit was disposed of in that court?

A. Only a few weeks.

Q. 16. Was Norton examined as a witness in that case in his own behalf?

A. He was.

Q. 17. Did you principally conduct the cross-examination of Norton in that case?

A. I think I did; and I think that my son conducted a very small part of it.

Q. 18. Was the defendant's counsel now present, Mr. Clarke, then present at that time, and during the examination?

710 A. I think he was; at least a portion of the time.

Q. 19. Look at him, and state whether you have any doubt about it.

A. He was present a considerable part of the time.

Q. 20. Did you undertake on that occasion to impeach the character of Norton in that suit?

A. I did not.

Q. 21. Did you at any time contemplate or intend to go into such an undertaking in the trial of that suit?

A. I did not.

Q. 22. You have known Norton for a great many years pretty well, have you not?

A. I have known Mr. Norton very intimately until the present time, from the time that Mr. Norton first came to Troy, which was a great many years ago.

Q. 23. Do you know his character for truth and veracity in this city?

A. That is a difficult question for me to answer, because during all my acquaintance with him I never heard, either in or out of the profession, a word said by any person in reference to his character for truth and veracity. I have heard a great deal said of him as a business man, and as a patent lawyer, and as a skilled man in the mechanical arts.

Q. 24. Do you consider his character for truth and veracity good or bad?

A. I consider it good, because I have never heard anything said against him in all my acquaintance with him on that subject.

Q. 25. From your knowledge of his character for truth and veracity here, would you believe him under oath?

A. I would.

Q. 26. Prior to Norton's financial embarrassments in '70 or '71, were you frequently in his law office in this city?

A. While he kept an office in the city of Troy I was very fre-
711 quently in his office, and I was frequently in his office up to the time he was said to be embarrassed financially.

Q. 27. From what you saw on those occasions in his office, how did it appear to you as to the character or extent of the business conducted there, or otherwise learned?

A. I knew that his business embraced various questions of procuring patents and of prosecuting and defending suits. From what I saw and learned from his clients in this city that his business was very great, indeed, and very lucrative. That he had that kind of business in the employment of many firms in this city and other places, who had great wealth and carried on the largest manufacturing business. He had pretty much the sweep of the patent business in this part of the State of New York.

Q. 28. Where is your brother Martin I. Townsend at this time?

A. I suppose that he is in the State of Iowa, near the town of Mar-

shalltown. I had a letter from him last Saturday evening, saying that he would be home within a few days, almost certainly before the first day of September.

Q. 29. Your several law firms have done quite an extensive law business in this city in the line of your profession, have they not?

A. Yes, sir.

Q. 30. Were you subpœnaed to appear here and be examined as a witness to-day?

A. I was.

Q. 31. Were your fees tendered you as a witness?

A. They were.

Cross-examination:

By Mr. CLARKE:

X Q. 32. You say that you have not heard Mr. Norton's character for truth spoken of. By that I suppose you mean by anybody generally as character; state whether in any particular matter or case you have ever heard it said that Mr. Norton was untruthful or swore falsely, or substantially that.

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A. I never heard, that I recollect, any question raised as to the truth of his statements, either in any case or anywhere; I do not recollect that I ever heard that he was sworn in any case other than the little justice's court case of which I have spoken in my testimony.

X Q. 33. How often have you heard Mr. Norton spoken of in any way, by anybody, within the last ten years, frequently or seldom?

A. I have heard him spoken of within ten years much less frequently than previously, but I have heard him spoken of frequently within the last ten years by a great variety of people.

X Q. 34. In what way was reference made to him on those occasions principally?

A. Reference was made to the character of his business in procuring patents, and in patent suits, and as to his ability as a scientific mechanic, and as to his ability in prosecuting and defending patent suits. Our manufacturing men that owned patents, and who employed him, spoke of his superior skill to the generality of lawyers, and insisted that he was superior to most of the legal profession in this part of the State.

X Q. 35. Explain briefly the testimony that was given in that justice's court suit?

A. In reference to the plaintiff's claim in said justice's court suit, which has been hereinbefore substantially stated by me, I testified on behalf of the plaintiff in said justice's court suit that I had two interviews or more with Mr. Norton in reference to said claim; one or more at or near the Troy House, and one other conversation, which was the last, in front of my office in First street, in the city of Troy, and that in the first conversation or conversations at or near the Troy House Mr. Norton raised the question as to whether the word be left at the hotel not to have the papers and periodicals left there any more after he went into the country, had ever reached the plaintiff before he delivered said articles; that if he should come to the conclusion that he was liable to pay, he would send his check at some early day, from his house in the country; and I testified that in the last conversation which I had with him in front of my office, that after a more full statement of the facts, that he promised absolutely to send his check the Tuesday following; I stated that that was my best recollection of our conversation; but Norton on his part testified that he did not promise absolutely to send his check, but that he coupled his promise with the condition of

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his finally determining that he ought to pay it; but he agreed with me in substance as to what was said at or near the Troy House; that I think is the substance of the difference between my testimony and Mr. Norton's. The defense in the testimony failed to show any knowledge of the order that Mr. Norton left at the hotel bar, communicating to the plaintiff for discontinuing the papers, which I deemed to have been the controlling thing in the case.

X Q. 36. You swore that the promise to send the check was absolute, and Mr. Norton swore that it was conditional?

A. Yes, sir.

X Q. 37. Did your son swear on that point also?

A. I think he did; I think he swore without being able to state positively, substantially, the same as I did.

X Q. 38. Have you any doubt that Mr. Norton made an absolute promise on that occasion?

A. I have no doubt he did make an absolute promise.

X Q. 39. He swore at the trial that the promise was conditional and not absolute, did he not?

A. He did.

X Q. 40. Did he, to your knowledge, swear falsely in that?

714 A. This is a difficult question for me to answer. I have stated on that point all that I know, and as to whether Mr. Norton swore falsely, any further than I have stated, I cannot state. I cannot say of my own knowledge that Mr. Norton intended to misrepresent.

X Q. 41. He did misrepresent, he did misstate, did he not?

A. I cannot state that; I testified according to the best of my memory, and I cannot state but that Mr. Norton answered according to the best of his memory. I might have made a mistake, and he might have made a mistake. I intended, in my testimony in the justice's court, to state truly.

X Q. 42. Did he, according to the best of your knowledge, misstate and misrepresent?

A. Mr. Norton, in his testimony on the subject I have referred to, did not state the facts in accordance with my memory. I said that he made an absolute promise to send his check, and he said he promised on a condition stated in his testimony. I know that in one or two previous conversations he had promised subject to a condition stated in my testimony and his, and in this last conversation referred to, my memory is that he did not put any condition. Mr. Norton did not make any misrepresentations, but he differed from me only in the fact of promising with a condition. Now, whether that was false or a misrepresentation, I leave for the court to decide.

X Q. 43. On that day, when Mr. Norton promised to send his check absolutely as you say, was that promise clear, precise, and so definite that Mr. Norton could not have reasonably meant anything but an absolute promise? Answer this question as you would one in any practical matter between man and man, without speculating too deeply as to the hidden processes of the mind.

A. As I understood his promise, and that it was absolute, I believed fully that he intended to send his check.

715 X Q. 44. How long a time intervened between the day of the promise and the day of the trial?

A. I can't tell positively from memory, but it must have been three or four weeks, perhaps.

X Q. 45. Does Mr. Norton now have the large practice in Troy which you spoke of on your direct examination?

A. I think not.

X Q. 46. Do you know whether he has any office at all in Troy?

A. I do not.

X Q. 47. When was it that the falling off in the business began?

A. I can't tell you just the time when, but it was when he was engaged in extensive practice in the city of Washington.

X Q. 48. What do you know about his extensive practice in the city of Washington?

A. I know nothing except hearsay; I may have seen him there a few times, but can't say positively.

X Q. 49. About how long ago was it?

A. I can't fix the length of time, but perhaps from eight to twelve years ago; that is as near as I can get to it now.

X Q. 50. What was the reason of the falling off of Mr. Norton's patent business in the city of Troy?

A. I can't give the reason other than pecuniary embarrassments, which were very heavy upon him, and then, becoming interested in some very valuable patents, he turned his attention to taking care of those patents, and that called him very much away from the city.

X Q. 51. Do you know what the occasion of the pecuniary embarrassment was?

A. I don't know.

X Q. 52. Have you ever heard that Norton does not keep his business engagements?

716 A. I have never heard of anything of that kind, other than that he did not pay his debts for the want of money.

Redirect examination:

By Mr. NORTON:

R. D. 53. Did you, in the justice's court case referred to in your cross-examination, recover judgment against Norton?

A. Yes, sir.

R. D. 54. For how much, including costs?

A. Well, I can't say, sir; but it seems to me that the damages were for some sixteen dollars, including interest, and the costs were enough to make it mount up to the sum of twenty-five dollars.

R. D. 55. How much was the original claim in that suit?

A. About thirteen dollars.

R. D. 56. Did Norton employ counsel in that case for him?

A. I think he did.

R. D. 57. Has Norton paid that judgment?

A. Yes; he gave his check promptly, and the check was paid.

R. D. 58. Counsel for the defendant here has inquired of you about a promise absolute and one conditional, testified about both by yourself and Norton in that trial; do you believe that Norton intended there to testify to anything but the truth, or that he stated anything differently from what he honestly believed the facts to be, although you believed them to be otherwise?

A. From the facts that I know in the case I have no reason to believe, nor have I any right to believe, that Mr. Norton intended to misrepresent or state what was untrue; the truth of his intent is beyond my reach.

R. D. 59. Notwithstanding Norton's testimony in that suit, al-
717 though you and he disagreed as to a certain point, you swear that you will believe him under oath, do you not?

A. I do so swear, and I say that all his acts in reference to that little claim show him to have been prompt and honorable.

R. M. TOWNSEND.

Subscribed and sworn to before me this 28th day of August, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned to August 29, 9 a. m.

I. B., *Ex'r.*

TROY, *Aug.* 29.

Same counsel, &c.

WILLARD GAY, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Willard Gay; age, 58 or 60; residence, Troy; occupation, cashier National State Bank of Troy.

Q. 2. About how long have you resided in the city of Troy?

A. Fifty years.

Q. 3. About how long have you been cashier of the State Bank?

A. Twenty eight years.

Q. 4. That bank started as State Bank in what year?

A. '52.

Q. 5. And it afterwards became a National Bank under the United States laws, did it not?

A. Yes.

Q. 6. Your position as cashier of that bank has brought you into an acquaintance with most of the prominent and business men of the city, has it not?

718 A. Yes, sir.

Q. 7. Do you know Marcus P. Norton, of the city of Troy?

A. Yes, sir.

Q. 8. About how long have you known him?

A. Well, from fifteen to eighteen years, certainly.

Q. 9. During your acquaintance with him, has he frequently transacted business at the bank of which you are cashier, in this city?

A. Yes, sir.

Q. 10. Do you know his character for truth and veracity in this city?

A. Yes.

Q. 11. Do you consider it good or bad?

A. I consider it good.

Q. 12. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

A. Yes.

Q. 13. Did you ever hear anything said in this city against his character for truth and veracity?

A. I may have heard persons speak against him, but have never heard a sufficient reason why they did.

Q. 14. In his dealings with you and the bank of which you are cashier, what, if anything, can you say about that?

(Objected to as immaterial.)

A. Well, I can say that he has always lived up to what he has promised, and has always been honorable in his dealings with us, both with me and the bank, in all his representations to us.

Q. 15. Do you remember of a single instance in his dealings with

your bank when Norton has asked a favor of you or of your bank, of his ever having been refused?

(Same objection.)

A. No, I don't remember of any now.

719 Cross-examination:

By Mr. CLARKE:

X Q. 16. Have you any doubt that you have heard things said against his being a truthful man?

A. No; I do not remember now of hearing any one express a doubt of his veracity.

X Q. 17. What are your means for knowing Mr. Norton's character for truth?

A. His business at the bank and some private business he has done with me; it was always done satisfactorily to me and to the bank.

X Q. 18. You say that Mr. Norton's character for truth is good because in his personal dealings with you he has been always square; is that it?

A. Yes.

X Q. 19. You do not allow yourself to be influenced at all by report or rumor?

A. No, sir; not to what I am swearing now.

X Q. 20. You say you do not recollect of any person who has impugned Mr. Norton's veracity in your hearing?

A. I do not.

X Q. 21. Did you ever hear of Mr. Norton being prohibited or debarred from practicing in the Patent Office, about six years ago?

A. I may have heard of it, but I could not swear when, and I could not swear that I have heard it.

X Q. 22. Did you ever hear of Mr. Norton being indicted for forgery in the District of Columbia, about six years ago?

A. That I think I never heard; no, I know I did not.

X Q. 23. Did you ever hear of Mr. Norton's reputation being impeached, or attempted to be impeached, in any case?

A. No, sir; except in this case here in Troy—this pending case.

720 X Q. 24. Have you heard Mr. Norton spoken of in any way by anybody, frequently or seldom, within the last eight or ten years?

A. Yes.

X Q. 25. Which; frequently or seldom?

A. Some years frequently and some years seldom; of late years not so frequently.

X Q. 26. Have you heard anything unfavorable said of Mr. Norton?

A. I may have.

X Q. 27. Have you any doubt as to that?

A. No; my impression is that I have. I don't remember of any reasons given that convinced me of what they said.

X Q. 28. In what respect were the remarks that you heard unfavorable to Mr. Norton?

A. I don't remember.

X Q. 29. You pay very little respect to rumor and reports about people, do you not?

A. Very little.

X Q. 30. When, on your direct examination, you stated that you didn't remember ever refusing a favor asked of you, or your bank, by Mr. Norton, did you mean by that to convey the idea that you always, invariably, accommodate him in any way he may ask?

A. In that answer I did not mean to imply that he never asked a favor which was refused, but that I did not remember of any such instance.

Redirect examination:

By Mr. NORTON:

R. D. 31. Notwithstanding anything that you may have heard said against Norton about the business matters of which defendant's counsel has inquired on cross-examination, you still continue to have that
721 trust and confidence in Norton that has enabled you here to-day to swear that you would believe him under oath, have you not?

A. Yes.

R. D. 32. Of the truth of anything that you may have heard against Norton, if you ever did hear anything, did you have any personal knowledge?

(Objected to as immaterial.)

A. I never did. I did not, to my remembrance.

W. GAY.

Subscribed and sworn to before me this 29th day of August, 1878.

IRVING BROWNE,
Special Examiner.

DANIEL W. FORD, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Daniel W. Ford; age, 40; residence, Troy; teller in National State Bank.

Q. 2. About how long have you resided in the city of Troy?

A. I have resided in the city proper for about thirty years.

Q. 3. For about what length of time have you been teller in the National State Bank of this city?

A. For about seventeen years.

Q. 4. That bank has a large number of depositors, or persons doing business with it, has it not?

A. Yes, sir.

Q. 5. Your position in that bank as teller has brought you into
722 an acquaintanceship with and a knowledge of a large number of business and leading men in this city, has it not?

A. Yes.

Q. 6. Do you know Marcus P. Norton, of the city of Troy?

A. I do.

Q. 7. About how many years have you known him?

A. About fourteen years.

Q. 8. Since you have known him you have had some business transactions with him, have you not?

A. I have.

Q. 9. Since you have been teller of the National State Bank, has Norton had money dealings with that bank?

A. Yes, sir.

Q. 10. Covering the whole time, can you approximate the general amount of those transactions?

A. My best recollections now are that they were in the neighborhood of three hundred thousand dollars.

Q. 11. You have had the opportunity to become pretty well acquainted with and to know Marcus P. Norton, have you not?

A. I have.

Q. 12. Do you know his character for truth and veracity in this city?

A. So far as my knowledge goes, I know it to be good.

Q. 13. Do you consider it good or bad?

A. I consider it good.

Q. 14. From your knowledge of his character for truth and veracity, would you believe him under oath?

(Objected to because the proper basis for the question is not laid.)

A. I would.

723 Cross-examination:

By Mr. CLARKE:

X Q. 15. What do you understand by the phrase "character for truth and veracity in this city?"

A. Well, if I have business dealings with a man, and he lives up to his business engagements, I consider that truth and veracity enough.

X Q. 16. You said that Mr. Norton's reputation for truth was good, because in his business dealings with you he had always been square; is that it?

A. Yes, sir.

X Q. 17. You don't allow anything else to influence you except your personal knowledge and dealings with him, do you?

A. No, sir.

X Q. 18. You are not influenced at all by common report and rumor in regard to him?

A. No, sir.

X Q. 19. And it was purely on the basis of your personal dealings with him that you said you would believe him under oath?

A. Yes, sir.

X Q. 20. Have you had dealings with Mr. Norton to any great extent within the past eight or ten years?

A. Yes, sir.

X Q. 21. To how great extent within that time?

A. Probably one hundred and fifty thousand dollars.

X Q. 22. Did you ever hear of Mr. Norton being indicted for forgery in the District of Columbia some five or six years ago?

A. I believe I saw it in the papers, but I don't remember the particulars about it.

X Q. 23. Have you ever heard of Mr. Norton being debarred from practicing as a solicitor in the United States Patent Office some five or six years ago?

724 A. I heard something to that effect; yes, sir.

X Q. 24. Did you ever hear of an attempt to impeach Mr. Norton's reputation for truth and veracity some fifteen years ago, in a suit in which William E. Hagan, Shavor, Groome and Potter were parties?

A. I don't remember of it.

Redirect examination:

By Mr. NORTON:

R. D. 25. The defendant's counsel now present, while operating his celebrated mud machine, was pleased to inquire of you if you had ever heard about a Patent-Office disbarment or about indictments, attempted impeachments, and various other things; if you ever did hear of any of those things, did you know of the truth of them, or believe anything in regard to the truth of them?

A. No, sir.

R. D. 26. You judge of men by your knowledge of them, or of business dealings with them, do you not?

(Objected to as immaterial.)

A. Yes, sir.

R. D. 27. And upon that foundation so constructed by you, you are enabled to tell whether a man is a scoundrel, a liar, or an honest and truthful man, are you not?

(Objected to as irrelevant and immaterial.)

A. Yes, sir.

DANIEL W. FORD.

Subscribed and sworn to before me, this 29d day of August, 1878.

IRVING BROWNE,
Special Examiner.

725 PHILETUS W. BISHOP, a witness heretofore produced and examined on behalf of the defendant, now being recalled by the plaintiff for further cross-examination, testifies as follows:

Complainant's counsel objects to any further cross-examination of this witness, on the ground that he was cross-examined by complainant at the time that the witness was first called; that complainant's counsel having then finished with the witness suffered him to sign his deposition and depart, and that said deposition has already been sealed up and forwarded to the clerk of this court; and requests the examiner over his signature to make a note of these facts.

Noted accordingly.

I. B., *Special Examiner.*

Defendant's counsel insists that if complainant further examines Mr. Bishop, he must make him his own witness.

Q. 1. Have you been subpœnaed by the complainant to appear here and be further cross-examined in this case?

A. I have.

Q. 2. The subpœna was served upon you when?

A. Yesterday.

Q. 3. Defendant called you some days ago to testify in this case against the character of Marcus P. Norton, did he not, for truth and veracity?

A. I was called for that purpose.

Q. 4. Did you testify on that occasion that you would not believe Norton under oath?

A. I think I did.

Q. 5. Have you any doubt about that?

A. No, sir, I have not.

726 Q. 6. You did then testify that you would not believe Norton under oath, did you not?

A. I do not remember the language I made use of, but that was the idea I intended to convey, and did convey, I have no doubt.

Q. 7. You testified on that occasion, in your direct examination, that you were a lawyer in practice in this city, did you not?

A. I am a lawyer and in practice in this city, and presume I so testified on that occasion.

Q. 8. How extensive is your practice in the law in this city?

(Objected to as irrelevant and immaterial.)

A. Do you mean as to the number of clients I have, the courts I practice in, or the amounts I receive for business?

Q. 9. I mean each and every one of the matters about which you have inquired in your last answer.

(Same objection.)

A. I have practiced in the United States courts, both civil and criminal; I have practiced in the district and circuit courts of the United States for the northern district of New York; also in the supreme court of the State; have causes in Albany County, Columbia County, and Rensselaer County; I have also practised and have causes in the county courts of Albany, Columbia, and Rensselaer counties, and also practice in the Troy justice's court, Troy police court, and other justice's courts in the county, and also in Columbia and Albany counties. I had at the February circuit of the supreme court eleven causes on the calendar; four of these causes were transferred to me by Baerman; the remainder I had myself. As to the amount received, my impression is that
727 last year my practice was worth to me about eighteen hundred dollars, and since the first day of January last I have received eight hundred dollars.

Q. 10. Of the eleven causes how many were tried at the last term of the court?

(Same objection.)

A. There were two tried, and one was settled.

Q. 11. How many were sent to a referee, if any?

A. None, that I remember of.

Q. 12. How many went over the term?

A. The balance of them went over the term.

Q. 13. For how many years have these causes been on the calendar?

(Same objection.)

A. Well, none of the causes that I had had been over two years, to my best recollection.

Q. 14. How many causes have you on the calendar of the supreme court for the County of Columbia, or to go on on the next calendar?

(Same objection.)

A. I have one.

Q. 15. How many causes have you in the United States courts for this district?

A. Only one.

Q. 16. Do you know a person in this city by the name of Browning?

A. I do.

Q. 17. Do you know in what part of the city he resides?

A. I think it is 112 or 114 Fifth street, in this city.

Q. 18. Did you ever do any business in your profession for the Mr. Browning referred to in the last two questions and answers?

728 A. Yes, sir; I have within the last month.

Q. 19. What is his first or Christian name?

A. James S. Browning.

Q. 20. Are you personally acquainted with his wife?

A. I am.

Q. 21. Did you ever transact any professional business for her?

A. I have.

Q. 22. In what year was it?

A. I do not remember.

Q. 23. Was it a suit or an action in any of the State courts, in which she was the plaintiff, or one of the plaintiffs?

(Same objection.)

A. I think that I had three, if not four, suits in the supreme court for her.

Q. 24. Did you have a suit for her against parties in West Troy?
(Same objection.)
A. I think all the suits were against parties in West Troy, although one of the parties had removed from West Troy at the time the suit was commenced.
Q. 25. Name the defendant in each of the suits which you brought for Mrs. Browning?
(Same objection.)
A. Andrew Alexander was defendant in one suit, William McClellan was defendant in another, and I do not remember the names of the others.
Q. 26. Were any of those suits sent to a referee for trial?
(Same objection.)
729 A. The suit against Andrew Alexander was referred to Giles B. Kellogg, a lawyer of the city of Troy.
Q. 27. Was that the last suit that you tried for Mrs. Browning?
(Same objection.)
A. No; I think I brought the suit against McClellan afterwards, and judgment obtained for five hundred dollars.
Q. 28. Which of the Browning suits was commenced last?
(Same objection.)
A. I think the McClellan suit was commenced last?
Q. 29. How long after the Alexander suit was commenced was this commenced?
(Same objection.)
A. I haven't said that the McClellan suit was commenced after the Alexander suit; I said I thought it was, but was not sure.
Q. 30. Are you still doing business for Mrs. Browning in this city?
(Same objection.)
A. Not any legal business; I have traded with her this summer.
Q. 31. You stated the other day, if I remember correctly, that you had resided in this city for about twenty years; is that correct?
(Same objection.)
A. I came here in 1856, and I think a part of the time I made it
730 my home on the old place at Canaan, and resided there and voted there; I think that most of the time I have resided here; a part of the time since '56, I had my office with Judge Cadman, at Chatham Village; he was not a judge at that time.
Q. 32. During your residence in Troy, you have been a hotel, a restaurant, saloon, and billiard table keeper, in this city, have you not?
(Same objection, and as leading.)
A. I have, a portion of the time.
Q. 33. About what proportion of the time?
(Same objection.)
A. I should think about one-quarter, but not to the exclusion of my law business.
Q. 34. Did I ask you to state anything about your law business in the last question?
(Same objection.)
A. If you did, I did not hear it.
Q. 35. Then why did you answer anything about it, so long as you swear that you were not interrogated about it?
(Same objection.)
A. To prevent the inference that during that time I abandoned my profession.
Q. 36. During the twenty years or more that you have resided in Troy, although voting in an adjacent county, as you have stated, did you ever

have a place where you have engaged in the use of cards, when money was at issue, being played for.

(Objected to as irrelevant, immaterial, and incompetent generally.)

731 A. I presume that on a very few occasions money was played for in the lobbies of the saloon, but I don't recollect of over half a dozen times while I was in the saloon; I kept no place or room for gambling in the saloon while I had charge of it nor anywhere else.

Q. 37. Have you, since you resided in this city, engaged in the use of cards with anybody, or in any place where money has been at stake and played for by yourself as one of the parties?

(Same objection.)

A. I have played cards in this city a great many times for money, and if I lost I have always paid, and if I gained I always took it if I could get it; a part of such playing has been with the best, the most reputable men of this city.

Q. 38. You consider a man who is a gambler and known as such, a reputable, trustworthy citizen in this city or anywhere else?

(Same objection.)

A. I do not, and I think that a gambler should be kicked out, and shut out, and ostracized from all decent society.

Q. 39. Do you think a man of that character is a proper person to sit in judgment on the character of his fellow-man, either for truth and veracity, or anything else?

(Same objection.)

A. I do not, although I know gamblers whose dealings and truth were as good as the dealings and truth of Mr. Norton, testified to by Mr. D. W. Ford; whose word was as good as their bond.

732 Q. 40. Previous to your coming to Troy to reside, did you travel upon any boats of the Mississippi River, between St. Louis and New Orleans?

(Same objection.)

A. I never did, and I do not believe that he thinks that I ever did; it was only intended as a mud-fling at me.

Q. 41. Have you ever been engaged in playing cards for money in any other place than the city of Troy?

(Same objection.)

A. I have played cards at Hudson, when I was attending court; I have played cards when I was at Albany, attending as a member of the legislature; and I have played cards at State conventions; I have played cards at Chatham Village, but never as a business.

Q. 42. How much money have you won at the playing of cards for that purpose?

(Same objection.)

A. I could not tell.

Q. 43. How much have you lost at the playing of cards during the last thirty years?

(Same objection.)

A. I don't know.

Q. 44. You have both won and lost at the playing of cards, have you not?

(Same objection.)

A. Yes.

Q. 45. Since your examination to-day, while you were being examined as a witness, have you not told Norton that he was a liar?

(Same objection.)

733 A. I have, and am willing to repeat it.

Q. 46. Your willingness to repeat it not being doubted at all, you are requested to state whether you do repeat it or not.

(Same objection.)

A. I do not care to repeat it, but I think that when he stated certain things about my being on a Mississippi steamboat, he knew he lied when he stated it.

Q. 47. Whereabouts in this city is your office located?

(Same objection.)

A. You can ascertain by looking at the directory.

Q. 48. The directory not being convenient at this time, the question is again repeated to you.

(Same objection.)

A. It is at 37 Congress street.

Q. 49. How long has your family resided at the city of Troy?

(Same objection.)

A. For about a year.

Q. 50. Do you know Marcus Ball of this city?

(Same objection.)

A. I do.

Q. 51. About how long have you known him?

(Same objection.)

A. I think I have known him since 1856.

734 Q. 52. He is a lawyer by profession, is he not?

(Same objection.)

A. He is.

Q. 53. From your knowledge of him, would you believe him under oath?

(Same objection.)

A. I would.

Q. 54. Do you know a person by the name of Richard M. Hermance?

(Same objection.)

A. I do not.

Q. 55. Do you know a person in this city by the name of Henry G. Giles?

(Same objection.)

A. Not personally.

Q. 56. Do you know anything about him; and, if so, what?

(Same objection.)

A. I don't know anything about him.

Q. 57. Do you know a man in this city by the name of Joseph C. Henderson?

(Same objection.)

A. I don't remember any such man.

Q. 58. Do you know a person in this city by the name of Nelson Pramer?

(Same objection.)

A. I do not.

735 Cross-examination:

By Mr. CLARKE:

X Q. 59. Complainant's last witness, Mr. Ford, was one of the reputable persons in this city with whom you have played cards for money, was he not?

A. He was.

Redirect examination:

By Mr. NORTON:

R. D. 60. Do you know Levi Smith, of this city?

A. I do.

R. D. 61. Is he a lawyer, and of the firm of Smith, Fursman & Cowen, in this city?

A. He is.

R. D. 62. Did you ever play cards with him for money?

A. I have; but not within the last fifteen years, to my recollection.

R. D. 63. Did you ever play cards for money with Marcus Ball?

A. I never did.

R. D. 64. How frequently have you, in former years, played cards with Smith for money?

A. I cannot say, but not very often.

P. W. BISHOP.

Subscribed and sworn to before me this 29th day of August, 1878.

IRVING BROWNE,
Special Examiner.

736 GEORGE A. WELLS, a witness called on the part of the complainant, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George A. Wells; age, 48; residence, Troy; and occupation, stove manufacturer.

Q. 2. About how many years have you resided in the city of Troy?

A. About ten years, and my residence is 171 Second street.

Q. 3. About how long have you been engaged in the business stated by you in your first answer, and in the city of Troy?

A. About twenty-one years.

Q. 4. You are a member of the firm of Fuller, Warren & Co., of this city, are you not?

A. I am.

Q. 5. Your firm is engaged in a large and extensive manufacturing business of stoves, ranges, heaters, and such like, is it not?

A. It is.

Q. 6. Where is the foundry or manufactory located?

A. In the south part of Troy.

Q. 7. Your business as a manufacturer and vender in the articles named has brought and brings you into an acquaintanceship with and a knowledge of a large number of business men and citizens in this city, has it not and does it not?

A. It has and does.

Q. 8. Do you know Marcus P. Norton, of Troy?

A. I do.

Q. 9. About how many years have you known him?

A. About ten years.

Q. 10. So far as you know, what has been his business since you knew him?

A. A patent lawyer.

737 Q. 11. Has he ever been employed by your firm in that line of business?

A. He has had matters of ours to attend to.

Q. 12. Do you know his character for truth and veracity here?

A. So far a I have had dealings with him.

Q. 13. Do you consider it good or bad?

(Objected to as irrelevant and immaterial.)

A. So far as I have had dealings with him, I consider it good.

Q. 14. From your knowledge of his character for truth and veracity, would you believe him under oath?

(Same objection, and also because the proper basis for the question is not stated.)

A. I would.

Q. 15. If you did not consider his character good for truth and veracity, you would not believe him under oath, would you?

(Same objection.)

A. No, I would not.

Cross-examination:

By Mr. CLARKE:

X Q. 16. From what you say on your direct examination, I infer that you do not allow anything to influence you in determining that Mr. Norton's character for truth is good, except your personal dealings with him; is that so?

A. I base it upon my own knowledge of the man.

X Q. 17. You were not influenced at all by report or rumor concerning him?

A. I was not.

738 X Q. 18. When did Mr. Norton last do any business for you?

A. Some eight or nine years ago.

X Q. 19. Why have you not employed him since?

A. My partners are employed in that department of patents.

X Q. 20. Do you mean that you don't know?

A. I don't know the reason, except that he was out of town or absent from the city.

GEO. A. WELLS.

Subscribed and sworn to before me this 29th day of August, 1878.

IRVING BROWNE,
Special Examiner.

HEZEKIAH S. BENEDICT, a witness called on the part of the plaintiff, being first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is H. S. Benedict; age is 64; residence, Troy; occupation, agent for the express companies, National and American.

Q. 2. About how long have you resided in the city of Troy?

A. I have resided here since the fall of 1836.

Q. 3. About how long have you been agent of the express companies spoken of by you in your first answer?

A. I have been since 1850 agent for the American Express Company, and since 1867 for the National Express Company.

Q. 4. Your place of business is located where in the city of Troy?

739 A. At the corner of Fulton and Union streets, opposite the railroad depot.

Q. 5. Your business has led you into an acquaintance with a large number of business men of the city of Troy, has it not?

A. Yes, sir; I guess all of them pretty much.

Q. 6. Do you know Marcus P. Norton, of the city of Troy?

A. Yes, sir.

Q. 7. About how long have you known him?

A. Well, from fifteen to twenty years.

Q. 8. Has he had frequent dealings with your companies during or within that time?

A. Yes, sir.

Q. 9. Do you know his character for truth and veracity in this city?

A. I know nothing to the contrary; I regarded him always as a man of truth and veracity.

Q. 10. Do you consider it good or bad?

A. I consider it good, sir.

Q. 11. From your knowledge of his character for truth and veracity, would you believe him under oath?

(Objected to as irrelevant, immaterial, and incompetent, and altogether improper.)

A. I would.

Cross-examination:

By Mr. CLARKE:

X Q. 12. What do you understand by the phrase "character for truth and veracity in this city"?

A. Well, I understand it as being a general opinion, as far as I have heard or know, gained much from my own intercourse, and also
740 from business transactions and knowledge of him; my conclusions were drawn chiefly from my own personal business intercourse, and supported by the absence of anything derogatory to him from others affecting his truth and veracity.

X Q. 13. What has been the nature of your business with Mr. Norton?

A. It has been the transmission of papers, packages, from receiving packages for him, and many of them requiring payment on delivery of same; of what is known as C. O. D. bills, and also drafts for collection.

X Q. 14. When did you have the most of that business with him?

A. I should think it was between five and fifteen years ago, but less within the last five years, though there has been a continuance of business, but not as great as before.

X Q. 15. Do people talk much about Mr. Norton, and have they?

A. Not at our office. I am most of the time there; what I have heard mostly spoken of concerning him has been his skillful management in the obtaining of patents.

X Q. 16. How long ago was that?

A. I should say that the most was said about it five or ten years ago.

X Q. 17. Within the last five or six years, have you heard Mr. Norton spoken of in any way, frequently or seldom?

A. Well, I think quite frequently within a single year, about '74, when he had a claim on a patent for a large amount, against the city of Troy.

X Q. 18. Well, how about the other years since, say 1870?

A. I had heard less concerning this claim, but have heard it occasionally spoken of, and the impressions which I gained were that the matter was to be compromised. For the last year or two I have
741 heard very little about this patent, and very little about him in any way, since he has been most of the time out of the city.

X Q. 19. Did you ever hear of Mr. Norton's reputation being impeached, or attempted to be impeached, in any case or suit in which William E. Hagan, Shavor, Groom, and Potter were parties, about fifteen years ago?

A. I recollect that several years ago, when I went down to his office, I found quite a large number of people there, and when I inquired what

was going on, I found that they were trying to impeach him. I do not recollect who the parties were who made the attempt.

X Q. 20. Did you ever hear of Mr. Norton being debarred or prohibited from practicing in the Patent Office some five or six years ago?

A. No, sir. I have never heard any such thing.

X Q. 21. Did you ever hear of Mr. Norton being indicted for forgery some five or six years ago, in the District of Columbia?

A. I heard that he was having some trouble of that kind, but I don't recollect of ever having heard what the result was; at least I don't know that such was the fact.

X Q. 22. Do you know anything about Mr. Norton's financial condition?

A. No, sir; I do not.

X Q. 23. Haven't heard anything about it?

A. I think I heard that he had failed, and been sold out.

X Q. 24. Have you had any conversation with anybody about Mr. Norton, who has had personal dealings with him?

A. I don't think I have.

X Q. 25. From what class of people have you generally heard what you have heard about Mr. Norton?

A. It has been with persons with whom I have done business at my office. I should say that it has been with tax-payers.

742 X Q. 26. Well, about how extensive were the conversations at any one time?

A. Not extensive at all, merely casual.

X Q. 27. Norton's claim against the city was in the newspapers, was it not?

A. I think it was, am not positive.

H. S. BENEDICT.

Subscribed and sworn to before me this 29th day of August, 1878.

IRVING BROWNE,
Special Examiner.

MARY L. BROWNING, a witness called on the part of the plaintiff, being duly sworn, testifies as follows:

Q. 1. What is your name and residence?

A. Mrs. Mary L. Browning; 112 Fifth street, in the city of Troy.

Q. 2. About how long have you resided in the city of Troy?

A. About ten years off and on.

Q. 3. Do you know a person in this city by the name of Philetus W. Bishop, a lawyer?

A. I do.

Q. 4. You have known him for about how long?

A. For about five years; through letters and correspondence about six.

Q. 5. Did you ever employ him to transact any business for you?

A. I did.

Q. 6. About what year was that?

A. Six years ago last May.

Q. 7. State, if you have no objections, what it was you employed him to do?

(Objected to as irrelevant, incompetent, and immaterial.)

743 A. Well, previous to this six years I invested twenty-six hundred dollars with Mr. Alexander, of West Troy, through an agent,

and a short time after the deposit the agent drew one thousand dollars without my knowledge or consent; so my husband he consulted Mr. Bishop, and he advised him to sue for the whole, the twenty-six hundred dollars; so we left Mr. Bishop here in Troy to manage the business, while my husband and myself went West to Columbus, Ohio; and in June following Mr. Bishop drew the sixteen hundred dollars in Mr. Alexander's hands, representing to the court that I was very needy and needed the money, and left the remaining thousand dollars to be decided by law; two years after that I came to Troy and learned from Mr. Kellogg, the referee, that Mr. Bishop had drawn this money; this was the first I knew about it, Mr. Bishop all the time corresponding with me in regard to the matter.

Q. 8. Mr. Bishop brought a suit for you against Mr. Alexander to recover the twenty-six hundred dollars, as well as interest, spoken of in your last answer, did he not?

(Same objection.)

A. Yes, he did.

Q. 9. State whether this twenty-six hundred dollars and interest, of which you speak, was or was not the last of a fortune which had become yours?

(Same objection.)

A. It was.

Q. 10. Do you remember when that suit was commenced?

(Same objection.)

A. Six years ago last May.

744 Q. 11. After the suit was commenced in 1872, did you frequently write to Mr. Bishop, asking him as to the progress of your suit or the probability of getting money from Alexander?

(Same objection.)

A. Yes, sir.

Q. 12. And about how long did that correspondence continue?

(Same objection.)

A. During two years, and until I came to Troy and learned what he had done.

Q. 13. From whom in Troy did you first learn that Mr. Bishop had obtained an order from court by which he had drawn seventeen hundred and forty-one dollars of your money from Alexander?

(Same objection.)

A. From Mr. Kellogg, the referee.

Q. 14. During the two years that Bishop was corresponding with you about your suit with Alexander, was Mr. Bishop in communication with you by letters through the post-office?

(Same objection.)

A. He was.

Q. 15. In that time how many letters did you receive from him?

(Same objection.)

A. Sixty or seventy.

Q. 16. About how many letters have you brought here in court for complainant's counsel to examine?

(Same objection.)

A. About fifty-eight.

745 Q. 17. Do you remember where the rest are?

(Same objection.)

A. Either lost or destroyed; we saved most of the important ones.

Q. 18. In any of the sixty or seventy letters which you say he wrote you after the commencement of the Alexander suit, in the spring of

1872, and during the time you were in Columbus, Ohio, and until you came to Troy, N. Y., to see the referee, Mr. Giles B. Kellogg, did he write you that on the 7th day of June, 1872, and within about one month after the commencement of that suit, he had obtained an order from the court by which he had received seventeen hundred and forty-one dollars of your money which that suit had been commenced to recover, including also another thousand dollars, making in all twenty-six hundred dollars and interest?

(Same objection; also, as leading; also, as asking for secondary evidence.)

A. No; he did not, but he wrote that he was daily expecting to receive it.

Q. 19. And he kept up a correspondence of that kind with you for about two years, did he not?

(Same objection.)

A. Yes.

Q. 20. By the correspondence you were led to believe, from the representations made to you in those letters, that you soon would receive your money, did you not?

(Same objection.)

A. Yes.

Q. 21. How came you to come to Troy at the time you did to see the referee, Mr. Kellogg, about the matter?

(Objected to as incompetent, irrelevant, and immaterial.)

746 A. We suspected that Mr. Bishop was not honorable in his dealings with us, and that is why we came.

Q. 22. On your interview with the referee about the matter did you learn that Mr. Bishop had been honorable or dishonorable with reference to the matter that you had previously intrusted to him as your lawyer to collect that claim?

(Same objection.)

A. Dishonorable.

Q. 23. You may explain as briefly as you can the way in which he had been dishonorable with you in that matter.

(Same objection.)

A. By drawing the money by order of the court and appropriating it to his own use. He also gave me a note from Mr. Stetson, with his endorsement, that was illegal and not worth anything at all, and it was never paid. He advised us not to have it protested when it came due, but we did.

Q. 24. Who was the endorser on the note that Mr. Bishop gave you?

(Same objection.)

A. Mr. Bishop himself.

Q. 25. Who was the maker of that note, and for how much was it? and you may state anything you desire to in reference to this note.

(Same objection.)

A. E. T. Stetson was the maker; it was for fifteen hundred dollars, with ten per cent. interest; it was dated and made payable in this city, I think; this was within one year after the suit was ended—

747 about the year 1874 or 1875. Mr. Bishop wrote me that this Mr. Stetson wished to borrow fifteen hundred dollars, and Mr. Bishop says: "I have the money myself, and will give it to him, providing that I take yours when I get it, which will be very soon," and Mr. Stetson would give me his note at ten per cent., and he (Mr. Bishop) would endorse it, and a life insurance policy of ten thousand dollars for one year, and providing anything happened to Mr. Stetson I would get the

insurance of ten thousand dollars. I saw Mr. Stetson several times myself, and he told me he would pay me something on the note—after it was protested, this was—but he never did. I think there was a put-up job between them, for they put me off with a sham note, and all this time Bishop had the money from the court in his possession.

Q. 26. For what length of time was this note made to run from its date?

(Same objection.)

A. One year.

Q. 27. Did Stetson ever pay you anything upon the note?

(Same objection.)

A. No.

Q. 28. Did Bishop pay you, as an endorser of that note?

(Same objection.)

A. No.

Q. 29. Did you ever receive anything from or by reason of the insurance policy?

(Same objection.)

A. No.

748 Q. 30. After you had seen Mr. Kellogg and learned that Bishop had had several hundred dollars of your money for two years or more, which he had withheld from you, and had deceived and lied to you about in his letters, did you call upon Mr. Bishop in reference to the matter while in Troy?

(Same objection.)

A. I did.

Q. 31. What did he say to you about it, if you remember?

(Same objection.)

A. I remember very well what he said about it; he said that he did not intend that I should know that he had the money. During this time he wanted Mr. Browning to take some hotels and some patent rights which he owned, but Mr. Browning wanted the money.

Q. 32. State how much, if any, Mr. Bishop has paid you out of the money amounting to seventeen hundred and forty-one dollars, paid to him by Alexander in June, 1872, and when it was.

(Same objection.)

A. While West he sent me small sums several times, amounting to about three hundred dollars, as near as I can remember; then this fifteen-hundred-dollar note I settled for three hundred and fifty dollars and a billiard table, but the billiard table I never got.

Q. 33. State why you never got the billiard table.

(Same objection.)

A. He said that the sheriff had seized the table for court charges.

749 Q. 34. Did he tell you where the table was?

A. Chatham Four Corners.

Adjourned to Aug. 30, 9 a. m.

I. B., *Sp. Ex'r.*

Met Aug. 30, 9 a. m., pursuant to adjournment of Aug. 29.

Complainant's counsel offers in evidence several letters dated as follows, each being signed P. W. Bishop, and all dated at Troy, New York, and all addressed to the lady witness now on the stand, under examination, with the exception of a few that are addressed to the lady's husband, James S. Browning: First is dated April 1st, 1872; 2d, May

1st, 1872; 3d, May 16th, 1872; 4th, May 21st, 1872; 5th, June 8th, 1872; 6th, June 13th, 1872; 7th, July 2d, 1872; 8th, August 3d, 1872; 9th, August 10th, 1872; 11th, August 20th, 1872; 12th, August 20th, 1872; 13th, August 24th, 1872; 14th, September 18th, 1872; 15th, September 28th, 1872; 16th, October 7th, 1872; 17th, November 6th, 1872; 18th, November 16th, 1872; 19th, November 27th, 1872; 20th, December 5th, 1872; 21st, December 26th, 1872; 22d, January 21st, 1873; 23d, January 27th, 1873; 24th, January 29th, 1873; 25th, February 13th, 1873; 26th, March 11th, 1873; 27th, April 1st, 1873; 28th, April 2d, 1873; 29th, April 21st, 1873; 30th, April 29th, 1873; 31st, May 5th, 1873; 32d, May 14th, 1873; 33d, June 7th, 1873; 34th, June 11th, 1873; 35th, June 19th, 1873; 36th, June 24th, 1873; 37th, June 16th, 1873; 38th, June 14th, 1873; 39th, July 4th, 1873; 40th, July 11th, 1873;
750 41st, July 17th, 1873; 42d, July 24th, 1873; 43d, July 26th, 1873; 44th, July 30th, 1873; 45th, a protest of a promissory note for fifteen hundred dollars, made by E. T. Stetson, which protest is dated July 12th, 1873; 46th, a letter dated August 24th, 1873; 47th, also a letter dated June 3d, 1873; 48th, January 13th, 1874; 49th, October 15th, 1874; 50th, October 20th, 1874; 51st, October 29th, 1874; 52d, also October 29th, 1874; 53d, November 11th, 1874; 54th, November 11th, 1874, on two sheets of paper; 55th, November 11th, 1874; 56th, March 25th, 1875; 57th, a letter dated Columbus, Ohio, November 1st, 1874, addressed to Mr. Giles B. Kellogg, and signed M. L. Browning, with the réply of Mr. Kellogg thereto, dated Troy, November 4th, 1874, which is in the following words and figures: "It was admitted on the trial that Alexander, under the order of the court, paid to your attorney, on the 7th day of June, 1872, $1,741.00. Yours, &c., G. B. K., Troy, Nov. 4, '74." Which several letters complainant's counsel will not formally offer in evidence until the witness shall have been examined further concerning them, and not until defendant's counsel shall have read them; and when offered will be marked "Bishop letters," from number one to number fifty-seven inclusive, as above indicated.

Direct examination of the witness MARY L. BROWNING resumed:

Q. 35. I now show you a package of letters, consisting of fifty-six letters, and a notice of protest, which have been heretofore marked as exhibits in this case by the examiner, and state if you have ever seen these letters before to-day; and, if you answer yea, state where you were when you first saw them.

751 A. Yes; I was at Columbus, Ohio, when I first saw them.

Q. 36. You brought these letters into court yesterday, under a subpœna, and by the request of complainant's counsel, did you not?

A. Yes.

Q. 37. Some of these letters are addressed to your husband, are they not, and the remainder to yourself, with the exception of a letter dated November 1st, 1874, addressed by your husband to Mr. Kellogg, and having Mr. Kellogg's reply written on the same sheet of paper, and numbered 57?

A. Yes, they are.

Q. 38. How did you and your husband receive those several letters?

A. Through the mail at Columbus, Ohio.

Q. 39. From whom did you and your husband receive these several letters?

A. P. W. Bishop.

Q. 40. Were the letters in reply to letters addressed by you or your husband to Mr. P. W. Bishop, of this city?

A. Yes.

Q. 41. And were they received by you while Bishop was pretending to act as your attorney against Mr. Alexander, of West Troy, in a claim for twenty-six hundred dollars and the interest thereon, and pending before Mr. Giles B. Kellogg, of this city, as referee?

A. Yes.

Q. 42. Was the twenty-six hundred dollars exclusive of the interest for money that you had loaned or deposited with Mr. Alexander, of West Troy?

(Objected to as irrelevant and immaterial.)

A. Yes.

Q. 43. Did you, during 1872 and 1873, need this money in business, or for other purposes?

(Same objection.)

752 A. Yes.

Q. 44. Did you expect that this money, when paid by Alexander, would be immediately paid to you?

(Same objection.)

A. Yes.

Q. 45. During the time covered by these several letters of 1872 and 1873 and 1874, and until the fall of 1874, did you know that Mr. Bishop had received seventeen hundred and forty-one dollars from Mr. Alexander?

(Same objection.)

A. No.

Q. 46. From whom did you first receive the information that in June, 1872, Mr. Bishop had received from Mr. Alexander this seventeen hundred and forty-one dollars?

(Same objection.)

A. From Mr. Giles B. Kellogg, the referee.

Q. 47. In what year and time of year was this, if you remember, that you received this information?

(Same objection.)

A. In the fall of 1874; it was in the mouth of October, I think, while my husband and myself were on here on business. I was then in business in Columbus, Ohio. After I returned Mr. Kellogg wrote me, giving me the exact date.

Q. 48. Did you employ a lawyer in this city to inquire into Mr. Bishop's conduct toward you as an attorney, and with reference to trying to obtain from him the seventeen hundred and forty-one dollars spoken of in several preceding questions?

(Same objection.)

753 A. Yes.

Q. 49. What did that lawyer say to you about it, if anything, and how was the matter finally disposed of?

(Same objection.)

A. He said he was not worth anything, and advised me to take whatever sum I could get. The offer was three hundred and fifty dollars and a billiard table, in settlement. I got three hundred and fifty dollars in notes from Bishop, endorsed by A. D. Lyon, and they were paid, but the billiard table I never received, as I before stated.

Q. 50. Have you produced here in court all the letters from Bishop to you and your husband that you had preserved?

(Same objection.)

A. Yes.

Q. 51. How many envelopes in which those letters came to you and your husband did you preserve, and now have here with you?

A. Twenty-six, as I count them.

Q. 52. If you have no objection, I ask you to produce those envelopes to accompany the letters you have produced.

A. I will, and do produce them.

Complainant's counsel here offers in evidence the several letters and notice of protest referred to by this witness on her examination, and heretofore marked Complainant's Exhibit Bishop Letters, numbered one to number fifty-seven, inclusive, and asks that the file and marking stand as already made by the examiner.

Complainant's counsel asks the defendant's counsel to consent on the record that each and every of these letters be withdrawn from the case after the same have been printed, and the case submitted to the
754 court on argument. Complainant's counsel agrees that copies of the said several letters shall be certified to, and filed at the time of the withdrawal of the same from the records of this court, and he also agrees to file with the clerk of this court printed copies of the same.

Complainant's counsel states the reason why he makes this request, as follows, to wit: for the purpose of enabling complainant's counsel at an early day to make a motion to the court to disbar Mr. Philetus W. Bishop, and to prohibit him from any further or future practice in the several courts of this State.

To the admission of said letters and papers, and every of them, defendant's counsel objects, on the ground that they are immaterial and irrelevant, but he states that he has no objection to their withdrawal from the record on the terms above indicated, and therefore consents to the same.

Complainant's counsel states that the envelopes produced by the witness, and offered, may be marked by the examiner in any way he may deem sufficient.

Complainant's counsel stating that he is through with the witness, defendant's counsel states that he does not wish to cross-examine, but that he objects to each and every part of the deposition, on the ground that it is immaterial and irrelevant.

MRS. M. L. BROWNING.

Subscribed and sworn to before me this 30th day of August, 1878.

IRVING BROWNE,
Special Examiner.

755 ROBERT H. MCCLELLAN, a witness called on the part and in behalf of the complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Robert H. McClellan, of Troy, New York; a counselor-at-law; my age is fifty and upwards.

Q. 2. About how long have you resided in the city of Troy?

A. Twenty-two years and upwards.

Q. 3. About how long have you practised your profession in this State?

A. Upwards of twenty-nine years, and for twenty-two years and upwards in the city of Troy.

Q. 4. Have you been surrogate of the county of Rensselaer, in which is situated the city of Troy?

A. I have, for four years succeeding January 1, 1856.

Q. 5. Have you at any time been chief officer or collector of customs for the United States at the port of Troy?

A. I was deputy collector of customs at the port of Troy, being under the collector of New York, and during a part of the administration of President Grant.

Q. 6. Do you know Marcus P. Norton, of the city of Troy?

A. I do.

Q. 7. For about how many years have you known him?

A. From about the time that he came to the city of Troy.

Q. 8. Did you at one time reside in the city of Troy near where Norton resided?

A. Yes; for, I think, about two years.

Q. 9. Whereabouts in the city is your law office situated?

A. In a building corner Third and Congress streets.

756 Q. 10. Have you a partner in your law business?

A. Yes.

Q. 11. Have you ever been counsel in any case with Norton, or he counsel with you, in any case involving patented inventions?

A. Yes.

Q. 12. How many do you remember now?

A. Two cases is what I remember now.

Q. 13. Those cases were in the circuit court for the northern district of New York, were they not?

A. Yes.

Q. 14. State whether some time in 1872, or the fore part of 1873, you brought suit for Marcus P. Norton against William W. Secombe, of the city of New York.

A. My firm brought such a suit, and about that time.

Q. 15. Do you know what was the result of that suit?

(Objected to as irrelevant and immaterial.)

A. As I was informed by Norton only, that he had settled.

(Answer objected to as hearsay.)

Q. 16. Was there an answer put in that case?

(Objected to as irrelevant and immaterial.)

A. No, I think not.

Q. 17. Did you enter a judgment in that case?

(Same objection.)

A. We did not.

Q. 18. Do you remember the time when an attempt was made to put Norton into bankruptcy, in this city, some six or seven years ago?

757 A. I remember the time when proceedings were commenced against, or by him, in bankruptcy.

Q. 19. Do you know his character for truth and veracity in this city?

A. I can only answer by saying that I have no recollection of ever having heard it spoken against by anybody; I will except Henry Burden.

Q. 20. Do you consider it good or bad?

A. I consider it good.

Q. 21. From your knowledge of his character for truth and veracity would you believe him under oath?

A. I would, as any other witness.

Q. 22. You may state, if you have no objection, what you heard Henry Burden say, and when it was, and what it was about.

(Same objection.)

A. I cannot remember what he said, nor definitely when it was. The subject was some patent, or patent controversy.

Cross-examination:

By Mr. CLARKE:

X Q. 23. How much have you heard Mr. Norton talked about in any way, by anybody, within the last ten years, much or little?

A. Since the time of Mr. Norton's proceedings in bankruptcy I have not heard him spoken of much; before those proceedings I heard him spoken of much among members of the profession.

X Q. 24. When were those proceedings—about?

A. I should think those proceedings were eight or nine years ago; perhaps not more than seven.

X Q. 25. Did you ever hear of Mr. Norton's reputation for truth being impeached, or attempted to be impeached, in any case but this?

758 A. Yes; I think that I heard it from Henry Burden, and that he gave me printed copies of the record.

X Q. 26. Did you examine any of the testimony?

A. I think that I did.

X Q. 27. Did you ever hea r anybody speak favorably of Mr. Norton's character as regards truth?

A. Not as I remember.

X Q. 28. Then all the positive information which you have received on the subject of Mr. Norton's character for truth has been unfavorable to him, has it not?

A. Yes; so far as I remember.

X Q. 29. Did you ever hear of Mr. Norton being debarred or prohibited from practicing in the Patent Office, some six or seven years ago?

A. Yes.

X Q. 30. Did you ever hear of an attempt being made to impeach Mr. Norton in one of the trials following the assassination of President Lincoln, in which he was a witness?

A. I think I saw something of it in the public press, but my recollection of it is very indistinct.

X Q. 31. Did you ever hear of a similar attempt in a case in this city, some fifteen years ago, in which William E. Hagan, Shavor, Groome, and Potter were parties?

A. Yes.

X Q. 32. Do you know anything about Mr. Norton's financial reputation for the last ten years?

A. I did hear something about it about the time of his bankruptcy proceedings.

X Q. 33. Well, what has been since those proceedings?

A. I don't think that I have heard anything about it since those proceedings.

X Q. 34. Because you have not heard anything about it do you consider it good at present; would you trust him as readily as you would have prior to the bankruptcy proceedings?

759 A. I have trusted him since; I never trusted him before. I consider it the highest evidence of good character that it is not discussed.

X Q. 35. Well, is his financial reputation good or bad at present?

A. So far as I know, he has no financial reputation in this city.

X Q. 36. Has he any reputation for truth?

A. Not that I am aware of.

X Q. 37. You would not say, then, that his reputation for truth and veracity is good in this city, would you?

A. No; only that it is not questioned, that I am aware of.

X Q. 38. You say that you have trusted Mr. Norton since his bankruptcy; is he indebted to you now in any way?

A. No, sir.

X Q. 39. How long since he paid up?

A. Within the last year, I think.

X Q. 40. Very little is said about Mr. Norton now in any way; is that so?

A. It is.

X Q. 41. Considering what you have heard against Mr. Norton's veracity, would you believe his testimony as readily as you would that of another man against whom you had heard absolutely nothing, supposing their testimony in flat contradiction to each other?

A. I think I would, also considering my own knowledge of the man Norton.

X Q. 42. Your personal knowledge of Mr. Norton is what would make the balance even between the two men?

A. My personal knowledge of him, or any other witness, will add to or detract from the weight of their testimony.

X Q. 43. Suppose you knew the other witness as well and as favorably as you knew Mr. Norton, how then?

760 A. I think then that I would be obliged to work on the inherent probabilities of the case, by which I mean that what I have heard in relation to Mr. Norton would not influence my judgment unfavorably to him, I think.

Redirect examination:

By Mr. NORTON:

R. D. 44. At the time when you heard Henry Burden speaking of Norton, did you learn from him in any way that Norton was professionally engaged against him in some kind of litigation about patents?

A. I think he spoke as if Norton were against him as implied in the question.

R. D. 45. Counsel for the defendant in operating his celebrated mud machine during your cross-examination was pleased to inquire of you about attempted impeachments, Patent Office disbarments, and such like; have you any personal knowledge of the truth of such allegations?

(Objected to as immaterial.)

A. No.

R. D. 46. Has whatever you may have heard changed your opinion with reference to Norton's character in this city?

A. No.

R. D. 47. Your opinion of him and his character is substantially as you have stated on your direct examination, is it not?

A. It is as I stated.

R. D. 48. Counsel for defendant, still operating his mud machine, was pleased to inquire of you as to Norton's financial standing in this city, as though a man could not be a truthful man without having a large

761 bank account; I desire to know if you know whether defendant's counsel pays his debts or not, or has any financial standing anywhere?

(Same objection.)

A. I have no knowledge on the subject.

R. D. 49. You know of many persons in this city who are perfectly truthful and honorable and honest, now in debt, and unable at the present time to pay those debts, do you not?

(Same objection.)

A. I think that I could, upon reflection, name many.

R. D. 50. Do you measure any man for truth and veracity by his financial ability?

(Same objection.)

A. No.

ROBERT H. McCLELLAN.

Subscribed and sworn to before me this 30th day of August, 1878.

IRVING BROWNE,
Special Examiner.

WAIT J. STILLMAN, a witness called on part and behalf of the complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Wait J. Stillman; residence, Troy, Rensselaer County, New York; age, 61 and a little over; my occupation is real estate and insurance, and negotiating mortgages.

762 Q. 2. About how long have you resided in this city?

A. I have done business regularly here for seven years.

Q. 3. Previously to your coming to Troy permanently to reside, did you own and operate a farm near the city of Troy?

A. Yes; within three miles and a half.

Q. 4. Whereabouts in this city is your office?

A. 72 Second street, corner of Congress.

Q. 5. You have a partner in business, have you not?

A. I have, and the firm is Stillman & Son.

Q. 6. Your business brings you into relation with and a knowledge of many people in this city, does it not?

A. Yes.

Q. 7. Do you know Marcus P. Norton, of the city of Troy?

A. Yes, sir.

Q. 8. About how long have you personally known him?

A. Well, eleven years or more.

Q. 9. You knew him from reputation before that time, did you not?

A. Yes; although I did not know him.

Q. 10. State whether you ever had any business dealings with Mr. Norton.

A. Yes; I have.

Q. 11. Did you ever have any dealings with him professionally?

A. I frequently consulted him professionally, but never had a bill presented to me for services.

Q. 12. Do you know his character for truth and veracity in this city?

A. No; I never heard anything about it; I don't know anything about it; I never heard anything against it.

Q. 13. Do you consider it good or bad?

(Objected to as immaterial.)

763 A. I consider it good—never had any reason to consider it otherwise.

Q. 14. From your knowledge of his character for truth and veracity in this city, would you believe him under oath?

(Same objection.)

A. Of course I would.

Cross-examination:

By Mr. CLARKE:

X Q. 15. Do you know anything about Mr. Norton's financial reputation in this city?

A. No, sir.

X Q. 16. Do you know anything directly or by report about Mr. Norton having been indicted in the District of Columbia for forgery some six or seven years ago?

A. Well, I can't say that I have; I heard there was some trouble then about some stamp.

X Q. 17. Did you ever hear anything about an attempt to impeach Mr. Norton's character for truth in any case except this?

A. No, sir; I don't think I ever have.

X Q. 18. Did you ever hear about an attempt made some eight or nine years ago to put Mr. Norton into bankruptcy?

A. I never have.

X Q. 19. When did you last have any dealings with Mr. Norton?

A. I think it was about seven years ago.

X Q. 20. You say that, having your memory first refreshed by Mr. Norton?

A. He did somewhat.

X Q. 21. How much business did you ever have with Mr. Norton?

764 A. Perhaps, in the whole time, two or three hundred dollars, and it may be five hundred for aught I know.

X Q. 22. What was the nature of that business?

A. It was the sale of milk for his family, and I think some things off the farm.

X Q. 23. You used to hear him talked about a great deal in those days; is that so?

A. No; not a great deal.

X Q. 24. In the last seven or eight years, how much have you heard him talked about?

A. Very little.

Redirect examination:

By Mr. NORTON:

R. D. 25. Counsel for the defendant, seeming anxious to know about Norton's financial standing here, has put some questions about that matter; did you ever have a bill or claim against Norton that was not promptly and honorably paid by him?

(Objected to as immaterial.)

A. They were always satisfactorily paid.

W. J. STILLMAN.

Subscribed and sworn to before me this 30th day of August, 1878.

IRVING BROWNE,
Special Examiner.

765 MARCUS P. NORTON, a witness called on the part of the complainant, having been previously duly sworn in the case, testifies as follows:

Q. 1. Have you been previously sworn and examined as a witness in this case; and, if so, when and where?

A. I have been, at Troy some time during the winter last past or

spring, and also in the city of New York before Mr. John A. Shields during the past summer; my examination at Troy was before the present special examiner.

Q. 2. Defendant's counsel, in attempting to impeach your character for truth and veracity, in Troy, has, during his cross-examination of witnesses in this case, inquired of them if they had ever heard that you had been disbarred from practice in the United States Patent Office; state what you now remember concerning that matter.

(Objected to as immaterial and irrelevant.)

A. What I am about to state about that matter will be the exact facts concerning the allegation, and will be stated in as few words as I can state the same. In the year 1862, January 14th of that year, a patent was issued to me upon revolving dating wheels, to be used in banks and railroad ticket offices; the invention contained in that patent was precisely the same invention as that contained in a patent dated August 9th, 1859, and issued to Frederick G. Ransford and Peter Low of this city, as my assignees under an agreement with those persons; the invention applied for in 1859, as to these revolving dating wheels, was not granted by the Commissioner of Patents, because of a prior patent for substantially the same invention, issued to Thomas J. W. Robertson, under date of September 22d, 1857. I desired my as-
signees, Frederick G. Ransford and Peter Low, to consent to put
766 my application, on which the patent of August 9, 1859, was
granted, into interference with the patent of Thomas J. W. Robertson, of September 22, 1857. This they refused to do, but went to New York, saw Robertson, bought his patent of September 22, 1857, and took an assignment of it to themselves, and I think a person by the name of William B. Hatch, of New York City. This I regarded as a violation of their agreement with me, and substantially the matter was arranged so that I might make an application and have an interference with Robertson, if I desired, at my own expense. After that I filed in the Patent Office, in my own name, an application for the patent that was subsequently granted under date of January 14, 1862. In that application I filed the original agreement between Ransford, Low, and myself, showing that I had the right in my own name to apply for that patent. A broad claim to the invention there described was rejected upon the September patent of 1857. An interference case was refused by the Commissioner of Patents upon that claim, upon the ground that more than two years had elapsed between the patent of August 9, 1857, and the then pending application for a patent upon substantially the same invention. Upon the refusal of the Commissioner of Patents to grant an interference, I wrote the Commissioner of Patents and referred him to a caveat, which I then had in the United States Patent Office, under date of June 21, 1855, or very near that date, covering precisely the same invention contained in the Robertson patent. Commissioner of Patents replied to me, stated that a caveat filed in 1855 would not be consulted in an application for a patent in 1861 or 1862. In reply to that letter I wrote the Commissioner of Patents in substance, that in less than two years after the date of that caveat and before its expiration, I had, in the year 1857, in the name of Norton and Haskins,
filed an application for a patent upon substantially and materi-
767 ally the same invention, which application had been rejected and
withdrawn, and a fee of twenty dollars returned to the applicants. That in the year 1859, and in less than two years after the application and rejection and withdrawal of that application in 1857, I had made another application in May or June, 1859, upon one claim of

which a patent had been granted, dated August 9, 1859, and that in that application I had specially and particularly reserved my right to make a new application upon all that part rejected and stricken out by order of the Commissioner, under an amendment submitted for his consideration. Accordingly, during the fall of the year 1861, or early winter of that year, I made another application for a patent upon the same identical invention, and that the last application, was but a continuation in law of my caveat of June 21, 1855, and of the application for a patent in the year 1857, and also in the year 1859. The examiner having the case in charge examined that caveat in my presence in the Patent Office, and admitted that it contained all the invention that was contained in the patent granted to Robertson, September 22, 1857, but disagreed with me in the principle of law which I had laid down with reference to the last application being a renewal or successive continuation of my caveat of 1855, and the first regular application for a patent in the year 1857, which was within one or two months of the Robertson patent. For this reason, he would not entertain favorably my motion for an interference case with Robertson; but upon an amendment being submitted to him by me, he finally allowed a patent to issue on an invention embraced in the claim of the patent of January 14, 1862. Not being able, after many efforts, both in written and oral applications made by me to the Commissioner of Patents, and the examiner having charge of the several applications, I have stated, to get an interference case with the patent of Robertson of September 22, 1857, I, for the time, relinquished my effort, and
768 took the patent of January 14, 1862, containing a disclaimer substantially forced upon me by the Commissioner of Patents. This patent could not have been granted to me, had it not appeared to the Commissioner of Patents that I was clearly entitled to it, because the records there contained the record of an assignment made by me to Ransford and Low in May, 1859, under the which the patent of August 9, 1859, issued to them. The original paper which I had giving me the right to make that application, was filed in the application for the patent of January 14, 1862, a copy of which I preserved. In the year 1871, under an act of Congress, I renewed the application made in 1857, 1859, 1861, and each founded upon the caveat of 1855, and at the same time made an application for a reissue of the patent of January 14, 1862; one or more of these applications, and I think all of them, were rejected by the examiner then in charge; one of the reasons assigned for the rejection was the assignment of May, 1859, to Ransford and Low, in which the examiner claimed that those men were the owners of that invention; I told him that they were not, and referred him to the files of the patent of January 14, 1862, to show the grounds upon which that patent was granted; upon examining the application for the paper which I stated to be contained in that application, no such paper was there to be found; I knew that that paper had either been mislaid or by some person abstracted from that file for some purpose in the interest of those adverse to my rights and interests in that invention; having in my possession a copy of that paper, I made a copy of it in the month of August, 1871, on clean new paper, which I finished on the morning of the 22d day of August, 1871; and with my sworn statement that it was a copy and nothing but a copy, I went to the Patent Office on that day to get that paper and the affidavit recorded upon the record
769 books of the Patent Office; I paid the fee upon it for record, and was promised that I should have it recorded that day, as I wanted to use it on the next day following in the then pending applica-

tions of which I have spoken; I offered this copy for record because I knew that copies of assignments and other papers had previously been recorded upon the record books of the Patent Office; I then believed that rule for recording copies was still in force in the Patent Office; the foldings in the paper which I then offered for record were so new that when I laid it down upon the table, when I paid the record fees, it partially opened, like as new paper partially folded will do; at that time the color of the ink of the writing of that paper was not fully set; the paper was new, so that anybody who then saw it could but know that it was a paper that had just been made, or that it was a copy of some paper; that paper was accepted for record, but the accompanying affidavit, being a separate paper, was refused for record. On the morning of the 23d day of August, 1871, I went to the Patent Office to receive that paper for the purpose of filing it in the then pending application, together with my affidavit that it was a copy paper, and also with my letter of that date addressed to the Commissioner of Patents, wherein I stated these facts, and asked for an interference case with the Robertson patent of September, 1857, and also with the Low and Ransford patent (as assignees) of August 9, 1859; the original affidavit and the original letter to which I now refer, have been filed as evidence in this case, and before John A. Shields, a standing examiner of this court, and to each of which I now refer.

On the morning of August 23, 1871, upon going to the Patent Office to attend to the business I have just spoken of, I was told by the assignment clerk in the Patent Office, that M. D. Leggett, then Commissioner of Patents, would not allow the paper to which I have referred to be recorded, and that he desired to see me in his official room; I im-
770 mediately went to see him—saw him in his room, and, without exchanging with me the common civilities that should exist between man and man, he handed to me a paper of that date, saying in substance that I would not be allowed to examine any of the records of the Patent Office, or transact any further business there until his further orders; the original of that paper is now on file in this case; it was filed before Mr. Shields as examiner in New York; I asked Mr. Leggett what he meant by such kind of conduct, and he replied that the paper he just handed me would answer my question. After going to the National Hotel, where I was then stopping, I wrote him a letter demanding an investigation into every matter or thing upon which he had founded the order dated the 23d day of August, 1871; while I was in his room at the time he handed me that paper, he stated to me that I had forged the paper which I had offered for record; I told him that he must know better if he examined the paper at all, for every word of it was in my handwriting; that it was a fresh, new paper, with the ink scarcely set or dry upon it; he became abusive in his language to me, whereupon I left him.

On the 29th of August, 1871, the Commissioner of Patents addressed to me a paper in writing of that date, signed M. D. Leggett, Commissioner. On pages one, two, and three of it, which is in print, containing eight infamous, libellous, and untruthful charges against me. There is not nor ever has been one word of truth in either of these charges. The paper I now refer to is a certified printed copy, and certified under the seal of the Patent Office, under date of the 15th day of November, 187—, which I desire the examiner to mark "M. D. Leggett, Fraud No. 1, August 30, 1878." Soon after receiving this paper, I filed in reply thereto, in the United States Patent Office, an answer signed and verified by me; the Commissioner appointed three persons, then in his em-

ploy in the Patent Office, as a commission; this was without my
771 consent, and I did not know who the persons were on that commission until I appeared before it for the pretended hearing. Ex parte affidavits of Frederick G. Ransford, Peter Low, and other persons, were produced upon the table before that commission; these affidavits I had not seen nor had any knowledge of until that time; I asked the privilege of cross-examining those persons about the matters concerning which they had made their ex parte affidavits, and my request was refused; my sworn answer was rejected and refused to be received in evidence in my behalf; one or two persons were examined in the Patent Office orally; the time consumed by the Patent Office Commissioner in his investigations occupied a part of two days.

Feeling and knowing that during those two days great wrong and gross injustice had been done to me in the Patent Office, I moved that commission as well as the Commissioner of Patents to allow me at least two or three weeks' time to procure me the testimony of witnesses, and to produce such papers as I knew would disprove each and every charge which the Commissioner of Patents had preferred against me; the hearing of that motion was argued by myself personally before the so-called commission; Mr. Leggett and a large number of persons were present during that argument, which was based upon stated facts; and the commission took that motion into consideration, and without making any decision upon it that I ever heard or knew of, on the next day, September 18, 1871, signed a report, that may be found on page three of the printed exhibit that I have before referred to, which I now hold in my hand. There is not one word of truth in the several findings in that report, of which the Commissioner said I was guilty; had I been permitted to have made the defense that I proposed to make to those charges, it is very likely that no such report would ever have been made.

172 These several charges were preferred by Mr. D. Leggett, Commissioner of Patents, in his own proper name and person. He exercised an arbitrary power without authority of law in the appointment of the so-called commission. He made an ex parte affidavit himself, and used it on the occasion before the commission against me, and refused to allow me to cross examine him in relation to it, although he was present during the so-called trial, it being held in his official room. He selected two persons in his employ in the Patent Office, to act as counsel in the prosecution before a commission of his own appointing, of the written charges made and filed by him August 29, 1871. Upon the 18th day of September, 1871, he sat in judgment, either as dictator, umpire, or judge, upon the charges he had preferred against me, and upon the ex parte affidavits of his own making, and upon the findings by his commission, dated on the same day, to wit, the 18th day of September, 1871, as will appear by a certified copy of his decision, which I now hold in my hand, under that date, signed M. D. Leggett, Commissioner of Patents, and countersigned C. Delano, Secretary of the Interior; which approval by the Secretary of the Interior, I had been informed, was procured by M. D. Leggett, Commissioner of Patents, on that day. I made no defense in those proceedings, because I was not allowed to do so by the Commissioner of Patents, other than by filing a sworn answer, which was refused admission in evidence, and the argument of counsel for me of the case as it had been presented by Mr. Leggett.

I was never debarred from practicing in the Patent Office. While Leggett was Commissioner of Patents, he pretended to, refused to recognize me as a patent agent. For some years previous to that time I had not

practiced as a patent agent in the Patent Office, because of the pressure and extent of my law business in the several courts of the country, and I was not at the time of the date of that paper, and had not, since
773 July, 8, 1870, practiced as an attorney in the Patent Office, for reasons which I have stated, except in my own personal matters. Since Leggett resigned the office of Commissioner of Patents, I have frequently had business in the Patent Office before the present Commissioner of Patents, in the examination of models and papers, and in the trial of one interference case. While Mr. Duell was Commissioner of Patents, who was the immediate successor of Mr. Leggett, I had frequently business to transact in the Patent Office, in the examination of records, models, and papers in litigated cases, as I since have had while Ellis Spear, the present Commissioner, has been Commissioner of Patents. During that time I have not been refused anything I have asked for in the Patent Office. And under both the last-named Commissioners of Patents, I have always been fairly and kindly treated and dealt with by both those gentlemen. There is no disagreement whatever, to my knowledge, between myself and any official or other person whatever in the Patent Office, and has not been since the resignation of M. D. Leggett, Commissioner of Patents. I do not ask for or expect any better or more kind treatment at the Patent Office than I received under Mr. Commissioner Duell's administration, and also under that of Mr. Ellis Spear, the present Commissioner of Patents, who was one of the so-called commission of September 18th, 1871.

The inventions or improvements referred to by me in this answer as being contained in a caveat of June 21, 1855; in the Robertson patent of September 22, 1857; in the patent of August 9, 1859; in the patent of January 14, 1862, and in the several applications for patents and reissue of patents, have no relation to, or connection with, the invention and improvements contained in my patent of April 14, 1863, or of the reissue of that patent in divisions A and B, October 4, 1870, and especially that division named in the bill of complaint in this
774 suit, which is alleged to have been infringed by the defendant. They are separate and distinct inventions.

(Answer objected to as partly hearsay, partly irresponsive, and as intended to contradict a Patent Office record collaterally.)

Met, August 31st, pursuant to adjournment of the day previous. Present, same counsel as before.

Examination of MARCUS P. NORTON resumed:

Counsel for complainant offers, for the purpose of reference, and as a part of the last answer, the paper referred to in the last answer of witness, and requests the examiner to mark it as stated in said answer.

The paper is received and marked as requested.

Q. 3. State what you may know with reference to Exhibits B and C, referred to in the third and fourth charges of "Complainant's Exhibit M. D. Leggett, Fraud No. 1," and also referred to in other parts of the exhibit.

(Objected to as irrelevant and immaterial, and also because the evidence, if admissible at all, should have been put in while complainant was making his rebuttal to the defense, and before the defendant began his impeaching testimony.)

A. I hold in my hand certified copies of the two exhibits referred to in the last question; the certificate is dated the 13th day of August,

1878, signed Elias Spear, Commissioner, and under the seal of the
775 Patent Office of the United States. The body of this certificate is incorrect, in that it states that the papers are from the caveat file (of mine) dated October 20, 1853, whereas it should be June 21, 1855; and also in that the title of the invention is misstated. It reads, "Machine for Mailing and Folding Letters," whereas it should "Railroad Printing Press." The additional paper dated Tinmouth, Vermont, August 21, 1855, which I now hold in my hand, under such certificate, is a correct copy of the original paper of the same date prepared by me at the time and place stated, and by me properly placed upon the files of the Patent Office, through S. T. Shugert, then chief clerk of the Patent Office, on the 25th day of August, 1855, within four days after the date of the additional description, designated in these papers as Exhibit D. The original of this paper was in my handwriting, was prepared by me, and completed on the 21st day of August, 1855, and it was accompanied by a letter of the same date and from the same place, addressed to the Commissioner of Patents. The letter to which I now refer is represented in these certified papers as Exhibit C. It never was a part of, and did not properly belong in, my caveat of October 20th, 1853, for machine for mailing and folding letters, a certified copy of which caveat of October 20th, 1853, has been filed in this cause by the complainant, and if I am not mistaken it is Complainant's Exhibit D. The original letter under date of August 21st, 1855, and represented in these certified papers as Exhibit C, was written by me on the same day that I completed the additional paper to Railroad Printing Press, on the 21st day of August, 1855, and represented in these certified papers as Exhibit D.

On the back of this letter of August 21st, 1855, is the following: "Received and filed August 25th, 1855, S. T. Shugert, Exhibit C."

This paper marked Exhibit C, and to which the paper marked
776 Exhibit D is attached, does not pertain to the caveat file of Marcus P. Norton for a railroad ticket printing press, filed June 21, 1855, but does pertain to the caveat file of Marcus P. Norton for a machine for mailing and folding letters, filed October 20th and 27th, 1853. See the endorsement upon the back of Exhibit D, hereto attached, "M. D. Leggett, Commissioner of Patents."

This endorsement was made upon this paper by M. D. Leggett, Commissioner of Patents, without my knowledge or consent. It is false and fraudulent in every statement therein made, as will readily appear by comparing it with Exhibit D attached to it. On the back of Exhibit D, to which the letter Exhibit C is attached, is written the following: "This paper, marked Exhibit D, after due notice to Marcus P. Norton, and trial had before a commission appointed by the Commissioner of Patents, was by the said Commissioner adjudged to be fraudulent, and to have been surreptitiously introduced into the caveat file of Marcus P. Norton, for railroad ticket printing press, filed June 21st, 1855. In the order of the Commissioner of Patents, dated September 18th, 1871, and approved by the Secretary of the Interior, in the case of the trial of Marcus P. Norton for gross misconduct. (See the finding of the commission as to charge four.) This paper does not, therefore, form a valid portion of the above-named caveat. M. D. Leggett, Commissioner of Patents."

These endorsements were made by M. D. Leggett, Commissioner of Patents, without my knowledge or consent. The paragraph where he states, "This paper does not, therefore, form a valid portion of the above-named caveat," is absolutely false and fraudulent to my personal knowledge. The paper does belong to the caveat files of June 21st,

1855, and it was received by and filed in the Patent Office on the 25th day of August, 1855, and for aught I know is still somewhere in the Patent Office, unless destroyed or taken away by some person
777 unknown to me. It is true, as stated in the endorsement, that there was a "commission appointed by the Commissioner of Patents" for a trial of certain false and fraudulent charges presented against me, in writing, by M. D. Leggett, Commissioner of Patents. During the twenty-five years that I have been acquainted with and done business at the United States Patent Office, I have never been guilty of gross misconduct, or any other misconduct, in that office. As to the trial referred to in the certificate, I have to say what I stated in my answer to question number two, and in addition to that I here state that that pretended trial was a farce and a fraud upon me. I was not only not allowed the opportunity to make a defense, after I had been advised of the ex parte proof produced against me, at the so-called trial, but I was denied the privilege to cross-examine Mr. Leggett, who had made an ex parte affidavit against me, and also those persons from the city of Troy, and other places, who had also made ex parte affidavits. I never introduced into the caveat file of June 21st, 1855, "surreptitiously," any paper whatever.

As a part of my answer I now introduce, for the purpose of reference and consideration, in connection with this answer, certified copies of Exhibits C and D, referred to by me in this answer, and also referred to in Complainant's Exhibit M. D. Leggett, Fraud No. 1, August 30th, 1878.

I desire the examiner to file and mark these Exhibits C and D as Complainant's Exhibit M. D. Leggett, Fraud No. 2, August 31st, 1878, I. B., ex'r.

(The same are so marked.)

Q. 4. State what you may know with reference to Exhibit B, referred to in the first and second charges, and also in other parts of Complainant's Exhibit, Fraud No. 1, August 30th, 1878, I. B., ex'r.

(Same objection.)

778 A. I now hold in my hand a certified copy of the exhibit referred to in the last question, certified to on the 13th day of August, 1878, by Ellis Spear, Commissioner, as an "additional paper found in the caveat file of Marcus P. Norton, filed October 20th, 1853, for machine for mailing and folding letters." It is addressed to the Commissioner of Patents, dated Tinmouth, Vt., August 7th, 1854. I have examined the paper and believe it to be a correct copy of the original paper prepared by me in my handwriting, and signed by me on the 7th day of August, 1854, at Tinmouth, Vt., and by me transmitted to the United States Patent Office through the mails, and mailed at the post office, in Timmouth, on the same day or the following day after the date thereof. That additional paper was accompanied by a letter written by me to the Commissioner of Patents, bearing date the same day, to wit, August 7, 1854. Both of these papers were, to my personal knowledge, received by and placed on file in the Patent Office in the month of August, 1854; for on or about the 12th day of August, 1854, I received a letter from the then Commissioner of Patents acknowledging the receipt of my letter dated August 7, 1854, and also an additional description "to be added to my subjoined description for mailing and folding letters, for which I have a caveat in your office;" of which additional paper, the certified Exhibit B, which I now hold in my hand, is substantially and materially a copy of that original paper so prepared and sent by me to the Patent Office.

On the back of this certified Exhibit D, I find these words: "This paper, marked Exhibit B, after due notice to Marcus P. Norton, and trial had before a commission appointed by the Commissioner of Patents, was by the said commission adjudged to be fraudulent, and to have been surreptitiously introduced into the caveat file of Marcus P. Norton, for a machine for mailing and folding letters, filed October 20 and 27, 1853.

779 "In the order of the Commissioner of Patents, dated September 18, 1871, and approved by the Secretary of the Interior, in the case of the trial of Marcus P. Norton for gross misconduct, see the findings of the commission as to charges one and two.

"This paper does not, therefore, form a valid portion of the above-named caveat. M. D. Leggett, Commissioner of Patents."

That part of the endorsement which reads as follows, "this paper does not, therefore, form a valid portion of the above-named caveat," is, to my knowledge, absolutely false and fraudulent. The paper does and did, in August, 1854, belong to and form a valid part of my caveat, dated October 20, 1853, for a machine for mailing and folding letters. This endorsement upon Exhibit B was made by M. D. Leggett, Commissioner of Patents, without my knowledge or consent. With reference to the other parts of this endorsement, I make the same answer as I did to a similar endorsement on (Exhibit D) Complanant's Exhibit M. D. Leggett, Fraud No. 2, August 31, 1878, I. B., ex'r.

For aught I know the original paper, of which this certified paper is a copy, is still somewhere in the Patent Office, unless it has been abstracted from its proper file by some person unknown to me, or been mislaid in the Patent Office by some official.

As a part of this answer, and for the purposes of reference and for consideration in connection with this answer, I offer Exhibit B, and desire the examiner to file and mark the same, near the endorsement thereon by M. D. Leggett, as Complainant's Exhibit, M. D. Leggett, Fraud No. 3, August 31, 1878, I. B., ex'r.

(The same is so marked.)

Q. 5. State when you first learned, if at all, that there was any

780 trouble of any kind in the Patent Office, with reference to the caveat that you have to-day referred to, or that anybody claimed or pretended to claim that there was anything wrong with reference to either of those caveats.

(Same objection.)

A. It was on the 23d day of August, 1871, in the official room of M. D. Leggett, then Commissioner of Patents; never before that time had I known or heard of there being even a suspicion of anything wrong with those caveats, or either of them. Of the caveat of October 20, 1853, I frequently had certified copies from the Patent Office, previous to August 23, 1871. One such certified copy was used at the trial of the suit at law wherein Jacob Shavor and Albert C. Corse were plaintiffs, and Edmund Hoole was defendant, tried at the October term of the United States circuit court, at the city of Albany, in the year 1864. Another such certified copy was used in the United States Court of Claims, in the case of Jacob Shavor and Albert C. Corse, against the United States, tried, I think, during the year 1868. Another such certified copy was used at the hearing before the Postmaster-General in the winter of 1870 and 1871, under an act of Congress approved July 14, 1870. Another such certified copy, certified to, I think, in the spring of 1868, has been filed in this case as evidence by complainant's counsel. I have had other such certified copies for other purposes, one of which I kept

as a permanent file in my law office in this city for many years. Every one of those caveats contained the additional paper, dated August 7, 1854, a copy of which is attached to Complainant's Exhibit M. D. Leggett, Fraud No. 3, August 31st, 1878, I. B., ex'r.

As to my caveat of June 21, 1855, for railroad ticket printing press, I have to say that, previous to the 23d day of August, 1871, I had certified copies from the Patent Office of that caveat, each of which
781 contained the additional paper represented by Exhibit D, attached to Complainant's Exhibit M. D. Leggett, Fraud No. 2, August 31, 1878, I. B., ex'r.

On the 22d day of August, 1871, less than twenty-four hours before the outrage and fraud commenced against me by M. D. Leggett, then Commissioner of Patents, I received from the Patent Office a certified copy of my caveat, file-wrapper and contents, dated June 21, 1855, under the seal of the Patent Office and the signature of M. D. Leggett, on that day Commissioner of Patents. Those certified papers contained the additional description represented by Exhibit D, of Complainant's Exhibit M. D. Leggett, August 31, 1878, I. B., ex'r. That certified copy caveat, including paper, was delivered to me in person at the Patent Office, at about three o'clock, afternoon of the 22d day of August, 1873. The certified copy to which I now refer has already been filed in this case as evidence by the complainant, and to which I refer, and make it a part of this answer.

Q. 6. State whether, on the 23d day of August, 1873, there was pending in the Patent Office an application for the extension of the patent granted to T. J. W. Robertson, September 22, 1857?

A. There was such an application pending there on behalf of T. J. W. Robertson.

Q. 7. State whether the patent for which he applied to be extended by the Commissioner of Patents contained the same, or substantially and materially the same invention, as that described in the additional paper dated August 21, 1855, in your caveat of June 1, 1855.

(Same objection.)

A. They contained substantially and materially the same invention.

782 Q. 8. State whether you, in your own person, opposed the application for the extension of the patent of T. J. W. Robertson, of September 22, 1857.

(Same objection.)

A. I did, and assigned my reasons and grounds for that opposition, several objections in writing, among which was my caveat of June 1st, 1855.

Q. 9. State when those reasons or grounds of objection were filed in the Patent Office, if you know.

(Same objection.)

A. In the month of June or July, 1871, they were.

Q. 10. Pending that application, did you give permission to Mr. T. J. W. Robertson to examine your caveat file of June 21, 1855?

(Same objection.)

A. I not only gave him that permission, but I gave him permission to have a certified copy of it. That permission was in writing, and a certified copy of it has been filed in this case.

Q. 11. State whether the T. J. W. Robertson patent, of which you have spoken, was extended by M. D. Leggett, Commissioner of Patents, if you know, and state the time, as near as you remember, if that patent was extended.

(Same objection.)

A. That patent was extended by M. D. Leggett, Commissioner of Patents, and the order for the extension was made about the 20th day of September, in the year 1871.

Q. 12. State the day, if you know, when you were cited to appear before the Patent Office to answer to the charges made and filed by M. D. Leggett, the Commissioner of Patents.

(Same objection.)

783 A. On the 8th day of September, 1871, at ten o'clock, forenoon of that day.

Q. 13. State the day when M. D. Leggett, as Commissioner of Patents, made and filed the paper represented by Complainant's Exhibit M. D. Leggett, Fraud No. 1, August 30, 1878, I. B., ex'r.

(Same objection.)

A. September 8, 1871.

Q. 14. State the number of days intervening the day set by the Commissioner for the trial by him of the charges by him preferred against you, and the decision made by him upon those charges, which you have denominated as grossly wrong and fraudulent, and without foundation in point of fact.

(Same objection.)

A. The extraordinary number of eight days, having twenty-four hours in each day.

Q. 15. State whether you ever expressed any fear that M. D. Leggett, Commissioner of Patents, would not do you exact justice as to the several charges he had preferred against you, bearing date August 29, 1871, and previous to the trial of the same.

(Same objection, and also as tending to question the Patent Office records.)

A. I never did; I had no such fear, but on the other hand I wrote him a letter demanding an investigation of the charges indicated in his letter to me of August 23, 1871; in which letter I expressed my entire confidence in him to do me justice in the premises. I did not then have a personal acquaintance with the man; have had none since, excepting what I obtained during the pretended trial of the charges re-
784 ferred to. I never had any misunderstanding with him. I knew nothing then against him, but believe that if he were a fit and proper man to be Commissioner of Patents, he must be honest and honorable enough, at least, to deal fairly by me in those alleged charges. I have since become fully satisfied that my confidence in him was misplaced, and that he was one of the party ready and willing to do me wrong and injustice in the Patent Office. I now believe that the course pursued by him toward my caveat of June 21, 1855, was for the purpose of getting out of his way a valid caveat, so that the Robertson patent of September 22, 1857, might by him be extended to Robertson. The only mistake I made with reference to the matter contained in "Complainant's Exhibit, Fraud No. 1, August 30, 1878, I. B., ex'r," was ever going to the Patent Office to attend the so-called trial, or in having anything to do with it before M. D. Leggett. I knew I had done no wrong, or in any way meddled with, or changed or altered, or added to any record in the Patent Office, or attempted to put on record any paper that I had not a perfect right to do. Being conscious of no wrong committed by me in the Patent Office, and feeling deeply aggrieved and injured by Leggett's order dated the 23rd day of August, 1871, which by him had been furnished to the newspaper press for publication, as I had been informed, and which was published in a great many newspa-

pers all over the country, I demanded an investigation, not then knowing that it would be ex parte, or that I should be deprived of making a full defense, and attended at the day appointed for the trial, expecting to be allowed the opportunity to make a full and satisfactory defense. After that farce of a trial had proceeded a little way, I discovered the great mistake that I had made in asking for or attending the investigation I had called for, but it was then too late to retreat from the false position into which I had been unconsciously drawn. I now and
785 here again deny in the most solemn manner each and every charge and allegation stated against me in the printed paper marked Complainant's Exhibit M. D. Leggett, Fraud No. 1, August 30, 1878, I B., ex'r. I was not at that time a practicing attorney before the Patent Office, and had not been for about two years previous thereto, for reasons I have already stated in this cause.

Q. 16. During the last examination on the part of the defendant before this special examiner, a paper, purporting to be a certified copy of an indictment against you, in the District of Columbia, was offered by defendant's counsel, and not objected to by complainant's counsel; state what you may know with reference to that matter.

(Same objection.)

A. If I remember correctly, that indictment was made in January or February of the year 1872. I knew nothing of any such movement or proceedings until it was told to me, I think, in the early spring of that year. Some considerable time after it had been returned into court as a true bill, this was communicated to me in the city of New York, at that time, by Jeremiah D. Green, of the city of Troy, and while on my way to Washington. I met Mr. Green in the city of New York, told him I was going to Washington, and he said to me that he was also going to Washington. He advised me not to go at that time, for he said he had understood that there was an indictment there against me, growing out of my difficulties with Mr. Leggett, Commissioner of Patents. He said that he would look into the matter as soon as he reached Washington, and if he found such an indictment there he would write me at New York and let me know, so that I could keep out of the way of it and avoid being arrested. I told him that I should do no such
786 thing—that I should go to Washington that night and see about it personally. I went to Washington on that night, and Jeremiah D. Green was on the same train. I reached Washington on the Sunday morning following, stopped at the Arlington Hotel as a guest, and on Monday morning the first business that I did was to go to the district attorney's office and see about the indictment, which Green had given me information about in New York the Saturday before. I saw George P. Fisher, then district attorney, in relation to it. In answer to my inquiry about it, he stated that he did not know of any such indictment. As I was about leaving him he called me back, and said that I had better go into Mr. Harrington's room and inquire of him about it, he, being his assistant attorney, might know something more definite about it. I called upon Mr. Harrington, and in answer to my inquiry he stated that there had been such an indictment found by the grand jury, but that he did not have a copy of it, and would go with me to the clerk's office, at the court-house, that I might examine it. Before going, I asked him what the indictment was about. He said that it had something to do with my troubles at the Patent Office with Mr. Leggett. I asked him who was the mover of such kindly proceedings. He told me that Jeremiah D. Green was the man who came to him and furnished such evidence as they had, upon which the indictment was found. I

then went with Mr. Harrington to examine the indictment. After examining the indictment, I told him that I was ready to furnish bail, and asked him to have the court fix the amount of that bail. The court fixed the amount at three thousand dollars. I was thereupon put under arrest, taken to the jail of the District of Columbia, put into custody of its keeper, and there gave bail in the sum of three thousand dollars. Mr. Pugh, a friend of mine, and a wealthy citizen of Washington, in the District of Columbia, became my bondsman in that amount.

787 On the next day after that I met Jeremiah D. Green on the street in the city of Washington, and on meeting him he said, "I heard that you had been arrested and taken to jail." I said, "You see I am here, Mr. Green, as free a man as you are, with the exception that you are loaded down with the bonds of hypocrisy and consummate meanness." He says, "You ought not to say that, for Mr. Gregory and I intended to have gone to the jail and bailed you out to-day." I thereupon left Mr. Green and passed on. Subsequently I saw Mr. Fisher, the district attorney, and told him that I had engaged counsel and was ready to be tried at any time he might fix, and the sooner the better for me. He told me he would look into the case, and inquire about it, after which he would give me ample notice of the time when he would try the case on that indictment. Not hearing from him about it for nearly a year, being again in Washington on business, I again called upon Mr. Fisher with reference to that indictment. He told me he had examined the case and was not satisfied with it; that I had better wait until Mr. Harrington had again seen Mr. Jeremiah D. Green about it. I waited a long while after that without hearing anything from Mr. Fisher in reference to it, and, not wishing to have a thing of that kind standing against me, I wrote him a letter, stating the facts in the case, and demanded an immediate trial on that indictment. He answered my letter by saying, in substance, that so far as he could discover there was nothing in the case, and that the indictment ought not to have been found; that he was about finishing his work in his office as district attorney, preparatory to resigning that office, and that before his term closed he would try and bring the matter before the court and have it nolle prosequied, which I supposed had been done, until some time in June last, when I called Judge Williams', complainant's counsel, attention to it, and asked his advice with reference to it, and he said he would

788 see whether the matter had been disposed of by the district attorney, Judge Fisher. I thought no more about it until we came to this examination, and questions were put to witnesses by defendant's counsel to know if they had heard about any such indictment. Why there has been no trial on that indictment to the present time I know not, other than I have already stated. My bondsman, Mr. Pugh, and myself, after I had learned of the indictment and given bail under it, went to see the foreman of the grand jury who had indicted me. I stated to him the facts about the case, and he said in reply that but very little evidence had been presented to the grand jury on the subject, and that that jury had hesitated somewhat about the indictment, and he did not think the indictment would have been found at all, but for the course pursued by the assistant district attorney, Mr. Harrington.

I am not guilty of a single charge contained in that indictment in any way, manner, or shape, for reasons already stated by me in this case with reference to the paper described in that indictment being a forged one. The indictment was for offering that paper at the Patent Office, and not because of having signed it. That paper described in that indictment was nothing but a copy of a paper the original of which had

been filed in the Patent-Office in my application for a patent which was granted January 14, 1862. I had an affidavit with that paper at the time I offered it for evidence in the Patent Office, showing it to be a copy, and nothing but a copy, as I have before stated. Moreover, that paper, when I offered it for record in the Patent Office, on the 22d day of August, 1871, was dated the 29th day of July, 1859. It bore plain and unmistakeable evidence of being a new paper, just made, so that anybody, unless he were a fool, a knave, or a scoundrel, might know that it was a new paper of very recent preparation. It had no government internal-revenue stamp upon it, as all original papers of
789 that character at that time by law were required to have. Had I tendered it as an original paper for record, I would not have been so foolish, or shown myself so ignorant of the law, as to offer an original paper for record without its having been previously duly stamped as by law required. This fact alone—about the non-stamping of that instrument with internal-revenue stamps—is, in my judgment, sufficient evidence to show that it was not offered for record as an original paper. The entire paper, including signatures and every other word in the instrument, was in my handwriting, and the ink with which the whole paper was written had scarcely become set or dry at the time I offered it for record. The paper had no seals attached to it. It was not an assignment of any kind. It was merely an agreement reduced to writing. It did not in anywise affect or disturb the title held by Ransford and Low and others to the patent of August 9, 1859. It had no reference whatever to the title to that patent.

Just before—I think four or five months before—the expiration of the first term of the patent of August 9, 1859, Jeremiah D. Green came to me in this city, which was in the spring of 1873, and asked me to sign an application for the extension of the patent of August 9, 1859, which at that time I refused to do. Mr. Green told me if I did not do it, that he and Ransford, Low, and Shavor would have me in state's prison under the indictment found against me at Washington, in the District of Columbia. I told him that he could fire that gun just as soon as he pleased, for the question might turn as to whether he and the persons he had named might not get into state's prison themselves for attempting to rob me of my patented property by procuring that indictment in the District of Columbia; still I would consult with Mr. Charles Eddy, of this city, a man in whom I had always had great confidence. I saw and conferred with Mr. Eddy on the subject, and he thought that perhaps, under the circumstances, I better sign that
790 application; and within a day or two after that I did sign that application for that extension. Mr. Green conducted the entire case. The application was allowed, and the patent was extended for seven years from the 9th day of August, 1873. After the extension was granted, and without the consideration of a single dollar, I assigned the extended term of that patent to Jeremiah D. Green, Frederick G. Ransford, Jacob Shavor, and other persons, which is now held, so far as I know, by those persons. That assignment was put on record in the Patent-Office, and the persons I have named hold title under it to the extended term of the patent of August 9, 1859. This patent of August 9, 1859, is for an invention substantially and materially different from that contained in my patent of April 14, 1863, upon a reissue of which this suit is founded. The extended term of the patent of August 9, 1859, relates to and is the same identical patent referred to in the indictment of which I have spoken.

The paper referred to in that indictment as bearing date July 20, 1859,

and as being the one which I offered for record at the Patent Office on the 22d day of August, 1871, never has, and never could, in any way or manner, change, alter, or transfer the Ransford and Low title to that patent, as will appear upon the face of the paper itself.

I have always deeply regretted the fact of the finding and filing of this indictment against me, yet I have always stood up under it, without fear or favor, believing, as I have always and now do believe, that it was the result of a conspiracy on the part of the persons I have last above named, for them to use against me to force away from me my property, my right, and my reputation. Up to this hour I have never yielded to any threatenings by those men with reference to this indictment, and never will. I am ready now, and ever will be at any future time, to be tried under that indictment, believing, as I always
791 have, and now do, that it was obtained by fraud and deception, and that it was obtained to use against me in reference to my patent of April 14, 1863, as I have already stated.

Q. 17. Defendant's counsel, during his cross-examination of defendant's witnesses, has frequen tly referred to and inquired of them whether they had ever heard of an attempt to impeach your character for truth and veracity. State what you may know with reference to any such attempt or attempts.

(Same objection.)

A. In 1862 and the fore part of the year 1863 I was the attorney and counsel for Jacob Shavor, Louis Potter, and Smith Groom, with reference to patent matters in the Patent Office and in courts. In the spring of 1863 an interference case was in progress in this city, of William E. Hagan against Jacob Shavor and Louis Potter, assignees of Smith Groom, patentee. This interference case originated in the United States Patent Office, and was before the Commissioner of Patents, and I was counsel for the defendants. During the progress of the taking of testimony, I stated to one of the plaintiff's counsel, in substance, that I had personal knowledge of Groom's invention as far back as the year 1859, and that there were others who had knowledge at an earlier time. On making that statement to plaintiff's counsel, he inquired of me if I would testify under oath to the sta ement I made to him. I said I would be willing to if it were necessary, not, however, intending at that time ever to be a witness in that case. On the next morning, which was the 4th day of February, 1863, Mr. James Morrison, jr., of this city, a client of mine, called at my office and stated to me that he had been authorized by counsel for Hagan to say that if I was examined as a witness in that case they would impeach me as to truth and veracity. I told
792 Mr. Morrison that I had had no idea of being examined as a witness in that case; that I felt assured that I had abundant evidence without anything from me in the shape of evidence; that since they had threatened the impeachment, I most certainly would go on the witness stand, and be examined as a witness in that case, and would be the first witness examined on that day. I was the first witness examined that day, and testified to what I believed to be true with reference to having seen Groom's invention at a certain fixed time, Groom having shown it to me and asked my opinion about it. I regarded my testimony, at that time, as unimportant, because I knew I had other witnesses to prove the invention some years farther back than I had stated, and should not have been a witness in the case but for the threatened impeachment, of which I had been advised that day. The impeachment was undertaken by Mr. William E. Hagan's counsel, William A. Beach and Levi Smith. Thirteen witnesses, residing in the city, were

called and sworn against me, namely, Marcus Ball, George R. Davis, George B. Smith, William F. Burden, George Gould, Henry G. Giles, Anson Atwood, Neilson Forsyth, Simeon Goodfellow, Stephen S. Barnes, Lemuel H. Tupper, William A. Beach, and Levi Smith. Mr. Ball, Mr. Giles, and Mr. Levi Smith are the same persons that the defendant has examined against me in this case on the question of impeachment. In support of my character for truth and veracity, in this city, in that case, I called and examined sixty-seven, residing and doing business in the city of Troy, and from among the best and most respectable business and social portions of the city of Troy. Their names are as follows: Anthony Seiler, Lewis Lillie, James Freiot, Cole H. Denis, Austin C. Winslow, Gurdon G. Wolfe, Edward D. Beach, D. W. Tuthill, Samuel O. Gleason, David H. Jones, Nicholas Winslow, Charles W. Root, John McChesney, James Dennin, Lyman Garfield, William W. Whitman, Hezekiah S. Benedict, Nelson D. Ross, John B. Hyland, Charles M. Halstead, James Allen, Luther Greenman, Hosea Leach, Philip H. Baerman, Charles W. Moseley, David L. Seymour, Dr. Thomas W. Blatchford, William C. Buell, William H. Young, William Eddy, John F. Winslow, Ebenezer L. Mallory, Alfred Wotkyns, Joseph W. Fuller, Edward J. Hicks, Albert W. Scribner, Philo P. Stewart, Elisha Waters, Henry B. Nims, Edwin Brownell, Albe C. Daniels, Uriel Dexter, Willis Humiston, Pelatiah J. Marsh, Robert H. Hyde, Henry Stanley, Joseph P. Door, Robert G. Fox, William Kemp, Peter Saxe, Edward S. Randall, James A. Lawson, William H. Tibbitts, Zebulon P. Birdsall, John Shanahan, Benjamin D. Benson, William J. Dodge, William Iler, James C. Burch, John P. Albertson, John H. Snyder, Frederick Ells.

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The impeachment undertaken on that occasion was not a successful one, as was stated in the Patent Office, both by the examiner in charge of the case and also by the appeal board, and was so admitted by William E. Hagan himself, the plaintiff in that case, in whose behalf the impeachment was undertaken, during the fall of 1863, and at subsequent times since then, whenever we have referred to the matter; and the last time I heard him make the admission, while he was being examined as a witness in this case, the other day, to sustain my character for truth and veracity here.

Never, to my knowledge, did that attempt of my impeachment work me any harm, or do me any injury, in this city, or anywhere else, after the testimony in that case had been closed, and the case submitted for argument; indeed, for eight or nine years thereafter I was largely and extensively engaged in the practice of my profession in this city, having frequently a large number of cases on the calendar of the United States courts in this State, and in several other States, earning in my profession between twenty, twenty-five, and thirty thousand dollars a year, which I received in cash. I have not, to my knowledge, heard that matter referred to in this city by any one for the past twelve or thirteen years, until it was brought up in this suit. At that time I could have examined more witnesses than I did examine to support my reputation for truth and veracity here in this city, had I deemed it best to be done. That undertaking principally grew out of my connection with the litigated cases between Corning, Winslow & Co. and the Burdens. I was for several years, and until Mr. Winslow left this city to take up his residence at Poughkeepsie, one of the counsel for Corning, Winslow & Co. against Henry Burden, Henry Burden & Sons, and in several other suits in other States and districts. Mr. Henry Burden was very hostile to me during the progress of the cases in

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which Corning, Winslow & Co. were interested. Levi Smith, of the then firm of Beach & Smith, testified against me in that interference case, and continuously therefrom and to the present time has been an enemy to me. He was examined in this case for the defendant on the question of impeachment, and I refer the court to his answers to my questions on his cross-examination to show his anxiety to do me harm. Most of the witnesses called and sworn against me in Troy were persons with whom I had had litigations for clients of mine. Two of them were the attorneys of Henry Burden and Henry Burden & Sons, namely, William A. Beach and Levi Smith, of the then law firm of Beach & Smith. Mr. Hagan and myself have frequently transacted business together since that attempted impeachment, and have been on friendly terms. I have very frequently employed him as expert witness in patent cases, regarding him always as among the best, if not the best expert
793 witness in this country. I believe him to be a perfectly truthful, honorable, and upright man.

Adjourned by consent to Monday, September 2d, at 9.30 a. m.

MONDAY, *September* 2, 1878.

Met pursuant to adjournment of August 31st.

Present same counsel as before.

Direct examination of the witness, MARCUS P. NORTON, resumed:

Q. 18. Counsel for the defendant, in his cross-examination of defendant's witnesses, inquired of some or all of them if they had heard about an attempt to impeach you at the time of the assassination trial of the conspirators of the murder of President Lincoln. State what you may know with reference to that matter.

(Same objection.)

A. I was examined as a witness on that trial on the part of the Government of the United States. The War Department at Washington, considering me an important witness in that trial, subpœnaed me to appear and be examined as a witness. I was examined as a witness. An attempt was made by counsel for the defense to impeach me, which was at the instance of Abram B. Olin, as I was informed by one of defendant's counsel. Two witnesses were called against me on that occasion and only two, whose names are as follows: Abram B. Olin and Henry Burden. Mr. Burden was a citizen and business man in the city of Troy, New York, a man who, for many years previous thereto, I had opposed to the best of my ability, in a series of bitter litigations between Corning, Winslow & Co. and Mr. Henry Burden, and
794 those associated with him in business at Troy, as one of the counsel and attorneys for Corning, Winslow & Co.; I had been such counsel and attorney for five or six years previous to that time; Mr. Burden was a bitter enemy of mine for many years, growing out of such litigation; at the time he was called as a witness against me in Washington, Mr. Burden was there attending to business in the Patent Office in a matter pending in an interference case where I had opposed him; after Mr. Burden had been examined by the defendants' counsel in that conspiracy trial, I met him at the Patent Office in Washington, and he told me that he had been subpœnaed to testify against me, and had done so; he said he was urged to do so by Abram B. Olin; Mr. Olin formerly resided in this city; he was at one time member of Congress from this congressional district; if I remember correctly, the last time he was in the field as a candidate for member of Congress for re-election he was

strongly opposed, and at the polls was defeated by John A. Griswold, of this city, elected to that office; I was one of those who opposed him; during the campaign I spoke from the "stump" in different parts of the district against Mr. Olin; I said some things about him to the people which I then and now believe I was justified in saying; he became angry and very bitter towards me after that; he came to my office during the progress of the campaign and personally denounced me in a bitter and profane manner; we may have spoken together once since that time, but I do not remember more than that; at one time I had an important case pending in the supreme court of the United States for the District of Columbia; as soon as I learned that he was to hold a term when that case must be tried, he being one of the judges in that District, I wrote him a letter stating that I regarded him as disqualified from trying that cause because of his conduct toward me, to which
795 I have referred in this answer, and suggested that he allow the cause to go over the term or go before some other judge in that District. He wrote me a letter in answer refusing to accede to my request. I thereupon employed Mr. John B. Gale, of this city, to argue that cause. The case was argued, and Mr. Olin decided it against me as well as against the evidence, and the law, as I then did and as I now do believe. The hostility of both Mr. Burden and Mr. Olin towards me was clearly manifested by their cross examination on that occasion of the assassination trial.

The War Department subpœnaed a large number of witnesses from Troy to sustain my character on that occasion. A few of such witnesses were examined, others were there ready to be examined, when that court held a secret session for a few moments, and thereupon decided that they would hear no more sustaining evidence, as the several judges of that court were satisfied that both Olin and Burden were too strongly opposed to me to give a correct expression with reference to my character for truth and veracity, and that under such circumstances, and from the fact that only two witnesses had been called against me, and considering the excellent character that had been given to me by the witnesses already examined from Troy, that court sustained my character for truth and veracity, and fully received my evidence in that case. This I was told by one of the judges of that court, and also by the attorney of the United States, who examined me as a witness on that trial.

I know of no place or of any people in this or any other country, where I have suffered even in the remotest way, or lost any credit, standing, or character for truth and veracity, in consequence of that attack so made against me by Olin and Henry Burden, as I have so stated.

I had, myself, almost entirely forgotten it, until the counsel for the
796 defense in this case called my attention to it. So, too, I had almo't forgotten the Hagan attempt at impeachment, until, in like manner, defendant's counsel called my attention to it during his attempt in this cause to impeach me. The best of friendship and confidence, without stint or reserve, has existed between Mr. William E. Hagan and myself since the summer of the year 1864 to the present time. I request the special and particular attention of his honor, Judge Blatchford, of New York, to the fact that Mr. William E. Hagan has appeared and been examined as an expert, or made several ex parte affidavits as an expert in some two or three causes tried by Judge Blatchford in the southern district of New York, where I was counsel for the defendant. I now refer to the suits known as the "Paper Bag Suits." I have also frequently acted as attorney for Mr. Hagan in several matters where he

thought it best to consult with me from the year 1864 to the present time. The testimony given by him as a witness in this case is, in brief, a manly exposition of that whole affair of attempted impeachment on his part. I do not know of a single business man in this city where that attempt at impeachment has done me any injury. I am satisfied that nearly this entire community has forgotten that undertaking, and would have entirely forgotten it but for this fresh stirring up of the same on the part of the defendant. Both attempts at impeachment were, beyond any question of doubt, unqualified failures, and I believe have been so regarded by this community and by everybody else acquainted with me.

During the twenty and more years that I have been in the practice of my profession in this city, I have been frequently engaged as counsel in several litigated cases considered of some importance between the parties residing here. In all that time my rule has been to know my clients, and only them, in such cases. If, therefore, I have made a few enemies here, I cannot help it, and only regret that there should be any.

797 Q. 19. During your examination, August 31st, ultimo, you spoke of two certain caveats, one dated October 20th, 1853, containing an additional paper under date of August 7th, 1854, and another caveat, dated June 21st, 1855, and an additional paper contained therein, under date of August 21st, 1855; state the substantial and material difference, if any, or the substantial and material similarity, if any, between the inventions described in these caveat papers.

(Same objection; and also that this evidence is not proper at this stage of the case.)

A. I am familiar with the invention in each of those papers described; there is no substantial or material similarity between them; they are substantially and materially different in all respects.

Q. 20. State on which of those caveats, if either, your application for a patent, filed in the United States Patent Office, on the 5th day of January, 1863, was founded, and on which your patent of April 14, 1863, for the combined post-marking and postage stamp canceling device described in your patent of April 14th, 1863, was issued.

(Same objection.)

A. The application referred to in the question was founded upon the caveat of October 20th, 1853, and upon the additional paper contained therein, dated August 7th, 1854, and in that month duly and regularly placed upon file in the Patent Office, in that caveat file containing other papers.

Q. 21. During your examination the other day you referred to a large number of witnesses called and examined on your behalf in the Hagan impeachment matter; state the names of such witnesses who have since died or removed from the city.

(Same objection.)

798 A. Those that have died are as follows, to wit: Lewis Lillie, John McChesney, Lyman Garfield, Lucas Shavor, Charles W. Mosely, Hon. David L. Seymour, Thomas W. Blatchford, M. D., William C. Buell, Alfred Wotkyns, M. D., Philo P. Stewart, Edwin Brownell, Uriel Dexter, Henry Stanley, Zebulon P. Birdsall, John Shanahan, Ebenezer L. Mallory. Those who have since removed from the city are as follows: Austin C. Winslow, Edward D. Beach, D. W. Tuthill, David H. Jones, Nicholas Wilson, Charles W. Root, Philip H. Baerman, John F. Winslow, Peter Saxe, Benjamin D. Benson, William J. Dodge, James C. Burch.

Q. 22. State also the names of those witnesses who were called against you in the Hagan matter who have since died, as well as those who have since removed from the city.

(Same objection.)

A. George R. Davis, William F. Burden, Judge George Gould, Neilson Forsyth, James Wager, Simeon Goodfellow, Stephen S. Barnes—those are dead. Those that have removed from the city are Anson Atwood and William A. Beach.

Q. 23. State whether after these two attempts at impeachment your professional business in this city was affected by them, or anything growing out of them, or either of them?

(Same objection.)

A. Never, to my knowledge. I always had all the business I could possibly attend to, and all that my office could do with the help employed in it, until the year 1871, when, having lost largely through undue efforts at speculation with stocks and other similar matters, I was forced to bankruptcy by two or three creditors for small amounts,
799 amounting in all to about five thousand dollars, a movement which had been gone into during a protracted absence of mine from home, and unbeknown to me until my credit was ruined by the course pursued by them toward me. This was during a time, too, when after a severe and dangerous illness at my home in this city, I had gone away from home with my family, seeking rest and health. My illness was the result of overwork in my office and in the courts during the years from 1865 to 1871. In the year 1864 I had also been ill, dangerously so, for several months, and growing out of similar causes. Still, with all this, my office was at all times crowded with business in the line of my profession, there being proper persons there to see to it and care for it in my absence. From 1861 to 1872 I had earned in my profession, and deposited in the State Bank and the National State Bank in this city about three hundred and fifty thousand dollars, which I call a fair business, considering the fact that in this time there had been the efforts made at impeachment as stated by me in this examination.

Q. 24. During the cross-examinaton of the complainant's witnesses called to support your character for truth and veracity, defendant's counsel inquired of them about your financial condition in this city, and as to whether you owed anybody anything or not. State what you may know about those matters.

(Same objection.)

A. My bank books will show this court or anybody else that honest claims and debts have been as fully and satisfactorily paid by me as would be the case among other persons in the community. I never refused payment of a fair and just claim in my life; there have been some doubtful and unjust claims that I have opposed, and sometimes litigated.

At the time of the commencement of the bankruptcy proceedings
800 in 1871, it was claimed I was owing about eighty thousand dollars.

Out of all those claims there are now standing about ten thousand dollars, which it is my purpose and desire to pay in full, both principal and interest, at such time or times as may be most suitable or convenient to me. Those creditors have not pressed me, nor are they now pressing me, for the payment of those debts; there is no misunderstanding between them and myself in reference to the same. It is, in my opinion, clearly a matter of right and of business between those creditors and myself, with which the defendant has nothing whatever to do; nor is it the matter or business of any of defendant's impeaching witnesses, for, with but one exception, namely, Mr. Edwin Chamberlin, I

do not owe a single dollar, not even one cent, to any of them. Since the bankruptcy proceedings I have made it a rule to avoid debt and pay at the time, or within a reasonable time after the contracting of the indebtedness. I have no trouble in respect to credit, or in getting all the credit I may ask for at the present time. Of course I have not had or asked for the money credit I had up to the time of the bankruptcy proceedings, nor do I expect any such until after all of the old indebtedness is settled and paid in full to the satisfaction of the creditors. At the time the trouble came with the two or three creditors of which I have spoken, had I known their real purposes and designs before they struck the blow, and ruined my credit for the time, I could have saved myself that disaster, and what to me I have ever regarded as an unpleasant affair, because I could have obtained the money to satisfy that claim of five or six thousand dollars before my credit was impaired in the manner I have stated. Precisely what a financial misfortune has to do with a man's ability to speak the truth, or as to his truth or veracity, I have not been able to discover since these suggestions made by defendant's counsel to the several witnesses on this occasion. The proceedings in bankruptcy remain in court in this district precisely
801 where they were in 1871. I have not gone, nor do I expect or wish to go, through bankruptcy, and be by law discharged from the payment of a just and honest debt. In several instances of claims against me they have been by the law paid by what is known as the statute of limitations. In such cases I have renewed the obligation or claim, regarding, as I do, the right of a man to have that which justly belongs to him, without being cut off by the statute of limitations. I am now, and shall continue, subject to the few remaining claims of my creditors until I shall have fully and satisfactorily paid the same. In the bankruptcy proceedings there was a conflict between the State and the United States court, and the sheriff of this county was allowed, by an order of the bankrupt court, to seize between fifty and sixty thousand dollars' worth of personal property of mine, and to sell the same at public sale, on a claim of about six thousand dollars; that property so seized was so sold in this city for less than its value, and the money went, so far as I have any personal knowledge, to "where the woodbine twineth." I never heard of any settlement by anybody with the sheriff for it. Had that property been allowed to remain in the hands of the assignees chosen by my creditors, that and other property would have paid every dollar of my just indebtedness, and left a large surplus for my family. I know that at the time it was generally conceded in this city a fraudulent, outrageous, and wicked transaction.

Q. 25. Counsel for defendant, in some of his questions to your sustaining witnesses, made effort to show that there had been a falling off in your professional business. State what you may know with reference to that matter.

(Same objection.)

A. For many years I had the entire patent business of nearly
802 all the stove manufacturers and venders in this city; they had retained my professional services, and those retainers hold good to the present time in every instance of which I have any knowledge. There came a time, about 1873, I think, when a series of litigations were commenced by one against the other. Of course I could not act on either ide, and did not. Notwithstanding that loss to me, I have had all the professional business from that time to this that I could attend to, and have frequently refused cases for want of time. Some of my old clients have died, some have removed from this city to other parts of the coun-

try, and others I took that good care and keeping of, when they had business, that they have had very little litigated business since. If I have lost any client or clients in this city, I do not know it, with one exception, namely, Charles Eddy, and Charles Eddy & Company. If, for any cause, there are any persons in this city who refuse to consult with me in my profession, I do not know that fact, except the persons named in my last answer, and also Jeremiah D. Green, Frederick G. Ransford, Nelson Pramer, Joseph C. Henderson, Henry G. Giles, and Richard M. Hermance, the stove-damper peddler.

(Complainant's counsel now offers in evidence a printed pamphlet of seventeen pages containing twenty-six letters of various dates during the forepart of the year 1869, and each having reference to the appointment of Marcus P. Norton to the governorship of the Territory of Wyoming, but before making the offer permanent the witness will be inquired of concerning it.)

Q. 26. Look at the pamphlet now shown you, and containing the letters contained in the above-named offer, and state what you may know with reference to them.

803 A. In the early part of the year 1869, desiring to go into the West for the purpose of a change of climate for the benefit of my health, as I had been advised by my physician to do, I contemplated giving up my business in the city of Troy, and complying with the advice of my physician, I made this known to some of my friends, and became a candidate for the office of governor of the new Territory of Wyoming. The letters contained in this pamphlet were written in support of that candidacy. Each of these letters is a true and correct copy of the original letter, under the same date, and written by the person whose name appears at the end of each letter. The original letters which appear here in print are in the handwriting of those persons who signed them. They are now in Washington, but I will get them and produce them at the final hearing of this cause, so that the court may see each one as it appears in the original. They are genuine letters, and were in good faith sent to me in support of my application for appointment to the governorship above spoken of. These letters were each shown to and examined by General Grant after he became President of the United States. My appointment was not made for the only reason that the appointment of Mr. Campbell had at that time been made, but not publicly known. The letters were retained by President Grant, and he afterwards offered me the government of the Territory of Utah, which I declined on account of the polygamous condition of that Territory, and no further effort was made by me in the direction of filling the position of governor of any Territory. After a year and a half of travel in the West and the Canadas, my health became very much improved; I may say, I became entirely well again, and thereupon resumed the practice of my profession again in the city of Troy, where for so many years previously I had practiced it. Since the making of these letters, and their delivery to me in 1869, I am not conscious of having done anything in this community, or anywhere else, that
804 would in any degree change the character of the opinions expressed in these letters of myself. I am sensitive over this, to me, wanton and unjustifiable attack upon my character by the defendant; indeed, I deeply grieve over the attack, because I am conscious positive that I have done nothing in this community or elsewhere to justify it. That the court may know at least something concerning me, as against a few irresponsible enemies of mine, who have endeavored to

testify against me in this case, I spread out upon this record, in connection with the large number of persons called in this city to sustain me, this pamphlet, containing the letters above named, that I may be able to repel and overcome the attack made upon my character for truth and veracity, or for anything else, holding my character and whole career to be sacred, and as dear to me and my family as life itself. I do not claim to be without faults. Like all men I have those, and sometimes more of them than I wish I had. I hold a man's character for truth and veracity, or anything else, to be the highest thing on earth.

(Complainant's counsel now offers in evidence the pamphlet above referred to for the purposes of evidence, concerning the attack made by the defendant upon the witness Norton, and the examiner is requested to mark it, Complainant's Exhibit Wyoming, numbers one to seventeen, inclusive. September 2d, 1878.—I. B., ex'r.

It is received, and so filed and marked.)

(Objected to on the ground that it is immaterial, irrelevant, and secondary.)

Q. 27. State whether, during the fall of 1867, you were ap-
805 pointed a delegate from this city and county to the National Convention of Southern Loyalists, held in Philadelphia.

(Objected to as immaterial and irrelevant.)

A. I was one of three, I think, from this county, and was appointed by a Republican county convention, held in this city about that time.

Cross-examination:

By Mr. CLARKE:

X Q. 28. Was the proceeding in bankruptcy voluntary or involuntary?

A. It was voluntary.

Redirect examination:

By Mr. NORTON:

R. D. 29. Explain the manner in which your bankruptcy proceedings were commenced, with reference to your last answer.

A. Two or three suits had been brought against me by John L. Flagg, a lawyer in this city, on some three or four claims, which I regarded as unjust and fraudulent. Going from home a few days after the commencement of those suits, to be absent for considerable time, I employed a lawyer, then in this city, by the name of A. S. Burdick, to act as my attorney in those cases. He prepared the answer in each case, and became my attorney of record. The causes were put upon the calendar, and some days before the suits were to be called in court I prepared and sent to Mr. Burdick proper and sufficient affidavits of merits. The rule of court then was, if I remember correctly, that an affidavit of merits must be filed on or before the second day of the term. This my attorney failed
806 to do, although those affidavits had been in his possession some days previous. Those affidavits not being filed, an inquest was had and judgment taken in each case. I was then ill and away from home. Executions upon those judgments were then issued and placed in the hands of the sheriff. The sheriff then entered my office and made a levy upon about twenty-five thousand dollars worth of property, and placed my office in the hands of one of his deputies, who was then known as a "figure-head" in Norton's office. At the time this levy was made, and this deputy was put in charge of my office, I was still away from home. That course on the part of the sheriff so injured my credit at the time, in my judgment, that I did not undertake to obtain the money to pay them, but did try to get the causes reopened, so that I

could make my defense. I obtained an injunction against Mr. Flagg and his clients, on coming home, driving his "figure-head" from my office and taking possession of it again myself. That injunction was afterwards dissolved, I think, by some judge residing in another judicial district. A new levy was made, but having a fresh injunction in my safe, I stopped the parties again. So the matter continued, until several injunctions had been obtained and dissolved. Seeing that I would not be able to make the defense in those suits which I desired to make in the State court, and that it was the intention of the moving parties to dispossess me of large and valuable personal property, it was thought best by counsel to go into the bankrupt court, where every creditor would have the same footing, and there prevent the sacrifice of my property and enable me to pay each creditor, principal and interest. Believing that, under the circumstances, to be a fair and honorable course to pursue toward my creditors, to preserve my property from a pack of thieves, I filed my petition in bankruptcy in the district court of this district. Mr. William H. Young and Lemuel H. Tupper
807 were elected assignees by my creditors. They took possession of the property under the proceedings in bankruptcy, and while taking an inventory of it, the sheriff of this county, under an order from the bankrupt court, obtained by deception and fraud, again seized the property under these executions, and publicly sold it in the manner I have before stated. I have now stated the reasons briefly, and the only reasons why I filed my petition in bankruptcy. As I have before stated, nothing has been done about the bankruptcy proceedings from that time to this, and as far as I am concerned, I do not propose to make any move in that case towards the consummation of those proceedings, but on the other hand to pay all just and honest debts. The sheriff making that seizure deprived me of my credit, and thus prevented me from paying those unjust judgments. The property that I lost in those bankruptcy proceedings, and that which I lost in Wall street, was all my own; nobody was on any paper for me to the extent of a dollar that I now remember of. Creditors who appear in the bankruptcy proceedings were such as happened to come in the current transactions of business.

MARCUS P. NORTON.

Subscribed and sworn to before me this 2d day of September, 1878.

IRVING BROWNE,
Special Examiner.

At 6 o'clock p. m., counsel for complainant's counsel requests counsel for defendant to allow him to-morrow as extra time to complete the examination of several witnesses who have been orally subpœnaed,
808 and promised to attend, but who for business reasons have not been able to do so. Defendant's counsel refuses to extend the time as asked for for one day only, whereupon complainant's counsel asks the examiner to adjourn these proceedings until 7.30 o'clock this evening, to enable him to continue the examination of witnesses, until the stipulated time shall expire at twelve o'clock midnight.

Defendant's counsel states, with reference to an extension of time, that he has engagements in New York to-morrow, and that he will probably be engaged there for two or three days after to-morrow, but that as he has no desire to deprive complainant of any testimony which he may have, he is willing, in consideration of the present adjournment, that complainant should have extra time, after the next three days, for

taking his testimony, when he, defendant's counsel, can attend to it; and he objects to an adjournment to half-past seven o'clock, on the ground that the examiner has no power to hold his session at an unusual and unreasonable hour. And defendant's counsel requests the examiner to note the facts, firstly, that counsel and the examiner have sat in the examiner's room since four o'clock, it being now half past six, taking no testimony, there being no witness present; and secondly, that it does not appear that any subpœnas have been served on witnesses for to-day; and thirdly, that there is no guaranty given that there will be any witnesses on hand at half-past seven; and defendant's counsel says that he has made all his arrangements for going to New York to-night on the eight o'clock boat.

809 The examiner notes said three facts as requested, but the examiner takes judicial notice that the witness Norton has been on the witness stand giving testimony on his own behalf alone for the last three days, and might reasonably have anticipated a cross-examination of considerable length, but said cross examination was unexpectedly brief. Under the circumstances, the examiner does not deem the failure to have witnesses in attendance immediately upon the close of said Norton's testimony, and the absence of such witnesses for the space of two hours to be unreasonable; and inasmuch as the additional testimony proposed to be given by the said Norton is announced by him to be for the purpose of sustaining his character for truth and veracity against the defendant's attack, the examiner deems that the adjournment asked for is not unreasonable, and decides to sit during the evening to enable the complainant to supply the time thus lost during the day, and especially because this is the last day for the complainant to put in his evidence.

At the time and place of said adjournment, the complainant's counsel appears, and states that he finds it inconvenient to have witnesses present this evening for examination, on account of their absence and previous engagements; that there are eight witnesses who have gone into the country to pass the night, to return on the early morning train to-morrow, who had promised to appear to-morrow and be examined on behalf of complainant, and in support of Marcus P. Norton's character for truth and veracity; but the defendant's counsel having refused to extend the time except upon his own conditions, and having re-
810 fused to go on with the case to-morrow, complainant's counsel is obliged to forego the benefit of said testimony, and to suffer the evidence here to be closed, because the stipulated time for the taking of the same expires to-night at 12 o'clock.

No counsel appears for defendant.

But the witness Norton desires to supply a matter which had escaped his recollection in his last testimony, and is therefore recalled by complainant's counsel.

Q. 1. The witness Frederick G. Ransford, during his examination on the question of your truth and veracity, by defendant, stated substantially that he had endorsed notes for you, and loaned you money, and that you were still indebted to him by reason thereof; state what you know about those matters.

A. I have had no dealings of any kind with him for the past seventeen or eighteen years, and during that time I have not been indebted to him in any manner whatever for a single dollar. He never during that time presented a claim of any sort to me, and I never heard of any such thing until I heard it from him on his examination in this case. Previous to 1860, I had some money transactions with him, but those

were all settled and paid in full before that year. On the contrary, if he would make a fair and honorable settlement of all our business transactions previous to the year 1860, he would be largely indebted to me, not only for professional services, but growing out of an interest which I had previous to that time in railroad rail or track chair, upon which there had been granted a patent some time in the early part of 1857, if I remember right; that patent Ransford sold out and received
811 pay for the same, all of which he converted to his own use, and refused to make a settlement with me for my interest in the same. His statements about sending money West to have my wife come to Troy; about the payment of house rent to prevent my being turned out of doors, and other similar matters, are absolutely and unqualifiedly false in every respect. Whatever money I had of him previous to 1860 was money fairly and justly my due on business transactions between us. Having failed to keep his agreement with me about the patent of August 9, 1859, it is not likely that after that I would have had any business relations with him involving money or other property, and I did not have any such, as before stated, after 1860, to the present time. He has been very bitter and hostile towards me for a great many years, having at different times made ex-parte affidavits against me, and filed them in the Patent Office. His hostility commenced about the beginning of the year 1865. About 1870, he, Peter Low, and Jacob Shavor, then living in this city, made some sort of an arrangement with Jeremiah D. Green to stay in or near Washington and watch and ascertain what was being done by me with reference to my patent of April 14, 1863. By their false ex parte affidavits, made from time to time and used in the Patent Office, they made me considerable trouble, and hindered and prevented the progress of my business with reference to that patent. In the patent of April 14, 1863, neither Ransford nor Peter Low, nor Jeremiah D. Green, ever had any interest whatever. The only interest that they ever had in any patent granted to me was in the patent of August 9, 1859, a machine of no practical utility, it having been tested in the post-offices at New York, Washington, D. C., and Troy, New York, and in each of those post-offices pronounced a perfect failure. In the year 1863 or '64, the Postmaster-General communicated the trial and failure of the cutting canceling instrument
812 to the Congress of the United States. That report may be found in the official Post Office Department report to Congress in the year 1863 or 1864.

MARCUS P. NORTON.

Subscribed and sworn to before me this 2d day of September, 1878.

IRVING BROWNE,
Special Examiner.

Whereupon the above examination is closed, for reasons stated by complainant's counsel, and at the hour of eleven o'clock p. m.

IRVING BROWNE,
Special Examiner.

813, 814 *Defendant's t stimony, taken by him under an order of the court, dated October 22, 1878.*

United States circuit court for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

SIR: Please to take notice that on the pleadings and evidence and all proceedings in this suit, and on affidavits and exhibits, copies of which are annexed, I shall move this court for leave to further cross-examine complainant's witness, Marcus P. Norton, with reference to the exhibits, and for such other order and relief as to the court shall deem meet, and that such motion will be made at the U. S. circuit court-room, in the city of New York, on the 21st day of October, inst., at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

New York, Oct. 14, 1878.

Yours, etc.,

STEWART L. WOODFORD,
U. S. Att'y, for Defendant.

To GEO. H. WILLIAMS, Esq.,
Of Counsel for Complainant, Washington, D. C.

815 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the 22d day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the Hon. Samuel Blatchford, circuit judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES. } In equity.

On reading and filing the annexed notice of motion, the annexed affidavits of S. B. Clarke, T. L. James, and D. A. Secombe, and the annexed exhibits, numbered one to twelve inclusive, and on motion of Stewart L. Woodford, U. S. district attorney and solicitor for the defendant, and after hearing Samuel B. Clarke, assistant district attorney, for the motion, and Geo. H. Williams, of counsel for complainant, in opposition, it is ordered that defendant have leave, and leave is hereby given him, to further cross-examine complainant's witness, Marcus P. Norton, with reference to said annexed exhibits; and complainant may re-examine said Norton with reference to the same. For the purpose of this
816 examination, said exhibits may be removed from the files and placed in the custody of John A. Shields, esq., a standing examiner of this court.

(Signed) SAMUEL BLATCHFORD.

Form agreed to.
S. B. C.
G. H. W.

(Endorsed:) U. S. circuit court, southern district of N. Y. Christopher C. Campbell vs. Thomas L. James. Order granting defendant leave to examine witness Marcus P. Norton. U. S. circuit court. Filed Oct. 23, 1878. John I. Davenport, clerk.

817 United States circuit court for the southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Testimony taken before John A. Shields, examiner, pursuant to an order made October 22, 1878, in the above-entitled cause.

NEW YORK, *Oct.* 23, 1878.

Present, S. B. Clarke, on the part of the defendant, and George H. Williams for the complainant.

MARCUS P. NORTON, recalled by the defendant for further cross-examination, being first duly sworn, testifies as follows:

X Q. 1. Look at the paper now shown you, which purports to be a letter from Marcus P. Norton to William W. Secombe, dated Washington, March 25, 1876, and state in whose handwriting it is.

A. It is in mine, written by me on the day of its date.

818 X Q. 2. Sent by you to Mr. Secombe, was it not?

A. I don't doubt but that it was.

X Q. 3. In that letter you ask Mr. Secombe to come to Washington. For what purpose did you wish that?

A. To answer the question it is necessary for me to make a statement by way of explaining this letter, and how I came to write it; that statement will necessarily be a part of my answer. If counsel will allow me to make it I will give full answer to the question, but cannot well answer it without making the statement in connection with the answer.

X Q. 4. Please state for what purpose you wished Mr. Secombe to come to Washington at that time.

A. To see whether he intended to fulfill a second but verbal agreement made with me concerning the obtaining of compensation of the government for the use of the invention and letters-patent upon which this suit is founded, and further to see what it meant, that a man by the name of Jeremiah D. Green, of Troy, should have to do with that patent, if anything, as I then discovered that Green had introduced a bill into Congress in which this patent was mentioned. I also wanted to see him about a patent granted to me upon the 14th day of January, 1862, upon revolving or changing dating type wheels, for I thought that there was an opportunity to show that one T. J. W. Robertson had defrauded us out of that patent and the invention contained in it, and that by the course I had in view we might get Congress to pass a bill referring that matter to the Court of Claims, when I would have the opportunity to present to the court those matters and practices on the part of Robertson which I then and now believe to have been fraudulent. I also wanted to see him about the efforts that had been made to remove M. D. Leggett, who had been Commissioner of Patents, from office and also his chief clerk, Mr. Grinnell, who I then believed were parties with Mr. Robertson in those fraudulent transactions. The

819 office then being free from those two persons, and with different

persons I could have access to the records of the Patent Office from which I had been debarred for nearly five years, by an ex parte order made by Commissioner Leggett. And the examiner who had been hostile to me during my trouble with the Patent Office in 1871, having resigned or been removed from office, and two of the commissioners appointed by Leggett in his proceedings against me in that year having also resigned, I thought I had sufficient evidence to reverse the former action of the Commissioner of Patents, and to show that those proceedings were fraudulent; and by showing that, we might in a suit have the extension of the Robertson patent vacated and declared void. I am not certain whether the two commissioners were then out of the office, but one of them, Mr. C. M. Parks, had been removed by the order of Commissioner Leggett. Mr. Secombe had been manufacturing largely under the patent of January 14th, 1862, and had had a suit with Mr. Robertson, above named, and that suit being decided against Secombe broke up his business that he previously had been engaged in in this city. The proceedings in that case is what I ask for in this letter, on the first page, to be sent to me by express, if he didn't come. Being at that time, March 25th, 1876, permitted to transact business in and about the Patent Office, as for many years I had been permitted to do previous to Leggett's appointment as Commissioner, I was of the opinion that we could revive the reissue application of th 1862 patent, containing the revolving dates, and that by doing so it was my opinion that the interference with Mr. Robertson, which I had asked in 1871, and which had then been denied, could then be obtained, and that even there I might be able to show the matters which I believed, as I now do believe, to have been corrupt and fraudulent on the part of Robertson and
820 the Commissioner of Patents and the examiner, to whom I referred in the obtaining of the extension of the Robertson patent of September 22, 1857, for revolving dates. I wanted to advise with Mr. Secombe about this matter, and see if he was in condition to furnish expenses to carry it through, in case he desired to, and I stated substantially in that letter that I was so well convinced that I was willing to try it at my own expense, that part of it, if he couldn't.

(Letter offered in evidence and marked Defendant's Exhibit 190, Oct. 23, 1878. J. A. S., examiner.)

X Q. 5. Look at the paper now shown you, which purports to be a letter from Marcus P. Norton to William W. Secombe, dated Washington, March 28, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. It is in my handwriting, written on the day of its date, and sent by me to Mr. Secombe through the mail.

X Q. 6. What deed of trust is referred to therein?

A. I think it was one dated the 4th day of March, 1871. There was, however, another deed of trust beside that one, which related to those revolving dating wheels, and also to several patents granted to me for canceling internal revenue stamps, which Mr. Secombe was at that time manufacturing, and it may have referred to that deed of trust; for it will be observed by the letter that I had just previously spoken about the Robertson matter, and I also spoke about the post-office case just previous.

X Q. 7. Is not the deed of trust referred to in that letter the one stated in the bill of complaint to have been delivered to Miss Ingalls by Mr. Secombe, bearing date March 4, 1871?

821 A. I should judge from the letter that it did refer to that deed

of trust; and also to a previous one, to which I have referred to in my last answer.

X Q. 8. Do you not know that it refers to that deed of trust of March 4, 1871?

A. The last sentence in the letter but one does refer to that deed of trust. The rest of the letter refers to another deed of trust. I will read the part referred to which contains the deed of trust referred to in the bill, namely, "Why can't you come here now, and see what can be done about the April 14, 1863, patent, mentioned in your deed of trust?"

X Q. 9. Did Mr. Eddy have anything to do with that other deed of trust you refer to?

A. Eddy & Co. owned one-third of the patent of January 14, 1862, but he had nothing to do with the other patents, and had nothing to do with either of the deeds of trust that I have spoken of, that I know of.

X Q. 10. Did he know of the existence of that other deed of trust to which you referred, so far as you know?

A. I don't know that he did; I don't know that he ever saw either of the deeds of trust. Mr. Secombe made some arrangement with him about the matter.

X Q. 11. Mr. Eddy referred to in the letter is Mr. Charles Eddy, of Troy, I suppose?

A. Yes.

X Q. 12. The Green referred to in the letter is Mr. Jeremiah D. Green, of Troy, I suppose?

A. Yes.

X Q. 13. Did Green have anything to do with that other deed of trust or know of its existence?

A. Not to my knowledge.

X Q. 14. What did you mean by saying "Green is at work for himself"?

A. Well, I meant that Green was trying to obtain compensation from the government for the use of the revolving date invention then in use in the several departments of the government at Washing-
822 ton, as well as in the post money order offices in various parts of the country, and covered by the Robertson patent of September 22, 1857, in which Green claimed to own an interest through Frederick G. Ransford and Peter Low, of Troy, and that, in my opinion, knowing the character of Green, he would take anything he could get and make no returns to the others?

X Q. 15. Where was Green so working?

A. Why, Green was in Washington, and had made me a great deal of trouble in the Patent Office, and there was a bill pending before Congress asking that this revolving type dating invention be referred to the Court of Claims for adjudication for the use of that invention in the several departments of the government that I have named. I suppose he was looking after those matters, but precisely where I can't say.

X Q. 16. Mr. Green was one of the men who claimed compensation from the government for the use of the post-office stamp, under the 1859 patent, for several years succeeding 1869, was he not?

A. Well, in 1870, I think it was, this Mr. Green claimed to be the agent of the owners of the patent granted to me August 9, 1859, for post-office postmarking stamp, and he has so acted, as I have been informed, down to the present time, and I believe has acted in that capacity with the defendant's attorneys in this cause.

X Q. 17. Mr. Green instigated the bill to which you refer in this letter of March 28th, did he not?

A. No, sir. He took a bill that had been agreed upon by the Senate committee at the previous session and changed it to suit his own purpose, and then had it introduced and referred, or at least I suppose so, from the fact that I was told that he was engineering a bill of that kind; and upon discovering that fact, I wrote to Mr. Secombe about it; and I also judge from the manner in which I speak of that bill in this letter.

823 X Q. 18. You sent Mr. Secombe a copy of it, did you?

A. I can't answer that, for I don't recollect. I cent him some bill in a previous letter, but I presume I may have sent him a printed copy of that bill.

X Q. 19. Do you say that that bill related solely to the revolving wheel patent?

A. I think Green had put all my patents into that bill, and therein consisted the fraud I spoke of in my letter, as he had no right whatever, from any source that I know of, to meddle with the patent of April 14th, 1863, or any of the several other patents that I have referred to; but he did have with reference to the patent of August 9th, 1859.

X Q. 20. Did the bill cover the patent in suit April 14th, 1863?

A. I don't think that patent was named in the bill, but the bill was so drawn that, in my opinion, at that time, it would cover that patent.

X Q. 21. Was the revolving wheel patent named in the bill?

A. I have no present recollections about that.

X Q. 22. When you said that Green is at work for himself, you meant that he was striving to obtain compensation for the combined post-office stamp, was he not?

A. Nothing of that kind. I think that letter clearly shows what I thought Green was about, and also my opinion of Green, which I have never changed from that time to now, and do not now change it. I have never doubted but that Green was fraudulently engaged in trying to make the 1859 patent cover an invention that it never contained and never was designed to embrace or to cover.

X Q. 23. Was not Mr. Green working at the time this letter was written, March 28, to obtain compensation for the use of the combined post-office stamp?

A. In no different way than I have already answered, that I had any knowledge of.

824 X Q. 24. What way was that; engineering that bill, as you have said?

A. Engineering what bill?

X Q. 25. The bill you have spoken of as having been engineered by Mr. Green.

A. Yes; that's the bill about which I suppose he was performing some labor or service of which I have no knowledge of my own, excepting having met him in one of the committee rooms about that time.

X Q. 26. Was it not because of the bearing of that bill upon the combined post-office stamp matter, and because of other matters connected with the combined post-office stamp, that you desired Mr. Secombe to come on to Washington?

A. No, sir. I have already fully explained my invitation to Mr. Secombe to come to Washington. I will further add, that at that time there was a bill pending before the Committee on Patents, drawn by myself, introduced into the Senate by Senator Ingalls, and which had

been referred to the War Department for it to report upon, and which afterwards was reported to the Senate Committee by the Secretary of War, favorably. I know of no bill pending at that time asking for special legislation but the fraudulent bill I have spoken of, and that bill was pigeon-holed in the committee room of the Senate, and is there now for aught I know, because the chairman of that committee told me himself he was satisfied there was fraud or something wrong about it, and the bill was reported upon by him adversely a few days after, and the Senate adopted his report; that report and action of the Senate, that I refer to, was made in July, 1876. I mean by being pigeon holed, that it was reported adversely, and killed by the action of the Senate, and has never since been revived to my knowledge.

X Q. 27. How do you know that Green was endeavoring to obtain compensation for the revolving wheel stamp in March, 1876?

825 A. I think Mr. Green told me so himself, and he afterwards proposed to join in a general bill that would take everybody's patent to the Court of Claims for adjudication, that had been used by the government; and he so joined in that undertaking and appeared with me before the Committee on Patents several times during the long session of 1876. And a bill of that kind was agreed upon and reported by Mr. Wadleigh, chairman of the Committee on Patents of the Senate, and I have a copy of that report with me.

X Q. 28. When, in this letter of March 28, you say "you cannot have forgotten the terms of your deed of trust"—to what deed of trust did you refer; did you not refer to the deed of trust mentioned in the bill?

A. No, sir; I think I referred to the first deed of trust about the other patents; I mean the revolving date patents and the internal revenue canceling devices patented by me; I do not think there is any doubt on that, because in an interrogatory in the latter part of the letter I specifically referred to the patent of April 14th, 1863, about which there was also a deed of trust, clearly showing that I did not wish him to be confounded as to those two deeds of trust. If I had meant the deed of trust referred to in the question, I would not have made the interrogatory I did about the patent of April 14th, 1863.

X Q. 29. When in this letter you say "I think it quite strange that you are unwilling to push the business along under the deed of trust," what deed of trust did you there refer to?

A. I there referred to the first deed of trust about the revolving dates and internal revenue stamp canceling patents.

X Q. 30. When was that revolving wheel deed of trust made?

826 A. It was made, I think, some time in the fore part of the year 1870; the spring time, I think, in the month of May; and I am not certain but it might have been earlier than that, but not later.

X Q. 31. Where is that deed of trust now?

A. At the time of my settlement with Mr. Secombe in July, 1873, when he and the Secombe Manufacturing Co. reassigned everything to Miss Ingalls which had been assigned to him or the company, by her or myself, I gave to him that original deed of trust as one of the conditions of the settlement, as I also at the same time gave up to him the original deed of trust relating to the patent of April 14th, 1863; and having never seen them since, I do not know where they or either of them are at this time.

(Letter offered in evidence, and marked Defendant's Exhibit No. 191, Oct. 23, 1878, J. A. S., Ex'r.)

X Q. 32. Look at the paper now shown you, which purports to be a

letter between the same parties, dated Washington, March 31, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. It is in my handwriting, written at the date of it, and sent to Mr. Secombe through the mail.

X Q. 33. What bill is referred to in it?

A. I think it is a modified bill, introduced into the House by hon. Martin I. Townsend, of Troy. My impression now is that I wanted to change the bill that had been introduced into the Senate by Senator Ingalls, and it having been acted upon and recommended by the Secretary of War, I thought it best not to undertake to change it, but to prepare an entire new bill and have it introduced into the House, and, by the Committee on Patents, referred to the Secretary of War for his opinion about it, and it was so done, and this is the second bill.

827 X Q. 34. Why did you send a copy of that bill to Mr. Secombe?

A. On my way to Washington some time about the middle of March, 1876, I called upon Mr. Secombe in New York, having heard that he had recovered from his financial embarrassments, and during our interview I told him what I was going to Washington for: I showed him a printed copy of the bill that Senator Ingalls had introduced into the Senate, and he said that if that bill should become a law, he would like to make a new arrangement, and furnish me with the necessary means required in Washington, and take an interest in the bill, or the different patents that he had had assignments of and deeds of trust about; we made an arrangement of that kind at that time, and he was to furnish the money and take an interest, and, as a matter of course, I desired he should see that bill, and sent him, I presume, a printed copy of that bill, as I also did of others on the same subject, after they had been amended or changed by the committee or by the different departments to whom they were submitted; my principal business in calling upon Mr. Secombe at that time was to see if we could not in some way revive the matter involved in his suit with Mr. Robertson, for I had been always dissatisfied with the course that had been pursued in that case by his counsel who argued the case before the court; it was in the course of the conversation about that matter that this Court of Claims bill came up between us.

(Letter offered in evidence, and marked Defendant's Exhibit No. 192, Oct. 23, 1878. J. A. S., Ex'r.)

X Q. 35. Look at the paper now shown you, which purports to be a letter between the same parties, dated May 3, 1876, and state whose handwriting it is, and whether it was sent to Mr. Secombe.

828 A. It is my handwriting, written on that day, and sent by me to Mr. Secombe.

X Q. 36. When you say in this letter, "If you intend to go any further with the deed of trust, it will be necessary for you to furnish some money," etc., what deed of trust do you there refer to?

A. It refers to the patent of April 14th, 1863, to the deed of trust referred to in the assignment by Miss Ingalls to Secombe on the 4th of March, 1871, as a part of that assignment, and referred to on page 13 of the amended bill, folios 51 and 52; and I meant by that language to refer to the second or subsequent agreement we made in New York, while on my way to Washington, as the original deed was substantially the same as our subsequent verbal agreement, and it was to stand in that condition until we ascertained whether that bill would become a law or not.

X Q. 37. The bill referred to in this letter, I understand, covers the patent of April 14, 1863?

A. No more that patent than any other patent used by the government in any of its departments. The patent on which the suit was founded is not mentioned in that bill at all; the bill proposed general legislation upon the subject of patents infringed by officers in the employ of the government.

(Letter offered in evidence, and marked Defendant's Exhibit No. 193, Oct. 23, 1878. J. A. S., ex'r.)

X Q. 38. Look at the paper now shown you, which purports to be a letter between the same parties, dated August 7, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. It is in mine, written on the date of it, and sent to Mr. Secombe through the mail.

X Q. 39. What bill is referred to in it?

829 A. It is a bill before Congress last above referred to, House bill No. 3743, which was substituted by the Senate committee for the bill which had been introduced by Senator Ingalls, and it was this Senate amendment that I inclosed in this letter, it being the bill reported by Mr. Senator Wadleigh, which I have before spoken of.

X Q. 40. You speak of "the case" being tried at the next term of court; what case?

A. I suppose that that referred to a case that might be brought under that bill, should it become a law.

X Q. 41. Under what patent?

A. I suppose it means the patent of April 14, 1863, about which Mr. Secombe and I had made a new and verbal arrangement in New York, when on my way to Washington, and I was trying to explain to him the practice under that bill were it a law, and showing my confidence in the proposed legislation, and to encourage him to carry out this subsequent verbal arrangement.

X Q. 42. You speak of there being "no more trouble about the stamp"; what stamp?

A. That refers to all kinds of stamps that I had patents upon, and that had been used by officers in the employ of the government, and the bill, were it a law, being general, anybody pretending to have any claim against the government could bring a suit under that bill; and that would include Mr. Green and all his party owning the August 9, 1859, patent, and each party coming in by separate bill before the court could have his rights, if he had any, properly adjudicated; and I meant by that, that that bill would save anybody else any further trouble of trying to defraud me of my patent of April 14, 1863, and I thought that that bill would set me free from those who had made me so much trouble about my patent of April 14, 1863, and put everybody upon an equal footing before the court; and I made an argument to that effect

830 before the committee having under consideration that bill, and the points suggested by me were unanimously adopted by the committee, and so reported in writing.

X Q. 43. You speak of money being had "on the stamp," and of persons who have "claimed in the stamp." What stamp did you refer to there?

A. Most undoubtedly to the one contained in and covered by the patent on which this suit is founded.

(Letter offered in evidence and marked Defendant's Exhibit No. 194, Oct. 23, 1878. J. A. S., ex'r.)

Adjourned by consent of counsel to Thursday, Oct. 24, 1878, at 10 o'clock a. m.

NEW YORK, *Oct.* 24, 1878.

Met pursuant to adjournment.
Present, counsel as before.

Cross examination of MARCUS P. NORTON resumed:

X Q. 44. Look at the paper now shown you, which purports to be a letter between the same parties, dated August 9, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe?

A. It is in my handwriting, written on the day of its date, and sent to Secombe through the mail.

(Letter offered in evidence and marked Defendant's Exhibit No. 195, Oct. 24, 1878, J. A. S., Ex'r.)

X Q. 45. Look at the paper now shown you, purporting to be
831 a letter between the same parties, dated August 11, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe?

A. The same answer as I made to the last question I make to this.

(Letter offered in evidence and marked Defendant's Exhibit No. 196, Oct. 24, 1878, J. A. S., Ex'r.)

X Q. 46. Look at the paper now shown you, purporting to be a letter between the same parties, dated September 23, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. I make the same answer that I made to the last question.

(Letter offered in evidence and marked Defendant's Exhibit No. 197, Oct. 24, 1878, J. A. S., Ex'r.)

X Q. 47. Look at the paper now shown you, purporting to be a letter between the same parties, dated October 30, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. The same answer as to the last question.

X Q. 48. What paper was it which you say you enclose herewith?

A. After my return from Washington, in August, 1876, and between the date of this letter of October 30, 1876, I ascertained that the reconveyance from the Secombe Manufacturing Co., and Mr. William W. Secombe, to Helen M. Ingalls, of the date of July 10, 1873, was not in her possession or in mine, and I went to Troy, saw Mr. Green, and asked him if he knew anything of the where-
832 abouts of that reconveyance, and he said he did not; I then came from Troy to New York, to see Mr. Secombe with reference to it, and I stated to him that that paper had been lost; as I had made diligent enquiries and searches for it, and could not find it, I asked him to make a new paper that would substantially be the same as the one that he had executed on the 10th of July, 1873, both for himself and the Secombe Manufacturing Company; he said that he would do so, but he thought I ought to be willing to refund him some part, at least, of the money that he had spent in the stamp business on my patents; that he was poor and needed it, and that he had been told that I was in ample condition to make such repayment if I chose to do so. I told him that I would not consent to do any such thing, as I had settled with him once all of our matters of difference and money dealings, and that I did not propose to do so again, simply because a paper that he had executed had been lost or could not be found. I told him that he knew that he had executed the paper, and that I would not submit to any such demand upon me as he had made because he had the advantage of the paper having been lost. I told him that I would put him in a position before the court where we would try the matters that were then being talked over between us. I left him, went to Canaan Four Corners,

where this letter is dated, where my family were then residing, and there talked the matter over with Miss Ingalls, stating to her the substance of my interview with Mr. Secombe. She thought it best to acceed to his demand, as it was but a few thousand dollars, and thus avoid any complication or further controversy with him. I thereupon prepared such paper as I thought sufficient, to take the place of the paper which I supposed at that time to have been lost. I put into that paper a clause covering the money demand that Secombe had made upon me in my interview with him in New York, and made the
833 conditions of its payment to correspond with his suggestions to me about the same while in New York, and also as had been repeated by him in a letter written by him to me on the 4th day of October, 1876, in which letter he promised to make the reconveyance if I complied with that demand; that paper, I have no doubt, is the one referred to in this letter of October 30, 1876, and covered by the question; it was a paper from him to Miss Ingalls, and should I see it I would be able to identify it. In that interview with Mr. Secombe in New York, I told him that what he had heard about my being in condition to pay money was not true. He then suggested that the writing could be so drawn as to secure to him the amount he had named, and that the payment should be paid to him out of the first money received, if any, from this patent, upon which this suit is founded. I made a provision of that kind in that paper.

X Q. 49. Do you say that between the month of August and October 30, 1876, you went to Troy, saw Mr. Green, and asked him as to the whereabouts of the assignment from the Secombe Manufacturing Company, and Mr. William W. Secombe to Helen M. Ingalls, of July 10, 1873?

A. My recollections about this matter being refreshed by the examination of these letters, I believe that I am now correct as to the time when I discovered the loss of this paper, and I went to inquire of Green about it because I then remembered of having sent it to him while he was in Washington, or of having handed it to him just before he went to Washington, for the purpose of having it put on record in the Patent Office; but whether he had returned it to me after that or not I did not know; hence my inquiry of him about it.

X Q. 50. Do you swear that between the month of August and October 30th, 1876, you asked Mr. Green in Troy as to the whereabouts of that assignment?

834 A. What I have already stated with reference to that matter are my present best recollections of it, and as to time I have given my best present recollections, aided as I have been by the examination of these letters; I cannot swear positive as to time, because I have no memorandum of it in writing.

X *B*. 51. Do you swear that at that interview with Mr. Green, he told you he did not know where that assignment was?

A. I do not swear as to the exact words used by Mr. Green, but in substance I understood him to say, that if he had not returned that paper to me he did not know where it was.

X Q. 52. Do you swear that that was the substance of what he said?

A. I have stated to you my best present recollections of that, and of my understanding of it; I certainly left him with that impression, and came to New York to see Secombe about it.

X Q. 53. Have you any doubt that that was the substance of what he said?

A. I have no doubt but that my last answer is the truth about that matter.

X Q. 54. Have you any doubt that the substance of what Mr. Green said was that he didn't know where that assignment was?

A. I have said that I could not tell the words used by Mr. Green; he might have said that he never had had it; I left him under the impression that he didn't know anything about it, and came to New York, as before stated. I certainly would not have come to New York if I had not understood that he did not know anything about it; this is what I call the substance of my interview with Mr. Green about that paper, and I have no doubts about it.

X Q. 55. You are a lawyer and understand the meaning of the last question; please answer it without evasion.

(Last question read.)

835 A. I have already given my best answer to the question as I understand it, and have not evaded or attempted to evade an answer to it. I have given my best recollections, my understanding and my impressions about the inquiries I made of Mr. Green, and his answer to me. I think I have substantially stated the substance of that interview, of which I have no doubt but what I am correct, and recollecting the fact that I came from Troy to New York to see Secombe, and saw him about the same matter, I have no doubt but what I have stated is correct in reference to my interview with Green.

X Q. 56. Why did you make that inquiry of Mr. Green at that time, as to the whereabouts of the assignment of July 10, 1873?

A. Not finding it among my papers, or those kept by Miss Ingalls, I became impressed with the idea that I had let Mr. Green take that paper, either personally or by mail, to have it recorded in the Patent Office, and I wanted to satisfy that impression and thought it best to see him about it, and I also wanted to find the paper.

X Q. 57. You gave or sent it to Mr. Green for the purpose of having it recorded in the Patent Office, did you?

A. That was my impression at that time.

(Letter of October 30, 1876, offered in evidence and marked Defendant's Exhibit No. 198. October 24, 1878, J. A. S., Ex'r.)

X Q. 58. Look at the paper now shown you, which purports to be a draft assignment of the patent of April 14, 1863, from William W. Secombe to Helen M. Ingalls, and also the draft acknowledgment appended, and state whether they are in your handwriting or not?

A. They are both in my handwriting, and this is the paper referred to in Defendant's Exhibit 198, the letter of October 30, 1876.

836 (Paper offered in evidence and marked Defendant's Exhibit 199, October 24, 1878, J. A. S., ex'r.)

X Q. 59. Look at the paper now shown you, purporting to be a letter from Marcus P. Norton to W. W. Secombe, also dated October 30, 1876, and state in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. It is in my handwriting, and was sent to Secombe through the mail, and written on the day of its date.

(Letter offered in evidence and marked Defendant's Exhibit 200, Oct. 24, 1878, J. A. S., ex'r.)

X Q. 60. Look at the paper now shown you, which purports to be a letter between the same parties, dated February 6, 1877, and say in whose handwriting it is, and whether it was sent to Mr. Secombe.

A. My handwriting, written on the day of its date, and sent to Mr. Secombe through the mail.

X Q. 61. What paper is that which you refer to in that letter a shaving been sent to Mr. Secombe about four months ago?

A. It is the paper that was sent in the letter of Oct. 30, 1876, and is Defendant's Exhibit No. 199.

(Letter offered in evidence and marked Defendant's Exhibit No. 201, Oct. 24, 1878, J. A. S., ex'r.)

Redirect examination:

R. D. 62. I find in this unsigned assignment, Defendant's Exhibit 199, that the proposition is to pay Mr. Secombe the money which he had
837 expended prior to the assignment of Miss Ingalls to him; is it to be understood from that that Mr. Secombe claimed nothing for money expended after the assignment, or was it some old claim brought up at the time of the conversation referred to by you with him?

A. That related to money that he had expended in the case of Robertson against the Secombe Manufacturing Co. on revolving dating type, and on an invention of that kind upon which a patent had been granted to me, and had no reference whatever to any money expended by him on the patent in suit.

R. D. 63. I understand, then, that Secombe did not claim that Miss Ingalls was indebted and should refund to him money that he had expended under her assignment?

(Objected to as leading.)

A. Your understanding about that is correct.

R. D. 64. You have mentioned in one of your answers that the deeds of trust at the time of your settlement with Mr. Secombe were delivered up to him; do you mean the declarations of trust which he gave to Miss Ingalls?

A. Yes; I mean those that were executed by him at the time that she assigned to him and the Secombe Manufacturing Co. the patents I have named, and which were papers not recorded in the Patent Office.

R. D. 65. You speak of a settlement with Mr. Secombe; state briefly what it was and the occasion of it.

(Objected to as not proper on this redirect.)

A. Mr. Secombe and the Secombe Manufacturing Co. had absolutely failed, and refused to comply with the terms and conditions of those two deeds or declarations in trust, each of which contained the
838 conditions upon which they received title to the patents I have named; they were indebted to Miss Ingalls and myself for royalties on the internal revenue canceling stamps manufactured under my patents; Mr. Secombe was also indebted to me for professional services that I had rendered to him, and also to the Secombe Manufacturing Company. Under these circumstances I thought it time to have those matters settled definitely. I called upon Mr. Secombe with reference to them; I stated to him that, according to the terms and conditions of those deeds of trust, he and the Secombe Manufacturing Company had forfeited all right and title to the patents that I had named, because they had not kept the conditions of those deeds of trust, and to this he assented. I then called his attention to my bill for services and to these royalties of which I have spoken, and about those we had a disagreement. After that I brought a suit against him in the supreme court of this State, and before the time to answer had expired, as stipulated between counsel, I was in New York and again saw Mr. Secombe, and all these matters were amicably settled between us, and the deed of reconveyance, dated July 10, 1873, was made and delivered to me as a per-

manent closing up of all those matters, and I discontinued the suit against him.

R. D. 66. Reference has been made in your examination by the defendant's counsel to two or more deeds of trust; did Miss Ingalls ever execute to W. W. Secombe more than one assignment? I do not now refer to any assignment to the Secombe Manufacturing Co.

(Objected to as not proper on this examination, and as immaterial.)

A. She never did but one, and that was dated March 4, 1871, and that was accompanied by a declaration of trust signed by him.

839 R. D. 67. Referring to the assignment by W. W. Secombe and the Secombe Manufacturing Company to Miss Ingalls, which has been frequently spoken of in the preceding examination, state where and by whom that assignment was drawn.

A. It was drawn by me in this city on the same day that it was signed by the Secombe Manufacturing Company and by Mr. Secombe.

R. D. 68. Why were not the patents referred to generally in that assignment named in detail by number and date?

(Objected to as not proper on this examination.)

A. When I began to prepare the instrument I intended to do that, but there being several patents I changed my purpose, because I could not furnish all of the dates or numbers accurately, and believing it was not necessary to specify the dates or numbers, I prepared the paper so that it should cover each and every of the patents I had testified about without reference to dates or numbers.

R. D. 69. State whether any, and, if so, what patents were issued in 1870, excepting the one on which this is brought, in which Secombe had any interest.

(Same objection.)

A. I know of none others, excepting those that related to the invention and improvements upon which the bill in this suit is founded.

R. D. 70. In your letter to Secombe, dated March 31st, 1876, you say, "Now, if you are wishing to continue under the deed of trust, you must help in this matter;" has that reference to your interview with Secombe on your way to Washington?

(Objected to as leading.)

840 A. Yes; on my way to Washington in 1876, during the long session of Congress in that year, and at the time the verbal agreement was made that I testified to in my examination.

R. D. 71. You say in your letter to Secombe of May 3d, 1876, "now if you intend to go any further with the deed of trust, it will be necessary for you to furnish some money at once to pay necessary expenses." To what does that refer?

A. That refers to my interview with Secombe on my way to Washington in 1876, when the verbal agreement was made which I have spoken of. The time, I think, was in February or March of that year.

R. D. 72. In your letter of August 7, 1876, to Secombe, you say: "When I last saw you I understood from you that you would, with me, bear one-half the expense, and so thinking, I came on here and have done as I have." To what does that refer?

A. That refers to my interview with Mr. Secombe and the new arrangement that was made between us in February or March, 1876, and which I have before spoken of.

R. D. 73. You say in that letter, "I would like you to give me prompt answer to this letter, for if you still refuse to share at least in these expenses, then I must at once make other arrangements." What did you mean by that?

A. That referred to this same new arrangement that I have spoken of, and I meant that if he did not furnish the means that he had agreed to, this verbal agreement should terminate.

R. D. 74. In your letter of August 9, 1876, you say, "I desire to know definitely and at once, because I will look elsewhere among my friends just as soon as you throw up the sponge, as you seem to have done;" and you further say in the same letter, "I want the money, and if you will not furnish it and do as you agreed to do, very well: of course
841 no one can prevent your entire abandonment of the case and claim." State what idea you intended to convey to Mr. Secombe in those expressions?

(Objected to because the words speak for themselves.)

A. Those words have reference to this same new arrangement of which I have spoken, and I intended to have him understand, that not having furnished the money he agreed to furnish me with at the time I have spoken of, that I considered it a forfeiture or abandonment of that arrangement, and that he could not expect to hold me to it. The case and claim before referred to there relates to the general patent bill that I had prepared and presented to Congress in that year, and about which I have testified.

R. D. 75. Was there any understanding between you and Secombe, or anything said to the effect that if he furnished means to secure the passage of this bill he might go on under the deed of trust?

(Objected to as leading.)

A. Yes; the understanding was that the old deed of trust should serve as a guide, but on my furnishing half of the means, as I agreed to, the amount fixed in that deed as his compensation should be reduced one-half, and I should be at liberty to charge for services rendered in preparing and attending to the passage of that bill; but the old deed of trust was in no way revived, excepting as a guide to our understanding, the title having been reconveyed to Miss Ingalls. I was unwilling to enter into any written agreement with him until after the bill had become a law, and I knew that he had furnished the necessary expenses that he had agreed to furnish.

R. D. 76. What do you mean by saying in your letter to Secombe of August 11, "you ought to help me under the deed of trust you
842 now hold and now in force, and will be, so long as you fulfill its provisions"?

A. That refers to this verbal agreement, and I treated it in that way on the grounds that I have stated in my last answer.

R. D. 77. What was your idea as to the assignment of the 10th of July, 1873, when you were unable to find it, as affecting the title between Secombe and Miss Ingalls?

A. My idea was that that assignment being lost and unrecorded in the Patent Office, that Mr. Secombe would be able to hold under the deed of trust between him and Miss Ingalls of the 4th of March, 1871, as that deed was then on record in the Patent Office. It being so recorded, my idea was that this verbal agreement of which I have spoken, as well as the lost re-assignment to her by Secombe, would, in law, be swept away by the fact that his recorded assignment that I have spoken of would appear upon the public record as showing the title in him, against which no verbal statement would prevail.

R. D. 78. When did you first discover that the assignment of Secombe to Miss Ingalls of July 10, 1873, was recorded?

A. It was in the month of June, 1877, in the Patent Office, while I was there examining the records for the purpose of obtaining certified copies

of such assignment papers as I thought would be necessary to use in this case. In looking over the digest of assignments I saw an entry of an assignment which the record stated had been delivered to Mr. J. D. Green. I took a memorandum of it, went to the record book to examine it—see what it was—and to my surprise found it to be a record of this identical assignment of July 10, 1873.

R. D. 79. Was that before or after this suit was commenced?

A. The bill in this suit was filed on the fourth day of that month in this court, and it was some days after the filing of the bill.

843 R. D. 80. You have stated in answer to defendant's counsel, and these letters also state, that you sent to Mr. Secombe for his consideration, bills, papers, etc.; did you ever exhibit to him any other documents or papers than those you have mentioned; and, if so, what were they?

A. I did; on the same day that I filed the bill in this case in court, I mean the original bill, I furnished him a written copy of it, and left that evening for Washington. On discovering the record of the re-assignment of July 10, 1873, I obtained from the Patent Office two certified copies of it. On my return to New York in July, after I called on Mr. Secombe, explained to him that that assignment was not lost, that it had been recorded within a short time after its date, and that I had a certified copy of it, which I delivered to him and have never seen it since. On communicating this discovery and other things to complainant's counsel he deemed it best to prepare and file an amended bill. That was done under stipulation of counsel. The original, and the bill as amended, were soon thereafter printed, and I furnished Mr. Secombe in his office with a printed copy of both bills, which was the last time I ever saw him alive.

R. D. 81. Was there anything said on the subject matter of the bill and assignment between you and him at that time; and, if so, what?

(Objected to on the ground as not proper in this examination.)

A. There was, about both; he said that the production of the certified copy of the assignment would deprive him of the money that he intended to compel me to pay, as had been proposed in my efforts to get him to make a new assignment when I supposed the one of July 10th, 1873, was lost; that the amended bill was proper, and that he had

844 no further claim to make. And I then asked him to deliver to me all the papers and models and engraved or stereotyped plates that he had relating to this invention and patent embraced in the bill in this case. He said he would, and at that time furnished me with part of them. Others he could not readily find at his office, but said that he would look them all up and deliver them to me the next time I came to New York. The engravings I speak of are now in the possession of the printer printing the complainant's case, and one of the models that he gave me at that time is in evidence in this case.

R. D. 82. When did you first see the administrator of W. W. Secombe's estate?

A. Never until the forenoon of to-day, when he came in this room, and was introduced to me by defendant's counsel, now present.

R. D. 83. Have you any reason to believe that he knew of the pendency of this suit before the first of the present month, when it is alleged that he communicated information as to these letters to the defendant's counsel?

A. I have.

R. D. 84. State what those reasons are?

(Objected to as immaterial.)

A. The next time I came to New York after the last time that I saw Mr. Secombe alive, I went to his office to get the papers that he had promised me; on entering the office I met Mr. Secombe's partner in business, saw that Mr. Secombe was not there, and, enquiring after him of his partner, was told that Mr. Secombe had suddenly died four or five days before. I enquired of him if he knew anything about Mr. Secombe's papers, and he told me that Secombe's brother had been there and had taken them all away. I obtained of him the name and address of that brother and wrote him, asking him to send to me those papers,
845 as they were needed for use, and he answered the letter, and this is how I have reasons to believe he knew about it, as I think I mentioned the circumstance of the suit in that letter.

R. D. 85. Has that brother and administrator ever claimed to you, in any way, that the estate of W. W. Secombe was interested in this suit? (Objected to as immaterial.)

A. No, I never heard or dreamed of any such thing until I received motion papers from you a few days ago about the matter that I have been examined here yesterday and to day by Mr. Clarke.

Re-cross by Mr. CLARKE:

R. C. 86. When was the verbal agreement made that you have spoken of between you and Mr. Secombe, to which as you say the statements in these letters about Mr. Secombe continuing under the deed of trust relate?

A. While on my way to Washington, either in the last part of February, or the fore part of March, 1876—I am inclined to think, however, that it was in the fore part of March, 1876.

R. C. 87. Whereabouts?

A. In this city and in Mr. Secombe's office.

R. C. 88. Where was that?

A. It was either in Broadway or else where Mr. Moore, his partner, is now or was carrying on the business of manufacturing Moore's pills; I don't remember the street or number.

R. C. 89. Mr. Secombe's usual place of business at that time, was it?

A. Yes; so far as I know.

R. C. 90. Who was present at the interview with him?

A. No one but Secombe and myself.

846 R. C. 91. I understand you to mean by your explanation, that it was only because of this verbal agreement that you made use of the expressions about Mr. Secombe's continuing under the deed of trust in these letters; is that the way you wish to be understood?

A. Substantially so, because I knew of the reconveyance which had been made July 10, 1873, and I knew that he knew it and understood it; and I suppose that he also understood the verbal agreement of which I have spoken, and that is the reason I used those expressions about the deed of trust in those letters.

R. C. 92. Was not the patent, division B. No. 4144, issued on the 4th of October, 1870, to the Secombe Manufacturing Company of New York, as your assignee by mesne assignments?

A. A certified copy of that patent has already been put in evidence by the complainant, and that will best show the action of the Patent Office in the reissuing the division referred to. I do not think that I made any assignment to the Secombe Manufacturing Company of that division, but that Miss Ingalls did some time in the summer of 1870, or after the application for reissue was made, and before the issuing of either division; and hence it was that division A was reissued to her,

and division B reissued to the Secombe Manufacturing Company, because the Patent Office would not have been apt to have reissued the divisions in the manner in which it did, if she had not, pending the application to reissue, assigned one division to the Secombe Manufacturing Company; otherwise both divisions must have been reissued to her on her application for reissue of that patent in two divisions, each division being for separate and distinct inventions, but embraced in the original patent.

R. C. 93. You say that you did not assign that division to the Secombe Manufacturing Company; did you ever assign any other pat-
847 ent to that company, or to W. W. Secombe, as president thereof?

A. I think I did; some patent about the internal revenue canceling device; I had several such patents, but I have no recollection of any assignment ever having made to Mr. Secombe, as president of that company; there are some applications for patents now before the Patent Office, some of which I think in 1871 I assigned to the Secombe Manufacturing Company, and the patents were never granted, and I have no recollection of making any assignment to anybody of division B inquired about, because the patent of which that was a reissue I had assigned to Miss Ingalls about the 20th of October, 1869, and since then have never had the title to it.

R. C. 94. Did you ever assign either the original patent now in suit, or any of its reissues, to the Secombe Manufacturing Company, or to W. W. Secombe, as president thereof?

A. I never did, to my knowledge.

R. C. 95. You say you had a conversation with Mr. Secombe about this suit in June, 1877; where was that?

A. That was in his office in Moore's Pill Factory that I have spoken of.

R. C. 96. With reference to the settlement that you have spoken of in 1872 or 1873, before the answer in your State court suit was received, was that settlement oral or in writing?

A. It was oral with the exception of the reconveyance of the 10th of July, 1873.

R. C. 97. Was that the time of the settlement, the 10th of July, 1873?

A. That is the day on which the settlement was consummated.

R. C. 98. Where was the settlement made and consummated?

A. The settlement was agreed upon in my room in the hotel I
848 was then stoping at in New York City; the assignment was signed by Mr. Secombe, at No. 7 Park Place, in this city, at his office and place of business.

R. C. 99. Who was present while that settlement was being made?

A. Nobody but Secombe and myself.

R. C. 100. What was done with the suit in the State court?

A. It was discontinued, and I paid my attorneys their costs.

R. C. 101. What deed of trust was ever recorded on the 4th of March, 1871?

A. I know of none; there was one dated on that day; that one was recorded a few days after.

R. C. 102. In your answer to question 77, you speak of a deed of trust of the 4th of March, 1871, as being on record; what did you mean?

A. I mean the deed of assignment made in trust, accompanied by a written declaration of trust; the declaration of trust was never recorded, but it is mentioned and described in the deed of assignment, made in trust by Miss Ingalls to Mr. Secombe, March 4th, 1871.

R. C. 103. Have you any of Mr. Secombe's letters, written in connec-

tion with these that have been put in evidence; I mean letters from Mr. Secombe to you?

A. I have not, but wish I had, for they would confirm every statement I have made on this examination; there were several of them.

R. C. 104. Where are they?

A. They were destroyed by me on reading, such as came to Washington, and those that came to Canaan and Troy.

R. C. 105. At the time of their receipts?

A. I mean the time they were received, or very soon after.

849 Redirect examination:

By Mr. WILLIAMS:

R. D. 106. You may state if I did not write to you, when I received notice of the motion under which this examination is made, to bring any or all letters of Mr. Secombe's you had in your possession for my examination, whether you brought any, and, if you did not, why not.

A. You did write to me such a letter; I brought none to you because they had been destroyed, as I have previously stated, and I so stated to you on your verbal inquiry made to me when we first met at the hotel on Tuesday.

R. D. 107. Did Mr. Secombe furnish you with money while in Washington, in accordance with the request in your letters?

(Objected to as not proper in this examination.)

A. Not a dollar, nor at any other time.

MARCUS P. NORTON.

Sworn to before me October 24th, 1878.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned sine die.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, an examiner in equity, duly appointed, qualified, and sworn in the circuit court of the United States for the southern district of New York, in the second circuit, do hereby certify that
850 the foregoing are the proofs for final hearing taken before me in the cause in the caption named, pursuant to an order made October 22d, 1878.

And I do further certify that I have been attended by Hon. George H. Williams, on the part of the complainant, and by Samuel B. Clarke, esq., on the part of the defendant.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said proofs and caption named, nor in any way interested in the event of the cause named in said caption.

JOHN A. SHIELDS,
Examiner.

851 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

SIR: Please to take notice that all defendant's depositions and ex-

hibits, taken and offered in evidence before John A. Shields, esq., examiner; Irving Browne, esq., special examiner; Nelson K. Hopkins, esq., special examiner; J. G. Pomerene, esq., special examiner; Hannibal Forbes, esq., special examiner; C. P. Taft, esq., special examiner, and A. J. Falls, esq., special examiner, have been filed in the office of the clerk of this court.

New York, October 11, 1878.

Yours, etc.,

STEWART L. WOODFORD,
U. S. Att'y for Defendant.

To MARCUS P. NORTON, Esq.,
Solicitor for Compl't.

852 (Endorsed:) U. S. circuit court, southern district of New York. Campbell vs. James. Notice of filing defendant's testimony. Stewart L. Woodford, U. S. att'y, for defendant.

Due and personal service by copy hereof is hereby admitted this 25th day of October, 1878.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

Served October 24, 1878.

Circuit court of the United States for the southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

To STEWART L. WOODFORD, Esq.,
U. S. Att'y and Solicitor for Defendant, New York:

SIR: Please to take notice that each and every deposition
853 taken, as well as the several exhibits offered and filed in this cause from time to time as evidence therein, as well as all proofs herein taken by and before John A. Shields, one of the standing examiners of this court; also by and before Irving Browne, of Troy, N. Y., special examiner duly appointed by the court; also by and before J. G. Pomerene, of Cleveland, Ohio; also by and before A. J. Falls, of Washington, D. C., also special examiner duly appointed by the court, have been by them duly transmitted to the clerk of this court and by him duly filed in this court, and that the same are now on file in said clerk's office.

MARCUS P. NORTON,
Complainant's Solicitor, Troy, N. Y.

Dated October 25th, 1878.

(Endorsed:) In the circuit court of the U. S., southern district of New York. In equity. Christopher C. Campbell vs. Thomas L. James.

Notice of the transmission and filing of complainant's proofs and evidence in this cause to the clerk of this court and by him filed therein.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

Due and personal service by copy hereof is hereby admitted this 25th day of October, 1878.

STEWART L. WOODFORD,
U. S. Att'y, Solicitor for Defendant, New York.

854 *Defendant's Exhibit No.* 190.—*October* 23, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL (F. TENNEY & CO.),
Washington, D. C., March 25, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: I enclose herewith a bill introduced by a man by the name of Green, from Troy. It will show for itself. I think you had better come on here as early as next Monday night, and we will look after the fellow Green a little.

I want you to bring me a complete copy of your case with Robertson and his frauds. If you can't come send it to me by express at once. I am told in Patent Office that we can now get up that reissue application of the 1862, containing the revolving dates, and then get it into interference with Robertson; if so, we may yet save a little in that direction. I am willing to try it at my own expense. You could then sue Betts & Co., and make them come down for damages, too.

That office are now my friends—Grinnell, Leggett & Co., all frauds, are out, and out in disgrace, and to stay, too.

Yours, in haste,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed Nov. 2, 1878. John I. Davenport, clerk.

855 *Defendant's Exhibit No.* 191.—*October* 23, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL (F. TENNEY & CO.),
Washington, D. C., March 28, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: Your letter of yesterday's date is received. In answer, let me say that what I wanted from you was one of your printed books of evidence in the case of Robertson vs. Secombe Manufacturing Co. I meant to have said that in my letter. A "printed book" of our proofs in that case I wanted for my own use here at the Patent Office.

I did not ask you to come here about the Robertson case, but to see if something could not be done about my post-office case.

You cannot have forgotten the terms of your deed of trust.

Green is at work for himself. He don't work for or think of any one but "Green." Were he to be let alone in the business he is in, no one but Green would ever get a cent. I look upon him as a villain, a thief, and a most unscrupulous scoundrel, as well as a man void of the truth.

856 Now, let me ask if you approve of the bill I sent you in my last letter to you. I think it quite strange that you are unwilling to push the business along under the deed of trust. I have been trying to find where Eddy and his party stand, but have concluded that they are out, and yet it may be that they are with Green. The bill I

sent you never can pass this or any other Congress—never. It is a fraud, of the dirtiest kind at that; it is a cheat and a vile swindle.

Why can't you come here, now, and see what can be done about the April 14, 1863, patent, mentioned in your deed of trust? Send me the "printed book" of your proofs.

Truly, etc.,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed Nov 2, 1878. John I. Davenport, clerk.

857 *Defendant's Exhibit No.* 192—*October* 23, 1878..—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL (F. TENNEY & Co.),
Washington, D. C., March 31, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: I received a printed copy of motion papers in your case with Robertson on yesterday, and from you.

They were not what I wrote for or would like to have. I wrote as plain as I could, telling you what I wanted, and as you do not understand me, I will say no more about the same.

I enclose herewith printed copy of a bill which is now before the Committee on Patents in both Houses and having consideration. I hope you will look it over carefully and say what you think about it. It has the approval of the Secretary of War; also, of General Butler, my counsel, who is here.

I have spent two weeks' time on this matter, and gotten it where it now is. This is why I wrote you to come on here. Now, if you are wishing to continue under the deed of trust, you must help in this matter. Some expense money is wanted, and that too, now. Had
858 you come here, I would have convinced you that this bill can be passed. Senator Ingalls has introduced the same bill in the Senate, and that committee has acted. The House committee are now at work on it. Write me about it and just what you are willing to do.

In haste, etc.,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed November 2, 1878. John I. Davenport, clerk.

859 *Defendant's Exhibit No.* 193.—*October* 23, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL (F. TENNEY & Co.),
Washington, D. C., May 3, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: I enclose to you herewith executive document No. 158, 44th Congress, first session.

It contains the bill which has been agreed upon, and which I have marked in blue pencil along the margin thereof.

You will find also official communications from War Department; also letter from Chief of Ordinance, fully and without reserve approving the bill; also, letter of Secretary of War with recommendations.

I hope you will examine this bill carefully. I am sure that you will find that it covers the entire ground, and that it is just the thing it purports to be.

Now this bill has been considered by both committees of the Senate and of the House. I think it can be passed.

I have been here for six weeks and over on my own expense,
860 and now, if you intend to go any further with the deed of trust, it will be necessary for you to furnish some money at once to pay necessary expenses. We need no money for any other purpose, but actual and necessary expenses must be paid. Therefore I ask you for money for that purpose in the passage of this bill.

If you do not intend to go any further on your deed of trust with me in patent of April 14, 1863, then, of course, I will have to pay my own expenses.

I expected to have heard from you a long time ago on this matter of expenses.

I wrote you requesting you to send me a copy of the printed evidence in your Robertson stamp case. You don't send it to me. It is a book of two or three hundred pages, and was printed by some one in Fulton street, who did it for one dollar per page. It takes in all the evidence. You cannot have forgotten it.

You remember that some 100 pages of it was printed at Troy and the rest in New York.

Write me at once about this expense matter.

In haste,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed November 2, 1878. John I. Davenport, clerk.

861 *Defendant's Exhibit No.* 194.—*October* 23, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL,
Washington, D. C., August 7th, 1876.

WM. M. SECOMBE, Esq.

DEAR SIR: Some time ago you wrote me something what Barnard had told you. Well, I did not reply to that letter at the time because I wanted to wait and get some permanent action on the bill and then write you. I now send enclosed herewith the original bill first prepared by me, and the amendment to the same; also the "Committee on Patents Report" of Senate on the bill. This amendment is the same as the House bill No. 3743, which I sent you over a month ago, and which the House Committee of Patents have agreed upon, but not yet reported it because they are awaiting the regular call of the committees so as to report it. Now, Mr. Secombe, there is not one shadow of doubt about this bill passing Congress and becoming a law; it may not pass the House at this session, and yet it may; all will depend on the time of

adjournment, which is not yet fixed upon. If it does not pass this session it will early in December next. It will not hinder any in the
862 getting of the case ready, as it will require full two months' time to get the bill and necessary papers ready to commence a suit under this new law, as shown in and by the enclosed bill. Then it can be filed in the Court of Claims here, and the case be tried at next term of court—next winter, and that is all we can do were the bill a law at this very moment. So, as it now stands, we lose nothing, even if the bill does not pass the House until next December.

Now, about Barnard; he is wholly and entirely mistaken about Green. I told Barnard no such thing as you have written me. He did ask me about Green. I told him he was here. He then said: "How are you getting with him?" I said, "Well enough;" and there the conversation ended. I did not even tell Barnard what I was doing here, only that I was trying to get along with the matter which I thought would suit all, and that there would be no more trouble about the stamp. I saw him not over ten minutes, and Mr. Merchant was present, and Green stood in the hall.

Now, Secombe, not one dollar has been paid me by any person in Troy to help me in my expenses here, nor will they pay a cent.

Since you wrote me I have written Eddy and Shavor about money, and they refuse to send a dollar. You can see their letters if you wish. I have paid my own expenses—every cent—here this time; done all the work in my own way, too, and gotten a good bill so near passed, in which money can be had on the stamp in greater amounts than in any other way on this earth, and I have not had one cent from you, not one from Eddy, or Corse, or Ransford, or Shavor, or Green, or any one who ever claimed in the stamp.

Green had a bill in when I came; it was killed by my bill, which I send you.

Now, Secombe, as an honest man, and I most certainly hold you to be thoroughly honest, in all your ways and business, let me ask you
863 if you think this is right towards me. I am in want of $250 now, and that will carry me through this session, and is it right that I should do all this work—get a good law, and then have some one else come in and try to get away from me cash results? When I last saw you I understood from you that you would, with me, bear one-half of the expenses, and so thinking I came on here and have done as I have. You have been fully advised of it from time to time about it.

I would like you to give me prompt answer to this letter, for if you still refuse to share, at least in these expenses, then I must at once make other arrangements, as Congress will adjourn in a few days.

Truly yours,

MARCUS P. NORTON.

(Endorsed:) Defendant's Exhibit No. 194. J. A. S., ex'r. U. S. circuit court. Filed Nov. 2, 1878. John I. Davenport, clerk.

864 *Defendant's Exhibit No.* 195.—*Oct.* 23, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL,
Washington, D. C., August 9, 1876.

WILLIAM W. SECOMBE:

MY DEAR SIR: Your letter of the 8th came to-day. I am really sorry

that you, a man of brains, cannot tell what the bill is that I have sent you, etc. It is just the bill wanted for my post-office case, and everybody here understands it and calls it O. K. Do you refuse to furnish me any money in this matter or upon the P. O. stamp case? I desire to know definitely, and at once, because I will look elsewhere among my friends just as soon as you throw up the sponge, as you now seem to have done. I intend to put myself right, so that you, nor the court, nor anybody else, can find fault with me in any way, shape, or manner. I have already paid out $550 cash since I came here. I want $250 or $300 more to settle up, and so called on you as I called on Eddy, so that I might know just precisely where you all stand. I called on Shavor, too. I have his and Eddy's flat and positive refusal, and I will not further consider them as having to do with my stamp or any of my
865 business. I was in hopes that there would be no more controversy over this case and claim. I hope that you will look on this whole matter as it is, and then you will have no one to find fault with but yourself; certainly not with me.

I want the money, and if you will not furnish it, and do as you agreed to do, very well. Of course no one can prevent your entire abandonment of the case and claim.

I will soon pass through New York, on my way home, but there will be no use in seeing you under the circumstances attending this matter.

I have been here now five months—spent my time and cash, as I have before stated, and it will not have been all in vain.

I send you Eddy's letter of refusal, and will Shavor's, if you want to see it. Please send back Eddy's letter to me here, as I will be here until Congress adjourns.

Truly yours,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed Nov. 2, 1878. John I. Davenport, clerk.

866 *Defendant's Exhibit No.* 196.—*Oct.* 24, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

NATIONAL HOTEL,
Washington, D. C, August 11th, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: In your letter you say you do not understand the bill I sent you. If you will carefully read the report accompanying it, I think that that will aid you about it; if not, then take it to your lawyer, Mr. Smith, and he will give you full explanation of it. I cannot do it in a mere letter. I will say this to you, and in the living truth, too, that it is just such a bill as we want for the patent of April 14, 1863, and all its reissues. I am convinced that you will be very much pleased with it and more than that when you do understand it.

I wish now to say that you cannot in any way, in my opinion, restore your losses and more, than to take hold and help me about this bill. I have gone along with expenses without saying much to you about the same until recently, because I knew that you had had losses, and was hard at work to right them up, and having had some such experience, I let you alone until now, and now I do think you ought to help

867 me under the deed of trust you now hold, and now in force, and will be so long as you fulfill its provisions; and I believe you will do that or surrender it, because I put you down as an honest man in every sense of the word. Besides this, I will say to you that some five or six persons, who have such kind of claims as ours against the government, have already been to me to have me prosecute them under this bill as soon as it becomes a law, and take an interest in the same, which I will do at the proper time. Now, if you want to come in there, and will aid in expenses, you can do so and make money. There is money in these cases under that bill, and no mistake. Please read the Executive Documents No. 158, 167, 168, 169, and 176, I sent you with the bill, and you will learn all the facts from the same.

This bill is one under which any patent claim against the government can be brought; it is known as a general bill—as a public measure—and is right in all its provisions.

We can sue the postmaster and get an injunction if we wish, for that has now been determined in a suit against War Department officers since I saw you.

This bill is in fact just the kind of bill that we talked over when I saw you last in New York. There is one clause in it, to save the 1863 patent from all the frauds who have tried to get it, I will not write about, but show it to you in person on my way home next week, when I will call and see you as you have requested.

Now, Mr. Secombe, in order that Troy men might not have cause to complain, I called on them about expenses, and they all refused, and now they cannot complain when it comes my time to refuse. There has not been any kind of change with them since you and I talked it all over. I want to do with you just as we agreed, and I hope you still will keep your part of that arrangement.

868 The Troy men can bring suit under their patent in this same bill, but the department will prove that the government never used one of their 1859 stamps, and they will take that course, so I am told, and so the 1863 will prevail.

Now it is for you to say; I have told you the amount of pressing want of money here, so as to square up and get away about the middle of next week. We may get the bill passed by then—the House.

Truly yours,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed November 2, 1878. John I. Davenport, clerk.

869 *Defendant's Exhibit No.* 196.—*Oct.* 24, 1878.—*J. A. S., ex'r.*

CAMPBELL *vs.* JAMES.

CANAAN FOUR CORNERS, COLUMBIA CO., N. Y., *September* 23, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: Are you in condition to furnish funds to carry forward the settlement with the government for the use of my invention in "postmarking and postage canceling hand stamps," patented April 14th, 1863, and afterwards reissued, and now in general use in the postal service of this government, and in accordance to and with the deed of trust

by which you came possessed of title, etc? If not, will you make the title back to Miss Ingalls, and be repaid whatever money you have advanced on the same in efforts to get a settlement with the government? I find that I cannot spend any more money on my own account, because I have it not. It will require money to complete the passage of the bill, and get the case in court so as to get proper pay. I am willing to do the work, but I cannot do the work and pay all the expenses as I did for 5½ months in last session of Congress.

870 Not a cent will come from Troy 1859 men. They furnish money to Green, but nothing to me. They may get 1859 patent into court, only to find the government will prove that it has never been used in the postal service, while 1863 has for 13 years been in use, and that something ought to be paid for the same.

Now if you cannot aid in cash, but will let the title become easy, I can make arrangements for all the money required to put it through, as I have just ascertained.

Work ought to be done at once, so as to get matters ready for Congress and for the court of claims. There is not time to delay. If you can furnish the money, I would prefer to have it as it now is; but if you cannot, then the next best thing ought to be done.

I want to act fairly with you, and have no sort of doubt but that you will do the same by me.

It is for you to say. If you do not do one of the two, I see no other way than to give it up entirely, because I cannot raise any more ready money for it, as I have been trying that ever since I saw you last. Write me just what you can and will do in the matter.

Write me here. I thank you for your kindness as to the overcoat, etc.

Truly yours,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed Nov. 2, 1878. John I. Davenport, clerk.

871 *Defendant's Exhibit No.* 198.—*October* 24, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

CANAAN FOUR CORNERS, COLUMBIA CO., N. Y.,
October 30, 1876.

WM. W. SECOMBE, Esq.:

DEAR SIR: Your letter of October 4th instant came duly at hand. Since then I have been trying to see if matters could not be arranged with those Troy Green people, and came from there on Saturday last. We could not make any sort of arrangement with the Green party; but I mean to give them a trial on the patent of 1863. As you cannot furnish any of the expenses required, and as I will have to go into a fight with Green & Co., I have thought you would reconvey the patent, etc., upon the terms mentioned in the paper I enclose herewith, which is to pay to you all you have paid out, with interest thereon. This paper will secure that to you, or else Miss Ingalls gets no title. Please show it to your attorney, and see if I am not right about it.

If you will sign it, I will have it put on record in Patent Office at once, and furnish you a certified copy of the same so recorded.

872 This saves to you all that you ask in your letter of the 4th in-

stant. I am not able to pay any cash down, but can make a fight on Green & Co. Please carefully examine it; and if correct, sign and return it to me here.

Truly yours,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed November 2, 1878. John I. Davenport, clerk.

873 *Defendant's Exhibit No.* 199.—*Oct.* 24, 1878.—*J. A. S., Ex'r.*

CAMPBELL
vs.
JAMES

Whereas, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, did obtain the letters patent of the United States of America, for and upon improvements in "post-office, postmarking, and canceling hand stamp," which letters patent were issued and delivered, bearing date the 14th day of April, 1863, and numbered 38175, which letters patent prior to the first day of January, 1870, were twice reissued under and bearing date as follows, to wit: August 23, 1864, and August 3, 1869, and which were subsequently reissued in two divisions, to wit: "division A" and "division B"; and

Whereas, the invention and improvements contained in the said letters patent and the several reissues thereof have been in general and continuous use in the postal service of said United States since on or about the first day of March, 1863, by the order and direction of the Postmaster-General; and

Whereas, Helen M. Ingalls, of the said city of Troy, county of Rensselaer and State of New York, did on or about the 20th day of October, 1869, by deed of assignment of that date, recorded in the U. S. Patent Office on the first day of August, 1870, in liber B 13, page 351, of transfers of patents, purchased of and from the said Marcus P. Norton,
874 the said letters patent and the invention and improvement therein contained, and as described and claimed in the said letters patent and in the several reissues thereof, to which deed of assignment reference is now and hereby had for a more full and perfect description of the letters patent and invention herein and hereby sold, assigned, and transferred; and

Whereas, the said Helen M. Ingalls, thereafter, to wit, on or about the 4th day of March, 1871, did, by a certain instrument in writing, together with a written deed in trust, assign and transfer to William W. Secombe, of the city, county, and State of New York, the said letters patent, invention, and reissues, to which assignment and deed in trust reference is now and hereby had for a better and more full understanding of the letters patent, reissues, and invention herein and hereby sold, assigned, and transferred in the manner herein set forth; and whereas the said Helen M. Ingalls, is desirious that the said assignment and deed of trust last above mentioned should be canceled, and that all the right, title, and interest obtained by me so as aforesaid in, to, or for the said letters patent, invention, improvements, and in or by the several reissues of the same; also any and every claim for the past use of each and every thereof, should be reassigned and re-transferred to her for her own use, benefit, and behoof, and for the use, benefit, and behoof of her legal representatives.

Now, therefore, this indenture and deed of assignment witnesseth, that for and in consideration of the sum of one dollar, to me the said Helen M. Ingalls in hand paid, the receipt of which is now and hereby acknowledged, and in the further and other valuable considerations, the receipt of which is hereby duly acknowledged, I, the said William W. Secombe, have sold, assigned, and transferred, and I do now and hereby sell, assign, and transfer, unto the said Helen M. Ingalls,
875 her heirs, assigns and lawful representatives, all the right, title, and interests, which I obtained and received so as aforesaid in the said invention, improvements, letters patent, and the several reissues thereof; and I also sell, assign, convey, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, any and every right, claim, or interest I have, or ever had against the Post-Office Department, government, or United States of America, for the past use of the said improvements, invention, letters patent, or any reissue thereof, intending herein and hereby to sell, assign, transfer and convey unto the said Helen M. Ingalls and her lawful representatives all the right, title, interest or claim which I now have, and which I obtained from her so as aforesaid, for the past and future use of the said invention, improvements, and letters patent, or any reissue of the same in the postal service of the United States aforesaid, by the Post-Office Department; and also the entire invention, improvements, letters patent, and all and every reissue of the same, herein and hereby selling and conveying unto her, the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all and every right, title, claim, interest, or privilege which I now have or ever had by reason of the said assignment and deed of trust, by and between herself and myself, made and executed so as aforesaid or otherwise obtained in any way, manner or form, from or by reason of the said letters patent or any reissue thereof; and the said deed of assignment in trust in the manner hereinbefore stated, to have, to hold, and to enjoy the same, and each and every thereof, to the full end of the term of seventeen years, for which the said letters patent were granted, on and commencing the 14th day of April, 1863, and in the same way and manner that she would have held and enjoyed the same had she never made to me the said deed of assignment in
876 trust; with full right, power and authority to settle, adjust, and to enforce a settlement by suit or otherwise, for the past use of the said invention and letters patent, or of any infringement thereof or of any reissue of the same.

This sale, assignment, transfer, and reconveyance of the said letters patent, reissues, inventions, and claims, in the manner as aforesaid, is upon the express condition and agreement that the said Helen M. Ingalls shall pay, or cause to be paid, out of the first money received from the United States aforesaid, to the said William W. Secombe, the full sum of money expended by him in and about the said invention and letters patent, or any reissue thereof, in effort to make settlement with said United States, or that he may have paid to said Marcus P. Norton, for or on account of the same, prior to the said assignment in trust from the said Helen M. Ingalls, together with lawful interest thereon from the date of such expenditures to the date of the repayment of the same with interest thereon by the said Helen M. Ingalls; and the same shall be paid to said Secombe in the manner aforesaid, from the first money received from the United States, for the use in the postal service of said invention, letters patent, and reissues. If not so paid by said Helen M. Ingalls, or by some one for her as aforesaid, then this in-

strument and deed of assignment and of reconveyance shall be null and absolutely void, and of no validity or effect whatever.

In testimony hereof, I have on this day of November, 1876, hereunto set my hand and seal in presence of—

[SEAL.]

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

On this day of November, A. D. 1876, personally came William W. Secombe, of the said city, county, and State, who to me is known
877 to be the person mentioned in the foregoing instrument, and who executed the same, and he duly acknowledged to me that he executed the same in the manner and for the purpose therein mentioned and set forth.

(Endorsed:) U. S. circuit court. Filed Nov. 2, 1878. John I. Davenport, clerk.

878 *Defendant's Exhibit No.* 200.—*October* 24, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

CANAAN FOUR CORNERS, N. Y.,
Oct. 30th, 1876.

WM. W. SECOMBE, ESQ.:

DEAR SIR: I wrote you to-day and enclosed therein a proposed assignment of the 1863 back to Miss Ingalls. The conditions of the retransfer are such that if she shall fail to pay or cause to be paid to you the money you have paid out on account of the invention and patent, then no reconveyance takes place; or, in other words, before she gets a perfect title she must pay that money with lawful interest up to the time she pays it; otherwise you would hold whatever your rights may be before you sign the paper. Unless you sign the same, it will be impossible for me to move further in the matter, for the want of necessary money, and I will have to give the matter up, and then of course those Troy men will push in the 1859 patent and make a point for themselves, and you and I will go out. But if you sign it and return it to me I can raise the necessary money and can get something out of it, and we can repay you your money with interest out of any settlement or judgment we may have in Court of Claims. If I can have money I can still defeat Mr. Green and Co. He is now worse than ever, and
879 says he don't care a d——n for 1863 patent, but does for 1859. Well, it is just the reverse with me. He will make no move unless it is all for Green. If the assignment paper sent to-day suits you, sign it, have it witnessed and acknowledged before a notary public, and then I will have it put on record, and send you a Patent Office certified copy.

I write this more full because I did not have time for morning's mail. This will go in the evening mail.

I see that Miss Grace Bell is married, etc.

Truly, yours,

MARCUS P. NORTON.

(Endorsed:) U. S. circuit court. Filed November 2, 1878. John I. Davenport, clerk.

880 *Defendant's Exhibit No.* 201.—*October* 24, 1878.—*J. A. S., ex'r.*

CAMPBELL
vs.
JAMES.

CANAAN FOUR CORNERS, COLUMBIA CO., N. Y.
February 6th, 1877.

WILLIAM W. SECOMBE, Esq.,
155 *Broadway, New York:*

DEAR SIR: I have thought it best to write you again about signing the paper which I sent to you about four months ago. I wrote you once to ask you what alterations you wanted in it, but as you did not answer my letter, I think you did not get it.

I have not been to Washington this session, because I have not had the money to go with. No one has been from Troy on the Green side. Shavor has failed in business, is worth nothing, and no one there can raise money for Green, so Shavor told me on Friday last. There are about twenty days more of this session remaining. Of course, the bill I sent you last summer from Washington will not be passed, for there is no one there to see to it, and remains just where I left it last August, having been once reached on the calendar and passed over. I
881 do not now expect anything from that source, but I have been thinking that were you to sign that paper and return it to me here, I would commence a suit against the postmaster in Troy, when I could test the whole ground, and get a decision on all the questions that would come up, and then if I could get anything out of it, I would pay you back some of your money you have put in, etc.

This I could do, because by doing the work myself it would not be very expensive; and then, should I succeed, I could get something out of it. I would like to make this effort, for the time is most gone for which the patent was granted—there are only two or three years more.

You have had it in your hands more than six years. It is six years and four months, and you have never succeeded in doing anything with it, and, as I understand you, you have no means to do anything with, and will not advance any cash in that business. I only know this from your letters to me, and from your conversation with me last August.

I am sorry that things have taken such a turn this session about the bill, but the real disposition is to "fuss away" on the presidential matter until the whole session is gone, and then no legislation will be done.

Had I had the means to have gone on to Washington on the first of the session, and remain there during the session, I might have done something with the bill. It is now too late unless I could go now, but I have not the means to go with. I wish you would write me here, and let me know your exact position in this matter, and just what you are willing to do. Should you sign the paper I sent you sometime ago, I think I could get your money for you out of it, after a while. Write me here.

Truly, yours,

MARCUS P. NORTON.

882 (Endorsed:) U. S. circuit court. Filed Oct. 22, 1878. John I. Davenport, clerk.

883 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

SIR: Please to take notice that the testimony taken herein before John A. Shields, esq., examiner, on the further cross-examination of complainant's witness Marcus P. Norton, pursuant to the order of court dated October 22, 1878, together with the Exhibits offered in evidence in connection with said testimony, has been filed in the office of the clerk of this court.

Yours, etc.,

STEWART L. WOODFORD, Esq.,
U. S. Attorney, for Defendant.

NEW YORK, *Dec.* 10, 1878.

To MARCUS P. NORTON, Esq.,
Complainant's Solicitor.

884 (Endorsed:) U. S. circuit court, southern district of New York. Christopher C. Campbell vs. Thomas L. James. Notice of filing testimony on further cross-examination. Stewart L. Woodford, U. S. att'y for defendant.

Service of notice, of which within is copy, admitted.
New York, Dec. 11, 1878.

MARCUS P. NORTON,
Complainant's Solicitor.

885 COMPLAINANT'S EXHIBIT EVIDENCE.

Complainant's Exhibit C.—J. A. S., Ex'r.

The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof, I, A. M. Stout, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this eleventh day of March, in the year of our Lord one thousand eight hundred and sixty-eight and of the Independence of the United States the ninety-second.

[SEAL.]

A. M. STOUT,
Acting Commissioner.

T. C. A., WEST POULTNEY, VT.

To the Commissioner of Patents:

SIR: I send enclosed a caveat which I wish entered on file, also a 20-dollar gold piece, for which you will no doubt send me a receipt.

I shall take up my brake for a rehearing soon, for I think it ought to have been laid before the office in a different light than it was. I wish you to send me the papers belonging to the brake if you can, and I will return them to their files.

Respectfully, yours,

MARCUS P. NORTON.

886 To the Commissioner of Patents:

The petition of Marcus P. Norton, of Troy Conference Academy, West Poultney, and county of Rutland, and State of Vermont, respectfully represents:

That he has invented a certain machine for mailing and folding letters in the outside wrapper with their way bills, and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to his applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office, agreeably to the provisions of the act of Congress in that case made and provided; he having paid twenty dollars into the treasury of the United States, and otherwise complied with the requirements of said act.

MARCUS P. NORTON.

TROY CONFERENCE ACADEMY,
WEST POULTNEY, VT.,
October 13, 1853.

Subjoined Descriptions.

My post-office stamp and way-bill folding machine is so constructed as to print the name of the town, State, month and day thereof, also the name of the postmaster, paid 3 cents, and unpaid 5 cents upon the letter, and to fold the same together with its way-bill, in an outside envelope. Said envelope and way-bill are made together, and in the form and manner as shown by a plan which I send enclosed.

That part of the machine which stamps the letter consists of a shaft, upon which is placed two arms, crossing each other at right angles, which contains the type in the form as shown upon the way-bill.

887 Upon the same shaft are two cams, one at or near each end of the same, which are used to move the continuous or sliding platform (upon which the letter is moved under the type) down so as to let it receive an impression from the type. The platform upon which the letter passes under the type is continuous, or to slide under and back as I may deem best upon experimenting. The platform belt is to be moved with the same speed of the type cylinder, by means of a band or its equivalent. The platform plays up and down by means of spiral springs around the guides of said platform, which are four in number. The belt or band is tightened at pleasure by means of movable boxes and screws. The type are to be inked by means of ink-rollers—two in number—placed in such a manner, by means of movable boxes and screws, so as to roll over the face of the type as they pass around. In order to change the motion of the platform belt or slide, two small gears are used—one on the cam and type shaft, the other on the crank shaft. The frame for the entire work is to be made in any form to suit the eye of the mechanic. A pulley is fastened to one of the cams for the purpose of moving the continuous belt or slide and the ink-rollers. That part for folding the letter with its way-bill in the outside envelope consists of a small table placed at one end of the stamping part, upon legs; a hole is made through the centre of this table large enough to receive any size letter; around this is made a box containing four folders, which turn upon hinges by means of levers, two of which move at a time only, which fold one-half of the envelope, after which the other two move and fold the remaining half, then the bottom of the aforesaid box opens and lets the letter drop out folded in its way bill envelope ready for transportation. The folders are worked by means of

levers fastened to them, at the end of which a cord is fastened which passes up through the table over pulleys, down through the
888 table, and are fastened to pedals; at the other end of the levers are fastened cords for the purpose of opening the folders when closed. Those cords for opening the folders are worked by means of weights or springs. Having thus described my machine, I will now state its object, and its object is—

1st. To facilitate mailing and wrapping up letters with their way-bills, and

2d. To save the expense of paper for wrapping purposes, lessening the cost about one-half and saving all of the paper as now required for way-bills.

3d. To lessen the number of laborers as now required in large post-offices.

T. C. A., WEST POULTNEY, VT.,
October 25, 1853.

HON. CHAS. MASON,
Commissioner of Patents,

SIR: I send enclosed an oath of my improvement in mailing and enveloping letters, etc., as described in my caveat. I consulted the patent laws for an oath to accompany a caveat, but did not find one; but one for an application for a patent. Pardon me, sir, for the mistake. I am anxiously waiting to hear from those papers, drawings and model for my improvement in R. R. car brakes, as rejected, etc.

Most respectfully, your obedient servant,

MARCUS P. NORTON.

HON. C. MASON,
Commissioner of Patents.

889 TROY CONFERENCE ACADEMY, WEST POULTNEY, VT.,
October 27, 1855.

To the Commissioner of Patents:

SIR: I send enclosed a plan for my type for letter stamp and way-bill folder, which should have gone with the caveat which I sent you yesterday, but was left out through a mistake and not noticed until too late for the mail.

Most respectfully, yours,

MARCUS P. NORTON.

Troy Conference Academy, West Poultney, and county of Rutland and State of Vermont, ss:

On this twenty-fifth day of October, one thousand eight hundred and fifty-three, before the subscribed, a justice of the peace, personally appeared the within named Marcus P. Norton, and made solemn oath that he verily believes himself to be the first and original inventor of the improvements described in his caveat for mailing and enveloping letters, together with their way-bills, in an outside envelope; and that he does not know or believe the same was ever before known or used; and that he is a citizen of the United States.

Before me.

J. B. BEAMAN,
Justice of the Peace.

(Endorsed:) Received and filed October 27, 1853. S. T. Shugert.

890 Know all men by these presents that I, Marcus P. Norton, of Tinmouth, in the county of Rutland, hereby constitute and appoint Silas H. Hodges, of said Rutland, for me and in my name and behalf to prosecute and attend to my application for a patent for a post-office letter stamp and way-bill folding machine, and I hereby request the commissioner of patents to correspond with him respecting the same, and also respecting my caveat, filed for the above improvements for me.

MARCUS P. NORTON.

RUTLAND, VT., *March* 11, 1854.

(Endorsed:) M. P. Norton's power of attorney to S. H. Hodges. Received and filed March 14, 1854,—A. B. L.

TINMOUTH, VT., *August* 7, 1854.

Commissioner of Patents:

SIR: I send to-day an additional description of my machine for mailing and folding letters, etc.

When will my caveat expire? The copy you sent me has no date. I wish to petition for a patent before the caveat shall expire. Please communicate the answer to Mr. Hodges. If I trespass your rules, etc.

Respectfully, your obedient servant,

MARCUS P. NORTON.

891 To the Commissioner of Patents:

SIR: I wish the following to be added to my subjoined description for mailing and folding letters, for which I have a caveat in your office.

In the mailing of letters I have provided means for post marking of letters, newspapers and the like, and for the cancellation of the postage-stamps thereon, at one and the same blow or operation of the instrument or machine by which the post-mark is had or made upon the letter, envelope, or wrapper, or package, in a plain and intelligible manner, and thereby always retaining the same, while the postage-stamp or stamps are more effectually and permanently canceled, so as to prevent frauds upon the revenue derived from the sale and use of such stamps.

The said device is arranged upon the type cylinder contained in first paper filed in my said caveat, between the-way bill form of type, and it gives the impression in ink upon the letter, envelope, or packet, by means of the revolving cylinder, and at the same time and operation it also gives a heavy impression in ink upon the postage-stamp when or where used upon the said letter or envelope, and the postage-stamp becomes thoroughly impregnated with ink by the means herein provided, and therefore it cannot be cleansed by chemical washing, or by other means, so as to allow of the same being used a second time, and thus frauds are prevented. If there should be no stamp used for payment of postage on letters, packets, etc., this device would do no sort of harm to the letter, envelope, etc., for it could only post-mark the same with the name of the town and date, such as month, day of month and year, and upon one side thereof at same time give a heavy impression in ink, which would appear was only intended for cancellation of the postage-stamp as aforesaid stated. This would make a plain
892 and more intelligible post-mark than by the old method now in use, while it would at same time, blow, and operation of the instrument, cancel in ink the postage-stamp or stamps, when such are

used, as aforesaid, in a most thorough, perfect, and permanent manner, so that the same could not be cleansed for the purpose of being used a second time. This part of my invention I construct of the ordinary form of type now used in the post-offices for the post-marking of letters with the name of the town, month, day of the month, and the year, etc., and I combine therewith in some good, practical, and suitable manner, a device which I denominate a postage-stamp conceling type, to be used in or with any kind of ink suitable for that purpose, and by such combined instruments one device is formed, which will give the name of post-office, month, day of the month, and year, and at same time and blow cancel and thus destroy the postage-stamp, thereby greatly economizing in the time now required in the making up of the mail, in fact, saving one-half of the labor required for post-marking, and for canceling of postage-stamps when it is desirable to give the impression of name of the town and date upon the envelope, letter, or packet, in order to preserve the same for any purpose of proofs or other thing. I now think that the best way to make this part of my invention is to use a cross-bar or cross-piece upon the periphery of the cylinder set forth in other papers in my caveat, and fasten in some suitable manner the post-marking stamp upon one end thereof, and the postage canceling type or device upon the other end of said bar or cross-piece, which would of course give dating stamp at one end and canceling stamp at the other end therof. This bar, thus constructed with said type arranged thereon as aforesaid, is securely fastened to the periphery of said cylinder in some suitable manner. The canceling type or stamp may be made of iron, steel, wood, rubber, cork, or of any other suitable
893 material, and the same may be combined with said cross-bar by the drilling of a suitable hole therein, or by a tube to receive the same, and said tube being suitably fastened to said cross-bar, or the same may be fastened directly upon and to the said cross-bar at any required distance from said dating part or dating type. A screw may pass through said cross-bar into the material used for the canceling type, and thus hold it firmly thereto, or a suitable tube may first be fastened to said cross-bar, and then the canceling material or part used for the canceling type may be inserted therein and thereon, and thereby held until worn out by use, when the same may be replaced. Rubber or cork, I think, will make the best and most suitable canceling type or device, while soft wood, used endwise, will make a most excellent canceling type. If it should be found impracticable to use the said cylinder and other parts of said machine as contemplated in the caveat papers now on file, then the said cross-piece or bar may be removed from the said type cylinder by means of loosening the screws by which it is fastened thereto, and a suitable handle affixed thereto in place of such cylinder, and the same then used as a hand stamping device for post-marking and for canceling postage-stamps. The said cross-bar may be removed from said cylinder in order to reset the type for the date to be given, or for the purpose of removing and replacing the said canceling type or stamp, and then the same may be replaced upon said cylinder as aforesaid. By means of this device I get a good and more perfect impression upon the letter, envelope or packet, of the name of the town, day of the month, month, ect., and at the same time and operation cancel the postage stamp or stamps in ink, in a most complete, thorough, and perfect manner. When cork is used it contains a greater quantity of the ink used, and being somewhat elastic, and somewhat rough upon the face containing the ink, it will to a considerable
894 extent break the enameled surface of the postage-stamp, formed

as such by means of the indelible ink used in the manufacture of such stamp so as to form a hard surface, in order that the stamp might not become defaced by transportation to places of sale, while on sale, or while being carried in a person's pocket ready for use, and having broken somewhat such surface of such postage-stamp by the blow of the cork upon the same, the ink impregnates in a most thorough manner the whole postage-stamp, and of course it cannot be removed without destroying the printed surface of such postage-stamp, and so defacing it that such efforts at reuse of it would be at once detected. Soft wood used endwise will have nearly the same effect; so, therefore, some soft and porous material will be most suitable to use in the construction of said canceling type or device used for the cancellation of all postage-stamps.

The cam-frame which draws the letter under said type cylinder for post-marking of letters, packets, etc., and for the cancellation of postage-stamps thereon, will give the blow against the said post-marking and postage-canceling device, which is done at one operation and at the same time, and when thrown out of gear, then the way-bill printing part may be worked and thus print the way-bills as I have described in former papers on file in my said caveat. I would prefer the use of an indelible ink with my said device or instrument, or machine, if the same could be had by all the postmasters who use the said machine, etc.

This part of said machine may easily and readily be converted into a hand stamp when and where no other part of said machine would be used, save and except the post-marker containing the name of the town where used, the month, and day of the month, and year, etc., and the postage stamp cancelor, or canceling device attached to and combined with the said cross-bar or cross-piece substantially as aforesaid, with a suitable handle at the centre of said
895 cross-bar or piece, or at some suitable place between the two stamping devices aforesaid, which handle is used for the giving of the blow or impression of the two devices attached to said cross-bar as aforesaid, and of course it would then be a simple device of post-marking stamp, of cross-bar, and cork, rubber, or wood (or other suitable material) postage-stamp canceling device thus combined into one instrument, and operated by the handle with one blow, and to be used in or with any kind of ink desired. One blow of the instrument in the hand of the operator will do the printing of the name of the town, of the month, of the day of the month, upon the letter or envelove, and the cancellation of the postage stamp in a most complete and effectual manner substantially as aforesaid—thereby saving great labor, and the rehandling over of the letters in order to postmark them, and afterwards to cancel the postage-stamps when it is desired to have an intelligible postmark preserved on the letter or envelope, and to have the postage-stamp permanently canceled so as to prevent frauds by the reuse of the same, as is often now the case. This instrument will therefore prevent such frauds, and very much simplify and economize in the time for the making up of the mails for transportation. This will be the effect and result if no other part of said machine be used, save the said parts converted into a simple hand stamp as aforesaid, to wit, the postmarking part, the postage-stamp canceling part, all attached to the said cross-bar and combined therewith as and in the manner aforesaid.

If the entire machine set forth in all the caveat papers be used, there will be great saving of labor and time in mailing of letters, and a large quantity of paper, twine, and sealing wax, etc., by the use set forth in all the papers of this caveat. There would be also great labor

saved as aforesaid, by the use of such hand stamp combined as aforesaid. I am having a full size machine made according to my
896 caveat papers, which, when done, I shall apply for a patent; or, at least, as soon hereafter as I may be able to get the Post Office Department to consider and adopt for use in the various post-offices my said improvements, or some parts thereof, preferring to submit the same to the judgment of that department before applying for my patent upon the invention herein contained. I desire you to file this with myother appers in my said caveat. I intend to renew my caveat, if such be at all necessary, in order to protect my rights while engaged in efforts with the Post Office Department for the general use of my invention, and especially that part which relates to the hand stamp form of postmarking and postage-stamp canceling, combined with and upon a cross-bar or piece, containing a suitable handle substantially as aforesaid, so as to give both impressions at one blow and operation of the instrument, as aforesaid, thereby saving great labor, and preventing frauds, etc.

MARCUS P. NORTON.

TINMOUTH, VT., *August* 7, 1854.

Applied March 21, 1857.

CAVEAT.

No.

MARCUS P. NORTON,

Of West Poultney,
County of Rutland,
State of Vermont.

Mach. for mailing and folding letters.

Rec'd Oct. 20, 1853.
Petition Oct. 20, 1853.
897 Affidavit, Oct. 27, 1853.
Specification, Oct. 20, 1853.
Drawing,
Model,
Cert. dep.,
Cash $20, Oct. 20, 1853.
1. Examined,
2. Issue,
3. Patented, 185 .
Recorded, vol. page

S. H. HODGES, *Att'y*,
(Power within.)

(Endorsd:) Certified copy of caveat filed in U. S. Patent Office in 1853, upon improvements in post-office stamps, and in mailing and enveloping letters, by Marcus P. Norton.

898 *Complainant's Exhibit D.—J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of

this office of the letters patent granted Marcus P. Norton, dated April 14th, 1863, No. 38175, for "improvement in post-office stamps."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

(Here follows diagram marked page 899.)

No. 38175.

United States of America to all to whom these letters patent shall come:

Whereas, Marcus P. Norton, of Troy, New York, has alleged that he has invented a new and useful improvements in post office stamps,
900 which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Marcus P. Norton, his heirs, administrators, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Marcus P. Norton, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States of America the eighty-seventh.

[SEAL.] J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
JOHN L. HAYES,
Acting Commissioner of Patents.

901 The schedule referred to in these letters patent and making part of the same:

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, have invented "new and useful improvements in postmarking and canceling revenue and postage stamps, etc., etc.," and I do hereby declare the following to be a full, clear, and

exact description of the construction and operation thereof, reference being hereby had to the accompanying drawings and to the letters of reference marked thereon, which drawings make a part of this specification.

Like letters refer to and represent like or corresponding parts.

Fig. 1 is a side elevation of the stamp and letter frank canceling device hereinafter described for canceling stamps issued by the "Post Office," "revenue," or other departments, with indelible or other ink, by the means hereinafter set forth.

Fig. 2 is a face view, showing the postmarking stamp ready for use, and the canceling stamp or device made of wood, cork, rubber, or other and similar material, and therein inserted and more fully described hereinafter.

Fig. 3 is a vertical section taken through the centre of the various parts of the post marking and canceling stamp.

Fig. 4 shows a marking, rating, or dating and canceling device more fully described hereinafter, and is more especially designed for rating, dating, and canceling revenue stamps.

Fig. 5 shows a device to cancel stamps or franks with indelible ink by means of wood, cork, rubber, or similar material, for type or blotter in combination with the postmarking device, and more fully hereinafter described.

902 The nature of my improvements, herein described, consists in the employment and combination of a device for canceling postage or other stamps by means of wood, cork, or similar material inserted in a tube or recess therein, for the purpose of effacing or blotting such stamps with indelible ink. It also consists in the combination of a canceling device, having wood, cork, rubber, or any similar material for the type or blotter therein, with any postmarking device so as to blot, cancel, or efface postage-stamps with indelible ink at the same time and operation of postmarking of letters, packets, etc., etc.

To enable others skilled in the art to which my invention relates to make and use the same, I will here proceed to describe the construction and operation thereof, which, as follows, to wit: I construct the postmarking stamp (D) of any suitable material. (E) Fig. 3 is the mortice or recess of suitable dimensions to receive the type for the month, the day of the month, and the year, around which is the name of the place where used, and is the same as the postmarking device described in my letters patent, bearing date the sixteenth day of December, 1862, and which is secured to the cross-piece (B) in the same manner and by the same means as described and set forth in the said patent, which is also the case with the canceling device (C).

I construct the canceling stamp or device (C) of any suitable material, of any size required in diameter, and in length to correspond to the postmarking device (D). (F) Fig. 3 is the tube or recess in the device (C) for the purpose of receiving the blotting or canceling device (G), Figs. 2 and 5, which device is made of wood, cork, rubber, or similar material, so as to closely fit the said tube or recess (F) Fig. 3. The face of this device may contain a plan or form for canceling with indelible ink, like that shown at Fig. 2, or it may have any plan or form for that pur-

903 pose thought best to devise or use. This device (G) may project somewhat below the lower end of the said tube (F), as seen at Fig. 5, and may also project below the face of the postmarking or rating device (D), Figs. 2 and 3, and it may be driven out of the said tube or recess by means of a pin or bolt operating through the hole (A), Figs. 3 and 5, for the purpose of repairs, or to replace it by a new one. The

said tube or recess (G) may be any size in diameter required or any depth desired. The said canceling stamp or device (C) being thus constructed with cork, rubber, or other elastic substance for type or blotter, will receive and hold on the face thereof ink in quantities sufficient to blot or cancel the postage-stamp in such a manner as to prevent the possibility of the said postage-stamp being cleansed of the canceling ink by any chemical or other process, for the said ink would be so effectually put thereon that any attempts to remove it therefrom would entirely destroy the said postage stamp, and thereby render the same incapable of a second or reuse. The said cork, rubber, or other elastic substance, as aforesaid, will render the said stamp capable of an easy and rapid use, for there being a yielding of the same when the blow is given, the operator will not tire as soon by a constant or continued use of the same as though it were of solid metal, and the same will greatly aid in raising the entire stamp from the paper and postage-stamp when the impression shall have been given by the operator. The said blotter or type can be more easily repaired or replaced by a new one at less expense than if made of solid metal. The said cork, rubber, or other elastic material may extend upward to the said cross-bar (B), and there be connected to the same by a screw or pin-bolt, if desired, which will be the same in effect and in operation.

In no case could any fraud be committed by a second or reuse of the government stamp or frank.

904 Having thus described my invention and improvements in marking and canceling stamps, what I claim and desire to secure by letters patent of the United States of America, therein, is:

1. The canceling device (C) with wood, cork, or rubber type or blotter (G) therein, or any device substantially the same, so as to cancel the postage-stamp with indelible ink, substantially as herein described and set forth.

2. I also claim the canceling device (C) with wood, cork, or similar material forming the type or blotter (G) therein, in combination with the cross-piece (B), and with the postmarking device (D) substantially as herein described and set forth.

In testimony whereof I have, on this 29th day of December, 1862, hereunto set my hand.

MARCUS P. NORTON.

Witnesses:
CHAS. D. KELLUM.
URIEL DEXTER.

Ex. J. A.—M. M., M. K.

905 *Complainant's Exhibit E.—J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in Liber C[7], p. 458.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR.
Commissioner.

said tube or recess (G) may be any size in diameter required or any depth desired. The said canceling stamp or device (C) being thus constructed with cork, rubber, or other elastic substance for type or blotter, will receive and hold on the face thereof ink in quantities sufficient to blot or cancel the postage-stamp in such a manner as to prevent the possibility of the said postage-stamp being cleansed of the canceling ink by any chemical or other process, for the said ink would be so effectually put thereon that any attempts to remove it therefrom would entirely destroy the said postage stamp, and thereby render the same incapable of a second or reuse. The said cork, rubber, or other elastic substance, as aforesaid, will render the said stamp capable of an easy and rapid use, for there being a yielding of the same when the blow is given, the operator will not tire as soon by a constant or continued use of the same as though it were of solid metal, and the same will greatly aid in raising the entire stamp from the paper and postage-stamp when the impression shall have been given by the operator. The said blotter or type can be more easily repaired or replaced by a new one at less expense than if made of solid metal. The said cork, rubber, or other elastic material may extend upward to the said cross-bar (B), and there be connected to the same by a screw or pin-bolt, if desired, which will be the same in effect and in operation.

In no case could any fraud be committed by a second or reuse of the government stamp or frank.

904 Having thus described my invention and improvements in marking and canceling stamps, what I claim and desire to secure by letters patent of the United States of America, therein, is:

1. The canceling device (C) with wood, cork, or rubber type or blotter (G) therein, or any device substantially the same, so as to cancel the postage-stamp with indelible ink, substantially as herein described and set forth.

2. I also claim the canceling device (C) with wood, cork, or similar material forming the type or blotter (G) therein, in combination with the cross-piece (B), and with the postmarking device (D) substantially as herein described and set forth.

In testimony whereof I have, on this 29th day of December, 1862, hereunto set my hand.

MARCUS P. NORTON.

Witnesses:
CHAS. D. KELLUM.
URIEL DEXTER.

Ex. J. A.—M. M., M. K.

905 *Complainant's Exhibit E.—J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in Liber C⁷, p. 458.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR.
Commissioner.

Liber C⁷, p. 458.

Whereas, I, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, have invented "new and useful post mark canceling stamp," for and upon which, I did, on the 14th day of April, 1863, obtain of and from the United States of America letters-patent, to which reference is hereby had, for the invention this day sold and assigned;

And whereas, Jacob Shavor and Albert C. Corse, each of the city of Troy, county and State aforesaid, are desirous of purchasing,
906 and have purchased, of and from me all the right, title, and interest secured to me in said invention by said letters patent, or which may be secured to me by reissue of the same, or otherwise;

Now, therefore, this indenture of assignment witnesseth:

That for and in consideration of the sum of five hundred dollars to me in hand paid, the reciept whereof is hereby acknowledged, I have sold, assigned, and transferred, and do hereby sell, assign, and transfer, unto the said Jacob Shavor and Albert C. Corse, their heirs, assigns, executors, or administrators, all the right, title, and interest which I have in the said invention as secured to me by said letters patent, or as may be secured to me by reissue of the same, or otherwise; the same to be held and enjoyed by them, the said Jacob Shavor, and Albert C. Corse, for their own use, benefit, and behoof, and for the, use benefit, and behoof of their legal representatives to the full end of he term for which the same were and are granted, as by reference to said patent will fully appear, as fully, freely, and entirely as the same would have been held and enjoyed by me had this sale, assignment, and transfer not been made.

In testimony whereof, I have, on this 20th day of April, 1863, hereunto set my hand and seal.

MARCUS P. NORTON, [SEAL.]

Signed and sealed in presence of—
CHAS. D. KELLUM.
CHAS. E. PATTERSON.

[15 cent internal revenue stamp, canceled.]

Received and recorded March 8, 1864.

907 *Complainant's Exhibit F.—J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR,

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Shavor & Corse, dated August 23d, 1864, No. 1748, "for improvement in post office stamps."

In testimony whereof, I, W. H, Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this eighth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

(Here follows diagram marked page 908.)

No. 1748. *Reissue.*

United States of America, to all to whom these letters patent shall come:

Whereas Jacob Shavor and Albert C. Corse, of Troy, N. Y., assigees of Marcus P. Norton, of the same place, have alleged that said M. P. Norton invented a new and useful improvement in post-office stamps for which letters patent were issued to him, dated April 14, 1863, which letters having been surrendered by said assignees, the same
909 have been cancelled and new letters ordered to issue to them on an amended specification) which he stated had not been known or used before his application; had made oath that he was a citizen of the United States; that he did verily believe that he was the original and first inventor or discoverer of the s id improvement; and that the same hath not, to the best of his knowledge and belief, been prevously known or used; aid assignees having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in said improvement, and praying that a paten t may be granted for that purpose:

These are therefore to grant, according to law, to the said Shavor & Corse, their heirs, administrators, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Shavor & Corse in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States of America the eighty-ninth.

[SEAL.]

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

910 The schedule referred to in these letters patent, and making part of the same:

To all whom it may concern:

Be it know that Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, invented "new and useful improvements in post-marking letters, packets, etc., and canceling the postage-stamps thereon" in the manner and by the means substantially as hereinafter described and set forth. That the same were duly assigned and transferred to the undersigned, Jacob Shavor and Albert C. Corse, on the 20th day of April, 1863, and recorded in the U. S. Patent Office on the 8th day of March, A. D. 1864, Liber C[7], page 458 of transfers of patents; and we do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being hereby had to the accompanying drawings and to the letters of reference marked thereon, which drawings make a part of this specification.

Like letters refer to and represent like or corresponding parts.

Fig. 1 is a side elevation of the post-marking and postage-stamp canceling device hereinafter described and set forth, for canceling stamps issued by the "Post-Office Department," with indelible or other ink at the same time and operation of the making of the post-mark on the packet one side of such frank or postage-stamp so canceled.

Fig. 2 is a vertical section taken through the centre of the various parts of the post-marking and postage canceling device herein described and set forth.

Fig. 3 is a face view showing the post-marking stamp ready for use and the postage canceling stamp or device made of wood, cork,
911 rubber, or other and similar material and therein inserted, and more fully described hereinafter.

Fig. 4 shows a device to cancel postage-stamps, or letter franks, with indelible or other ink by means of wood, cork, rubber, or any elastic or similar material for type or blotter, which may be used for that purpose separate and alone or in combination with the post-marking device, substantially as shown at Fig. 3.

Fig. 5 is a vertical section of a post-marking and canceling postage-stamp device combined, and entirely made of iron, steel, or similar material, and described hereinafter more fully.

Fig. 6 is a plan or face view, of Fig. 5, and fullg showing the postage canceling device made of iron, steel, or similar material.

Fig. 7 shows the wrench for securing the type for the month, day of the month, and year in the postmarking device.

Fig. 8 shows the punching tool or device for forcing the cork, wood, rubber, or similar material from the tube in which the same is held for use, so as to repair or replace the same with a similar blotter or postage-stamp canceling device.

The nature of the said invention and improvements herein described consists in the employment and combination of a device for the more complete and perfect cancellation of postage-stamps by means of wood, cork, rubber, or similar material, whereby such stamps are blotted or effaced with indelible or other ink in the manner substantially as herein described and set forth.

It also consists in the combination of a postage canceling device having wood, cork, rubber, or any similar material for the type or blotter with any post-marking device, so as to blot, cancel, or efface postage-stamps with indelible or other ink at the same time, blow, or operation of the instrument by which the post-mark is made upon the letter,
912 envelope, or packet, substantially as herein described and set forth.

It also consists in the post-marking of letters, envelopes, or packets, and in the cancellation of postage-stamps thereon with ink or similar material by means of wood, cork, rubber, steel, iron, or any other suitable material so combined with the post-marking instrument as to blot or efface such postage-stamps at the same blow or operation of the instrument thus constructed for such purpose.

To enable others skilled in the art to which said invention or improvements relate to make and use the same, we will here proceed to describe the construction and operation thereof, which is as follows, to wit: We construct the postmarking device or stamps, D, of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device herein described. E, Fig. 3, is the mortise or recess of suitable dimensions to receive the type for the month, day of the month, and the year, around which is the name of the place where

used, and is similar to the postmarking device described and set forth in our letters patent bearing date the 16th day of December, 1862, which was issued to the said Marcus P. Norton, and by him afterwards assigned and transferred to us; and which said type is secured to the cross-piece (B) in the same manner and by the same means as described and set forth in the said patent as well as in this specification hereinafter.

We construct the postage canceling stamp or device G, for the purpose of canceling in a more perfect and thorough manner the postage-stamps on letters, packets, etc., of wood, cork, rubber, or any similar or elastic material, and insert the same in the tube or recess F, which is in that part of the canceling device C connected to and combined with the said cross-piece B, as herein described.

The said tube or recess F, Figs. 2, 3, and 4, may be of any
913 diameter or depth desired. We prefer to have the diameter thereof at least the same as the width of the postage-stamp to be canceled or destroyed with ink as aforesaid.

The said canceling device G will of course be so made as to correspond with such tube or recess and to closely fit the same, and may be made of cork, wood, rubber, or any elastic material, as aforesaid.

The face of this device may contain a plan or form for canceling postage-stamps with ink like that shown at Fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

This device (G) will project somewhat below the lower end of the said tube F, as seen at Figs. 1 and 4, and it may also project somewhat below the face of the postmarking or rating device (D) if deemed best so to do, and it may be driven out of the said tube or recess (F) by means of a pin or bolt substantially like that shown at Fig. 8, the lower end of which operates in and through the hole *a*, Figs. 2 and 4, for the purpose of repairs or to replace it by a new one. (A) is the handle firmly secured to the cross-bar B.

The said postage-stamp canceling device (G) being thus constructed with cork, rubber, or other elastic material for the type or blotter, and combined with the said device C, with recess (F) therein, as aforesaid, will receive and hold on the face or configuration thereof ink in quantities sufficient to permanently blot, efface, and cancel the postage-stamp whereon the same is used, in such manner as to prevent the said postage-stamp being cleansed of the said cancelling ink by any chemical or other process, for the said ink so put on would be so effectual that any attempt to remove it therefrom would entirely destroy the said postage-stamp and thereby render the same incapable of a second or other use without immediate detection.

The said cork, rubber, or other elastic material, as aforesaid,
914 will render the said stamp and canceling device of an easy and rapid use, for there being a yielding of the same when the blow is given, the operator will not tire as soon by a constant or continued use of the same, and it will somewhat aid in raising the entire apparatus from the paper and postage-stamp when the impression and cancellation shall have been given by the operator. The said type, blotter, or canceling device can be easily repaired or replaced by a new one at very little expense or trouble. The said cork, rubber, wood, or elastic device for canceling postage-stamps as aforesaid may extend upward to the said cross-bar (B) and there be connected to the same by means of a screw, pin, bolt, or similar device if desired. The operation and effect produced would in such case be the same. The said postage canceling device may be of any desired distance from the said post-

marking or rating device, or it may be securely fastened to the immediate side of the said postmarking or rating part or stamp by any proper and sufficient means.

The said postage canceling device may also be made of iron, steel, or similar material, as shown at G, Figs. 5 and 6, which may be secured to the said cross-piece (B) in like manner as the said device C, Figs. 2 and 4, which is done either by screw and nut where the same unites with the said cross-bar, or it may there be firmly fastened by means of pins or rivets or solder, as deemed best. The said postmarking or rating device is secured to said cross-bar B, in like manner and by substantially the same means. The said metal canceling device G, Fgs. 5 and 6, may also be fastened to the immediate side of the said post-marking device by any good and sufficient means as hereinbefore described in reference to the said device C, Figs. 2 and 4. This metal device may also have, upon its face or lower surface, any configuration deemed best for the purpose of canceling the postage-stamp in ink at the same
915 blow of the instrument or apparatus, as hereinbefore stated. In every case the postmarking of the letter or packet and the effacing or cancellation of the postage-stamp thereon is done at the same time, and at one operation of the device constructed and combined substantially as herein described and set forth. Both the postmark and the cancellation of the said postage-stamp are done with indelible or other kind of ink and without any injury to the said letter, envelope, or packet, or the contents thereof, as would be the case were the said postage-stamp canceled by being cut in several places by means of cutters or knives constructed for that purpose. The instrument and devices herein described will not cut either the letter, envelope, or postage-stamp thereon, but performs the cancellation aforesaid with ink only, as aforesaid. No cutting device whatever is used.

In no case could any fraud be committed by a second or reuse of the government postage-stamp or frank without being immediately discovered. This combination of devices will greatly facilitate the making up of mails for transportati n, will reduce the labor in postmarking letters and in canceling the postage-stamps thereon to about one-half of that required when this combined instrument is not used. It therefore saves about one-half of the labor in the postmarking of letters and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the said postage-stamps more effectual, so as to prevent a second or reuse by any means whatever, which are very important items in the successful management of the post-offices in this country, whereby large sums of money are annually saved this government.

Having thus described the original invention and improvements of the said Marcus P. Norton, in postmarking and canceling devices combined as and for the purposes aforesaid, what we claim and desire to secure by letters patent of the United States of America, is:

916 First. The postage canceling device (C) with "wood," "cork," or "rubber" type or blotter (G) therein, or any equivalent therefor, so as to cancel, blot, or efface the postage-stamp with indelible or other ink in the manner and for the purposes, substantially as herein described and set forth.

Second. We claim the canceling device (C), with wood, cork, or rubber, or any equivalent thereof forming the type or blotter (G) therein, in combination with the cross-piece (B) and with the post-marking device (D), substantially as and for the purposes herein described and set forth.

Third. We claim the post-marking of letters, envelopes, and packets, and the cancellation of the postage-stamps thereon with ink at one and the same blow or operation of the instrument in the manner and by the means substantially as herein described and set forth.

Fourth. We claim the employment and combination of a postmarking device with a postage-stamp canceling device, both being operated by one or the same handle for the postmarking the letter, envelope, or packet, and for the destruction of postage stamps thereon with indelible or other ink, substantially as herein described.

In testimony whereof, we have, on this 27th day of May, A. D. 1864, hereto set our hands.

JACOB SHAVOR.
ALBERT C. CORSE.

Witnesses:
BENJ. H. HALL.
C. L. ALDEN.

Examined, E. A. M., E. H. K.

917 *Complainant's Exhibit G.—J. A. S., ex'r.*

DEPARTMENT OF THE INTERIOR,

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an affidavit and assignments recorded in liber U[11], page 319.

In testimony whereof, I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR,
Commissioner.

Liber U[11], p. 319.

Affidavit and assignments.—Transfer of patents.

CITY OF TROY, COUNTY OF RENSSELAER,
AND STATE OF NEW YORK, *ss:*

Jacob Shavor and Albert C. Corse, of the city of Troy, being duly and severally sworn, each for himself, doth depose and say that they reside at the said city of Troy, in said county and State. That
918 they have so resided there for about twenty years. We know Marcus P. Norton, who also resides at same place. He is a practicing lawyer by profession, in the several courts of the State of New York, in the United States, as well as before the U. S. Patent Office. We have so known him for five or six years past. In the summer of the year 1860, he exhibited to us at his office in said city of Troy, a double or combined stamp or instrument for postmarking of letters, and for the cancellation of the postage-stamps thereon, in ink, at one l o v or operation of the same. This device consisted of the device for gi v-ing the name of the post office where used, together with the dat of the same, and with a device of either cork, wood used endwise, rub b r or metal having any suitable configuration upon the lower surface of the

same for the cancellation of the postage-stamp, and used and arranged in combination with such po-tmarking device. At about that time, the said Marcus P. Norton called upon us, we being then considered clients of his, and at that time he there made known unto us that he had a very valuable invention and improvements for the use in the postal service, of the kind, character, and for the purposes hereinbefore stated, and that, because of having endorsed so large an amount of paper as to cause him very great embarrassment in the years 1856 and 1857, and from all of which he at that time was a great financial sufferer, and thus being much distressed, he desired each of us to aid him in money for the purposes of obtaining letters patent upon his said invention and improvements, in this country and perhaps in Europe. Whereupon and after due consideration, we agreed with him, the said Marcus P. Norton, to furnish him with such sums of money as he might require, in order to get his said inventions into general use by the Post-Office or other departments of the government requiring such inventions
919 or instruments. The money so furnished by us, or either of us, as in the judgment of the said Marcus B. Norton he might need or require from time to time, in order to obtain such patents as he might deem best, in order to get his said improvements into general use, by the government or Post Office Department at as early a date or time as possible, or within his power to do, he having the entire management of the same; we agreed with and promised to the said Marcus P. Norton to receive one half interest or moiety part of the said inventions, improvements, and letters patents when obtained, for the uses and purposes aforesaid, while the other and remaining half interest or moiety part of such inventions, improvements, and letters patent were to be and the same were in any event or under any circumstances to remain the property and right of the said Marcus P. Norton, and of his lawful representatives; we were to make no charges whatever against him for any money thus furnished by us to him. His one-half interest and moiety part of the said inventions and patents were to be wholly and entirely free from any and every claim or charge for money or other matter or thing on our part or by us. The said Norton was not to charge our said one-half part with any professional services rendered by him in the premises. The said Norton was by the arrangement to assign all his said patents to us soon after or before the same were issued to him, in order that all his patents, inventions, and improvements and every one of them might be in safe hands while said Norton was so embarrassed, because of his losses aforesaid, or for other cause, as well as to permit of his being a witness of, and concerning his said inventions, improvements, and patents, in court or elsewhere, concerning such matters as were within his personal knowledge, and could not be proven by any other person,
920 such for example as matters appertaining to his caveat filed in the U. S. Patent Office in the year 1853, and containing among other things the several inventions herein named. It was also agreed that whenever the said Norton should be able in his own judgment to manage the affairs concerning and connected with his said inventions, improvements, and letters patent, and to us assigned and transferred in the manner as aforesaid, and upon being requested so to do, we were to reassign, reconvey, and retransfer unto him, the said Norton, his heirs and legal representatives, the invention, improvements, and letters patent dated December 16, 1862, also dated April 14, 1863, including each and every reissue of either of said patents, if at the time of such request and demand of and by said Norton upon us, there were any reissue or reissues of the said letters patent, or of either of them; we

were, also, to reassign, reconvey, and retransfer unto him, the said Marcus P. Norton, his heirs and legal representatives, each and every other letters patent than those hereinbefore named which at the time of his request and demand aforesaid might be in our possession through and by means of any assignments and transfer thereof from the said Norton to us, including the "Post Office Way Bill Envelope," patented on or about the 10th day of June, 1862, including, also, all other patents upon postmarking of letters or packets, and for the cancellation of postage-stamps thereon, and including each and every reissue of any of the said patents. That whenever he, the said Norton, should for any cause desire, request, or demand of us the reassignment, retransfer, or reconveyance of any or of all of his said patents by him assigned to us under our said agreement with him, and for the purposes aforesaid, then the same should be so done without any trouble to him, or unnecessary delay; and in consideration of such reassignments, retransfer, and reconveyances of the said inventions, improvements, and patents by
921 us to the said Marcus P. Norton, he was only to pay to us all sums of money and lawful interest thereon paid out by us at the request of the said Norton, when we should present to him the proper vouchers for the same, and that if, at the time when said Norton should desire or demand of us the reassignment, retransfer, or reconveyance of any, or of each and every of the said patents, by us as aforesaid, he might not be able to cash at once such money, and the lawful interest upon the same, then he, the said Norton, his heirs or lawful representatives, may at his or their own election, pay such money out of the first money had or received by him or them, out of any sale or sales made with the Government of the United States, by him or them, and which should under such circumstances be so paid as soon as possible, after any such sale, and payment of money in accordance therewith, we producing vouchers for all moneys so expended by us as aforesaid stated. It is also agreed that the said Norton was to have full and uninterrupted charge and control of, as well as the management and direction of all matters appertaining to each and every of said patents, both in the obtaining of the same, all legal matters thereon, or in the sale or either of them, or in the introducing of any or all of them into public use by the "Post Office Department," or other department of the government. The letters patent thus far obtained under our said understanding and agreement with him, the said Marcus P. Norton, are dated as follows, to wit: December 16th, 1862, assigned to us December 20th, 1862, also April 14th, 1863, assigned to us April 20th, 1863, and each for improvements in postmarking letters, packets, etc., and for the cancellation of postage stamps, and each recorded in the U. S. Patent Office; also, June 10th. 1862, assigned to us December
922 20th, 1862, and recorded in the U. S. Patent Office December 31st, 1862, and for and upon an invention entitled Post Office Way Bill Envelope, made by said Norton.

And deponents further say for answer to the position taken by the committee of the House of Representatives of the Congress of the United States of America, as well as in full statement and vindication of the facts, and that such committee may know the whole truth, to wit: The position aforesaid being, that deponents are mere speculators upon the invention and ingenuity of another, and that the purchase of said inventions and patents by Congress would not be a reward to or compensation to the said Norton or his family, nor would it be a reward by the government through Congress to the inventor for invention and valuable improvements made by him. That the real and true inventor

should himself be the recipient of the attention of Congress, as well as of the compensation, whereby to encourage, to reward, and to stimulate invention for the benefit of the government, and not persons who claim as mere assignees, for Congress cannot know how or in what manner they came by or unto the possession of the same. That the payment of a very large sum of money by Congress to such assignees would not have the tendency to stimulate and encourage invention. That Congress should reward the inventor and patentee directly, and thereby encourage other inventors as well as to discourage speculation by assignees. The deponents say that they were only to be temporary assignees, in order to aid said Norton in the manner hereinbefore stated, for deponents were by the arrangement to reassign, reconvey, and retransfer each and every of the said patents to them assigned by said inventor and patentee Norton, previous to the time when he might or should request or require of and from us such assignments and
923 transfers, no matter what may have been the name, or nature, or style of the same. Deponents further say, that it was their purpose and intention to render unto the said Norton all the aid in their power, whereby to enable him to complete his models, drawings, and specifications in order to obtain the patents contemplated by him, and to enable him to get the Post-Office Department or government to consider, adopt, and put into use the several inventions made by him, for the purposes and uses aforesaid, for the said Norton was at that time engaged for deponents, in and about business and certain matters appertaining to said Norton's profession, to wit, that of a practicing lawyer.

And deponents further say, that upon the said Norton's request so to do, deponents were to, and would duly and faithfully and freely, reconvey, reassign, and retransfer each and every of the aforesaid inventions and patents unto the said Marcus P. Norton, in legal form and condition, the same as we had received such inventions and patents and each of them in trust as aforesaid from him, whereby the title thereto should be full, free, and perfect, and clear from any, all, and every incumbrance whatever.

And deponents in further answer to said position of the said committee of Congress, do hereby make, execute, and deliver the following absolute assignment and transfer of the aforesaid patents, inventions, and improvements to the said Marcus P. Norton, his heirs, assigns, or legal representatives, to be by him or them used and put upon the record at the U. S. Patent Office, whenever he or they may desire so to do. That is to say, whereas, letters patent of the United States of America were duly granted, issued, and delivered unto the said Marcus P. Norton, under, and bearing date as follows, to wit: December 16th, 1862, also April 14th, 1863, for and upon improvements in instruments for
924 postmarking of letters, and for the cancellation of the postage-stamps thereon, as, and in the manner, form, and for the purposes substantially as hereinbefore stated and set forth, also, a certain letters patent, dated June 10th, 1862, for and upon an invention known and denominated a "Post-Office Way-Bill Envelope," as hereinbefore stated and set forth.

Now, therefore, and by virtue, force, and power of our said agreement and contract with the said Marcus P. Norton in the manner aforesaid, and in consideration of the premises hereinbefore set forth, and in the further consideration of the sum of three hundred dollars, the receipt of which is hereby duly acknowledged, we have sold, assigned, and transferred, and we do hereby sell, assign, and transfer unto the said Marcus

P. Norton, his heirs, assigns, and lawful representatives, the full, clear, entire, and the exclusive right and title to each, every, and all of the aforesaid named and described letters patent, inventions, and improvements, also, each and every reissue of any or either of the same, including together with those hereinbefore named and described, each and every invention and letters patent acquired by us, of and from him, the said Norton, under our aforesaid agreement and contract with him as aforesaid stated. To have and to hold the same, forever, for his own use, benefit, and behoof, and for the use, benefit, and behoof of his heirs, assigns, and legal representatives, for and during the full length of the term for which the same were and are granted, as fully, freely, and entirely as the same would have been held and enjoyed by us, had this grant and sale not been made by us.

925 In testimony whereof we do hereby set our hands and seals, and make our solemn oaths on this 23d day of February, A. D. 1864.

JACOB SHAVOR. [SEAL.]
ALBERT C. CORSE. [SEAL.]

Subscribed and sworn to before me this 23d day of February, 1864.

JOHN T. LAMPORT,
United States Commissioner for
Northern Dist. of New York, Troy, N. Y.

Recorded July 24, 1869.

[Stamps, $1.05, canceled.]

926 *Complainant's Exhibit H.—J. A. S., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted M. P. Norton, dated August 3d, 1869, No. 3586, for "imp't in post-office postmarking and canceling hand-stamps."

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

(Here follows diagram marked page 927.)

No. 3586. Reissue.

The United States of America, to all to whom these letters patent shall come:

Whereas Marcus P. Norton, of Troy, New York, has alleged that he has invented a new and useful improvement in post-office post-
928 marking and canceling hand-stamps (for which letters patent were issued to him, dated April 14, 1863; the same surrendered, and new letters issued to him, dated August 23, 1864; which last letters

having been surrendered by him, the same have been canceled, and new letters ordered to issue to him on an amended specification), and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are, therefore, to grant to the said Marcus P. Norton, his executors, administrators, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, using and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof, I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand, at the city of Washington, this third day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

[L. S.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

S. H. HODGES,
Acting Commissioner of Patents.

929 UNITED STATES PATENT OFFICE.

Marcus P. Norton, of Troy, New York. Letters Patent No. 38175, dated April 14, 1863; reissue No. 1748, dated August 23, 1864; reissue No. 3586, dated August 3, 1869. Improvement in post-office post-marking and canceling hand-stamps.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer, and State of New York, have invented new and useful improvements in "post marking letters," "packets," etc., and in the "canceling" of the "postage-stamps" thereon, in the manner, and by the means, substantially as hereinafter described and set forth; that letters patent of the United States were duly issued thereon, under and bearing date April 14, 1863, which were assigned and transferred under a certain agreement, and by virtue of a certain instrument in writing, bearing date the 20th day of April, 1863, and recorded in the United States Patent Office on the 8th day of March, 1864, in Liber C[7], page 458 of transfers of patents, to Jacob Shavor and Albert C. Corse, of said city of Troy, county, and State, and who, on or about the 23d day of February, A. D. 1864, duly reassigned and retransferred the said invention, improvements, and letters patent to the said Marcus P. Norton, inventor and assignee aforesaid, by a certain instrument in
930 writing, duly executed, and bearing date on the said 23d day of February, 1864, and which assignment and transfer from said

Jacob Shavor and Albert C. Corse was duly recorded in the said United States Patent Office on the 24th day of July, 1869, in Liber U[11], page 319, of transfers of patents. Now, therefore, I the said Marcus P. Norton, do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being had hereinafter to the accompanying drawings, and to the letters of reference marked thereon, which drawings, so marked and lettered, hereby make a part of these my specifications of and concerning my said invention and improvements herein contained and set forth.

Like letters refer to and represent like or corresponding parts of my said invention.

Figure 1 represents a side elevation of the postage-stamp canceling and post-marking device hereinafter described and set forth for canceling postage-stamps with any suitable ink contained upon such instrument, at the same time, blow, and operation of the making of the postmark on the letter, envelope, or packet, one side of and from such postage stamp or frank so canceled.

Figure 2 represents a vertical section taken on a line through the centre of the various parts of the post-marking and postage-canceling device or instrument herein contained, described, and set forth.

Figure 3 represents a face view of the device, showing the post-marking stamp ready for use, and the postage-canceling die or device, made of wood used endwise, or of cork, rubber, or other suitable material therein inserted, in the manner substantially as shown, and more at large described hereinafter.

Figure 4 shows a device for the purpose of canceling postage-stamps or letter franks, used to represent value, by the use and power of
931 any suitable ink, by the means of wood, cork, or any elastic material for the type or die, which may be used for that purpose separate and alone, or in combination with any suitably-constructed post-marking stamp or device, substantially as shown at Fig. 3 of the said drawings.

Figure 5 represents a vertical section of a post-marking and postage-stamp canceling device or die combined, and constructed entirely of iron, steel, or other metal, and more fully described hereinafter.

Figure 6 is a plan or face view of Fig. 5, showing the postage-stamp canceling device or die, made of iron, steel, or other suitable metal or material.

Figure 7 represents the wrench used for securing the dating-type in a proper place within the post-marking device, having the name of the town or post-office where used engraved thereon in relief letters.

Figure 8 represents the tool or instrument used for removing the cork, wood, or rubber die or type used for canceling postage-stamps from the tube or surrounding case where held or contained so as to repair, or replace the same with a new one when worn out or unfit for use.

The nature of my said invention and improvements herein contained and described consists in the employment and combination of a device or die used for the more complete and perfect cancellation of postage-stamps or letter franks by means of soft wood used endwise, or of cork, rubber, or other suitable material, whereby such stamp or frank is effaced and canceled in and by indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of a postage stamp canceling device or die, constructed of wood, cork, rubber, or any suitable material, with any suitably arranged and constructed post-marking stamp or device, so as to cancel, efface, or destroy the postage stamp or let-

932 ter-frank, with indelible or any suitable ink at the same time, blow, or operation of the stamp or instrument by which the post-mark is given or made upon the letter, envelope, or packet, substantially as herein described and set forth.

It also consists of the post marking of letters, envelopes, or packets, and in the cancellation of the postage stamp or stamps thereon, with, in, or by any suitable ink, or similar material, by means of some soft wood used endwise against the postage-stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material, so combined with the post-marking stamp or instrument as to cancel, efface, or destroy the postage-stamp or stamps at one and the same blow or operation of the entire instrument, thus constructed for that purpose, whereby to prevent a second or reuse of such postage-stamp or stamps.

To enable others skilled in the art to which my said invention and improvements relate, to make and use the same, I will here proceed to describe the construction and operation thereof, which are substantially as follows; that is to say—

I construct the post-marking device or stamp (D) of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device and die or type.

E, Fig. 3, is the mortise or recess, of suitable dimensions to receive the type for the month, day of the month, and for the year, and called or known as the dating-type, around which is the name of the town or post-office where used, in relief-letters, and upon the lower face of such post-marking stamp or device. I construct the postage-canceling stamp or device G (for the purpose of canceling, in a more perfect and thorough manner, the postage-stamps on letters, envelopes, or packets) of wood, used endwise upon the postage stamp, or of cork, rubber, or of any suitable or elastic material, and insert the same in the tube or 933 recess F, which is that part of the canceling device marked (C) of the accompanying drawings, and which is connected to and combined with the said cross-piece B, as herein described.

I prefer to have the diameter of the canceling-device and die or type F, Figs. 2, 3, and 4, about the same as the width of the postage stamp to be canceled or destroyed by means of the same.

The said canceling-die or type (G) may be of any length required, and so made as to correspond with the tube or recess F, and closely to fit the same, and it may be made of wood, cork, rubber, or of any elastic material as aforesaid.

The face of this device may contain a plan or form for canceling the postage-stamp in, with, or by ink, like unto that shown at fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

The said device, die, or type G will project somewhat below the face of the post-marking device D, if deemed best so to do, and it may be removed out of the said tube or recess (F) by means of a pin or bolt, substantially like that shown at Fig. 8, the lower end of which operates in and through the aperature *a*, Figs. 2 and 4, for the purpose of repairs, or to replace it by a new one, when desired.

A is the operating handle, firmly secured to the cross-bar B by any suitable mechanical means, and it will be made of wood, &c.

The said postage-stamp canceling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and combined with the said device C, with recess or tube (F) therein as aforesaid, will receive and contain, on the face or configuration thereof, the ink aforesaid, in quantities sufficient to permanently cancel, efface, or de-

stroy the postage stamp whereon the same is used while post-marking letters, packets, &c., in such manner as to prevent the said postage-
934 stamp being cleansed of the said canceling-ink by any chemical or other process; for the said canceling-ink, so put upon the postage-stamp by means of said cork, die, or type, would be so effectual that any attempt or effort to remove it therefrom would entirely destroy, or nearly so, the aforesaid postage stamp, and thus and thereby render the same incapable for or of a second or other use without immediate detection.

The said cork, rubber, or other suitable elastic material, used as aforesaid, will render the said post-marking and postage-stamp-canceling die or type of a more easy and consequently rapid use, because of there being a yielding of the said canceling-die, or type (G), when the blow is given upon the letter, envelope, or packet and postage-stamp, as aforesaid; the operator will not tire as much by means of a constant, continuous, and rapid use of the same; and it will also somewhat aid the operator in raising the entire instrument or apparatus from the paper or packet and postage-stamp, when the impression thereon and the cancellation of such postage stamp shall have been given by the operator, in the manner substantially as aforesaid.

The said canceling type or die can be easily repaired, or replaced by a new one, whenever desired, and at very little expense; and such canceling die or type (G) may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt. In such case there would not be any tube or pipe surrounding said canceling die or type, G. The operation and effect produced would, in such case of construction, be the same.

The said postage-stamp canceling device, die, or type G may be of any desired distance from the aforesaid post-marking or dating device or stamp D, or it may be securely fastened to the immediate side of the said post-marking and dating part or stamp or device (D) by any convenient and suitable mechanical means.

935 The said canceling-die, type, or device G, I prefer to use made of cork, as it will hold a much greater quantity of canceling-ink upon and in the lower face thereof, and when it comes in contact with the printed surface of the postage-stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus, and thereby, inject into, or impregnate such broken surface with the said canceling-ink, whereby such postage-stamp, so operated upon and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be reused, or used a second time, in fraud upon the postal revenue, without immediate detection of the same.

Soft wood, used endwise, will answer nearly the same purpose. Still, long and continued use, after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the canceling-die or type used upon postage-stamps, as aforesaid.

The said tube or cylinder C, Figs. 2, 3, and 4, may be constructed in any suitable manner, or by any convenient means, and thereafter fastened to the under side of the said cross-bar, B, in or by any mechanical means which will answer the required purpose. It may also be of any form or shape deemed best.

I also construct my said postage-stamp-canceling device, die, or type of cast-iron, steel, or other suitable metal, substantially as shown at G′, Figs. 5 and 6, and which may be secured to the said cross-bar or piece B, in like manner as the said tube or cylinder C, Figs. 2 and 4, and which is done either by screw and nut, where the same unites with the said cross-bar, or it may there be firmly fastened by means of suitably

constructed and arranged pins, or rivets, or the same may be soldered to the under side of said cross-bar or piece B, or otherwise attached thereto.

936 The said post-marking and dating device (D) is also secured to the under side of said cross-bar or piece B, and at or near the end thereof, opposite that where said tube or cylinder C, or canceling-die, type, or device G, is securely fastened, as aforesaid, in like manner, and by substantially the same means as used for such fastening of said canceling-device to said cross-bar upon the under side of the same, as aforesaid.

The aforesaid metal canceling-device, die, or type G′, Figs. 5 and 6, may also be fastened or secured to the immediate side of the said post-marking-device by any good and sufficient means, substantially as hereinbefore described and set forth, in reference to the said device C, or tube, or cylinder, constructed to receive and contain the said type or die G, Figs. 2, 3, and 4.

Such metallic device, die, or type may also have upon its lower face or lower surface any suitable configuration deemed best to use for the purpose of canceling the postage stamp in, with, or by any suitable ink at the same time, blow, and operation of the instrument or apparatus, as hereinbefore stated and set forth.

In any and every case, the post-marking of the letter, envelope, or packet, and the effacing or cancellation of the postage-stamp or letter-frank thereon, representing value, are done at the same time, and by the same blow or operation of the said several devices and parts, constructed and combined in the manner and by the means substantially as herein described and set forth.

Both the post-marking and cancellation of the said postage-stamp are done with indelible or other and suitable ink used for such cancellation or effacing of the postage-stamp, and that, too, without any injury to the letter, envelope, or packet, or to the contents thereof, as would be the case were the said postage-stamp canceled by being cut in several parts and places by means of cutters or knives constructed for

937 that express use and purpose, as is the case by the cutters or knives contained and set forth in letters patent granted to me on the 9th day of August, A. D. 1859; also, on the 16th day of December, A. D. 1862, the first of which contains no guard or guards to said knives or cutters, while the second contains such guard or guards, for the purpose of preventing such cutters or knives from cutting too much or too deep in and upon said postage-stamps.

The said instrument and devices herein set forth and described, will not, under any circumstances, cut either the letter, envelope, or postage-stamp thereon, in any way or manner, but perform the cancellation required to be done in, with, and by ink only, as aforesaid, no cutting device whatever being used; but the said cork, device, die, or type will, when it comes in contact with the printed or enameled like surface of the postage-stamp, somewhat mar, bruise, or break the same by means of the blow given by the instrument, whereby to prepare the same to be filled by or impregnated with any suitable ink used for such cancellation substantially as aforesaid.

In no case could a fraud be committed by a second or reuse of the government postage-stamp, or letter-frank representing value, without being discovered.

This arrangement and combination of devices will greatly hasten or facilitate the making up of the mails for transportation. It will also economize in labor, and reduce the labor in post-marking letters, and in

the canceling of the postage-stamps thereon to about, if not entirely, one-half of the number of workmen, laborers, or clerks absolutely necessary when and where this combined instrument is not used in the manner aforesaid.

It therefore saves at least one-half of the labor required in the post-marking of letters, envelopes, or packets, and in the cancellation of the postage-stamps thereon. It also makes the cancellation of
938 the postage-stamps more effectual or permanent, so as to prevent a second or reuse of such postage-stamps by any means whatever, which is very important in the successful management of the post-offices in this country, whereby, and by means of which, large sums of money are annually saved this government; and frauds upon the postal revenue by the second and reuse of postage-stamps are also prevented by the use of my invention and improvements herein contained, described, and set forth.

By the use of said invention the letters to be mailed and prepared for transportation, by means of post-marking the same, and in canceling the postage-stamps thereon, as aforesaid, need not be handled over but once, thus and thereby economizing in time and in labor.

The cross-bar, or piece B, figs. 1, 2, 3, and 5, may be of any suitable width or thickness, or of any metal which will answer the required purpose. It may also be of any length deemed best to use, in order to get the said post-marking device and the said postage canceling device, die, or type suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened or attached in the manner substantially as aforesaid.

The type whereby to give the date are arranged in the said mortise E, as shown at figs. 3 and 6, and are there held in their proper place by means of a set-screw, substantially as shown in figs. 2, 3, and 6.

The cork or other material used for the canceling device, die, or type will be pressed into the said tube, or pipe, at recess F, cylinder C, fig. 2, and the same is there firmly held, substantially as shown at G, fig. 4.

The device or configuration for the cancellation of the postage-stamp, in the manner substantially as aforesaid, may be seen at (C and G), fig. 3, where cork is used. But when iron, steel, or other suit-
939 able metal is used, the device or configuration may be as seen at G′, fig. 6.

The invention and improvements contained in and covered by the several claims hereto annexed or below given is and are not contained in the letters patent granted on my application, in due form, on "the 9th day of August, 1869"; nor is, nor are, the same to be found in my said letters patent granted to me "December 16, 1862"; but the said invention and improvements are contained in my caveat duly filed in the United States Patent Office in the year 1853, containing, also, other improvements.

Having thus described my original invention and improvements in "post-marking" and "postage canceling" devices, combined and arranged for the purposes aforesaid,

What I claim, and desire to secure by letters patent of the United States of America, is—

1. The postage-stamp-canceling-device cylinder, or tube C, containing a die, or type, G, made of cork, wood, or other suitable material, or any equivalent for said cylinder, or tube, C, or for the canceling-die, or type, G, whereby to efface, cancel, or destroy the postage-stamp with indelible or other ink, in the manner and for the purposes substantially as herein described and set forth.

2. The canceling-device cylinder, or tube C, with cork or wood, or any substantial equivalent thereof, forming the die or type G, therein, in combination with the cross-bar, or piece B, and with the post-marking device D, substantially as and for the purposes herein described and set forth.

3. The post-marking of letters, envelopes, and packets, and the cancellation of the postage-stamps thereon with ink, at one and the same blow or operation of the instrument, in the manner and by the means substantially as herein described and set forth.

940 4. The employment and combination of a post-marking device with a postage-stamp-canceling device, both being operated by one and the same handle for the post-marking of letters, envelopes, or packets, and for the cancellation of the postage-stamps thereon, with indelible or other ink, in the manner substantially as herein described and set forth.

In testimony whereof I have, on this 12th day of July, 1869, hereunto set my h nd in the presence of two witnesses, to wit—

MARCUS P. NORTON.

Witnesses:
J. C. LATHROP.
F. W. DONN.

941 *Complainant's Exhibit I.—J. A. S., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is certify that the annexed is a true copy from the records of this office of an assignment recorded in liber B[13], page 351.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR,
Commissioner.

Liber B[13], page 351.

Whereas I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, did obtain letters patent of the United States of America for and upon improvements in "post-office post-marking and canceling hand stamp," which letters patent were issued and delivered and bearing date the fourteenth day of April, 1863, which letters patent have been twice reissued under and bearing date as follows, to wit, August 23d, 1864, and August 3d, 1869, the last of which is numbered 3586;

942 And whereas the invention and improvements contained in the said letters patent have been in general and continued use in the postal service of said United States since the first day of March, 1863, by the order and direction of the Postmaster-General; and whereas Helen M. Ingalls, of the said city of Troy, county, and State, is desirous of having and acquiring all the right, title, and interest which I now have and ever had in, to, or for the said invention, improvements, and

etters patent, and the several reissues of the same; also, any and every claim for past use of the same.

Now, therefore, this indenture and assignment witnesseth that for and in consideration of the sum of one hundred dollars to me, the said Marcus P. Norton, in hand paid, the receipt of which is hereby acknowledged, and in the further and other valuable considerations, the receipt of which is hereby duly acknowledged, I have sold, assigned, and transferred, and I do hereby sell, assign, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all the right, title, and interest which I now have or ever had in the said invention, improvements, and letters patent, and the several reissues thereof; and I also sell, assign, convey, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all the right, interest, or claim I now have against the Post-Office Department or Government of the United States aforesaid, for the past use of the said invention and improvements under the said letters patent, intending herein and hereby to sell, assign, and transfer unto the said Helen M. Ingalls and her lawful representatives all my right, title, interest, or claim for the past and future use of the said invention, improvements, and letters patent in the postal service of the United States by the Post-Office Department, and also the entire invention, improvements, and letters patent, and all
943 and every reissue of the same, each and every of which is to be held and enjoyed by the said Helen M. Ingalls, for her own use, benefit, and behoof, and for the use, benefit, and behoof of her legal representatives, to the full end of the term for which the said letters patent and said several reissues are or were granted, as fully and entirely as the same would have been held and enjoyed by me if this sale and assignment had not been made in the manner aforesaid; hereby selling and conveying unto her, the said Helen M. Ingalls, and her assigns and lawful representatives, all and every right, interest, privilege, title, or claim which I now have or ever had, in any way, manner, or form, under the said letters patent, and any and every reissue of the same, to the full end of the term of seventeen years, for which said letters patent were granted, on and commencing the fourteenth day of April, 1863, with full right, power, and authority to enforce, settle, and adjust the same for the past use of the said invention, improvements, and letters patent.

50. 50.
Marcus P. Norton.
October 23rd, 1869.
50. 50.

In testimony whereof I have hereunto set my hand and seal on this twenty-third day of October, 1869.

MARCUS P. NORTON. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES O'CONOR.
EDW. W. DONN.

Recorded August 1st, 1870.

944 *Complainant's Exhibit K.—J. A. S., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of

this office of the reissue letters patent granted Helen M. Ingalls, dated October 4th, 1870, No. 4143, for "improvement in post-office postmarking and canceling hand stamps."

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

No. 4143. Reissue.

The United States of America, to all to whom these letters patent shall come:

Whereas Marcus P. Norton, of Troy, New York, assignor to Helen M. Ingalls, of same place, has alleged that he has invented a new and useful improvement in post-office postmarking and canceling hand-stamps (for which letters patent were issued to him, dated April 14, 1863, the same surrendered and new letters issued to him, dated August 23, 1864, which second letters were surrendered and new letters issued to him,
945 dated August 3, 1869, which last letters having been surrendered, as well as letters patent for improvement in hand-stamps, issued to Helen M. Ingalls, as assignee of said Marcus P. Norton, dated August 23, 1870, the said two letters patent last named have been canceled, and new letters ordered to issue to said assignee on two separate amended specifications), and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discover of the said improvement, and that the same hath not to his knowledge and belief been previously known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are therefore to grant to the said Helen M. Ingalls, her executors, administrators, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington this fourth day of October, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

[L. S.] W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
SAML. S. FISHER,
Commissioner of Patents.

(Here follows diagram, marked page 946.)

Marcus P. Norton, of Troy, New York, assignor to Helen M. Ingalls, of same place. Letters patent No. 38175, dated April 14, 1863; reissue No. 1748, dated August 23, 1864; reissue No. 3586, dated August 3, 1869; reissue No. 4143, dated October 4, 1870; and also letters patent No. 106716, dated August 23, 1870. Division A. Improvement in post-office postmarking and canceling hand-stamps.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, have invented new and useful improvements in "postmarking letters," "packets," etc., and in the "canceling" of the "postage-stamps" thereon, in the manner and by the means substantially as hereinafter described and set forth; that letters patent of the United States were duly issued thereon, under and bearing date April 14, 1863, which were assigned and transferred under a certain agreement, and by virtue of a certain instrument in writing, bearing date the 20th day of April, 1863, and recorded in the United States Patent Office, on the 8th day of March, 1864, in liber C[7], page 458, of Transfers of Patents, to Jacob Shavor and Albert C. Corse,
948 of said city of Troy, county, and State, and who, on or about the 23d day of February, A. D. 1864, duly reassigned and retransferred the said invention, improvements, and letters patent to the said Marcus P. Norton, inventor and assignee aforesaid, by a certain instrument in writing, duly executed and bearing date on the said 23d day of February, A. D. 1864, and which assignment and transfer from said Jacob Shavor and Albert C. Corse was duly recorded in the said United States Patent Office, on the 24th day of July, 1869, in liber U[11], page 319, of Transfers of Patents; on or about the 23d day of October, A. D. 1869, I, the said Marcus P. Norton, by deed of assignment in writing, did lawfully assign and transfer unto Helen M. Ingalls, of the city of Troy, State of New York, the said invention and letters patent, dated and reissued as hereinbefore stated and set forth, which deed of assignment was duly recorded in the United States Patent Office, on the 1st day of August, 1870, in liber B[13], page 351, of Transfers of Patents, and who is now the lawful owner thereof under and by virtue of the said sale, assignment, and transfer so made, executed, and delivered, and recorded as before stated. Now, therefore I, the said Marcus P. Norton, do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being had hereinafter to the accompanying drawings and to the letters of reference marked thereon, which drawings, so marked and lettered, hereby make a part of these my specifications of and concerning my said invention and improvements herein contained and set forth.

Like letters refer to and represent like and corresponding parts of my said invention.

Figure 1 represents a side elevation of the postage-stamp canceling and postmarking device hereinafter described and set forth for canceling postage-stamps, with any suitable ink contained upon such
949 instrument, at the same time, blow and operation of the making

of the postmark on the letter, envelope, or packet, one side of and from such postage-stamp or frank so canceled.

Figure 2 represents a vertical section taken on a line through the centre of the various parts of the postmarking and postage-canceling device or instrument herein contained, described and set forth.

Figure 3 represents a face view of the device, showing the postmarking stamp ready for use, and the postage-canceling die or device, made of wood, used endwise, or of cork, rubber, or other suitable material therein inserted, in the manner substantially as shown and more at large described hereinafter.

Figure 4 shows a device for the purpose o fcanceling postage stamps or letter franks, used to represent value, by the use and power of any suitable ink by the means of wood, cork, or any elastic material for the type or die, which may be used for that purpose separate and alone, or in combination with any suitably-constructed post-marking stamp or device substantially as shown at Fig. 3 of the said drawings.

Figure 5 represents a vertical section of a post-marking and postage-stamp canceling device or die combined and constructed entirely of iron, steel, or other metal, and more fully described hereinafter.

Figure 6 is a plan or face view of Fig. 5, showing the postage-stamp canceling device or die made of iron, steel, or other suitable metal or material.

Figure 7 represents the wrench used for securing the dating-type in a proper place within the post-marking device, having the name of the town or post-office where used engraved thereon in relief letters.

Figure 8 represents the tool or instrument used for removing the cork, wood, or rubber die or type used for canceling postage-
950 stamps from the tube or surrounding case where held or contained, so as to repair or replace the same with a new one when worn out or unfit for use.

The nature of my said invention and improvements herein contained and described consists in the employment and combination of a device or die used for the more complete and perfect cancellation of postage-stamps or letter-franks by means of soft wood used endwise, or of cork, rubber, or other suitable material, whereby such stamp or frank is effaced and canceled, in and by indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of a postage-stamp canceling device or die, constructed of wood, cork, rubber, or any suitable material, with any suitably arranged and constructed post-marking stamp or device, so as to cancel, efface or destroy the postage-stamp or letter-frank with indelible or any suitable ink at the same time, blow, or operation of the stamp or instrument by which the postmark is given or made upon the letter, envelope, or packet, substantially as herein described and set forth.

It also consists of the postmarking of letters, envelopes, or packets, and in the cancellation of the postage-stamp or stamps thereon, with, in, or by any suitable ink, or similar material, by means of some soft wood used endwise against the postage-stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material so combined with the post-marking stamp or instrument as to cancel, efface, or destroy the postage stamp or stamps at one and the same blow or operation of the entire instrument thus constructed for that purpose, whereby to prevent a second or re-use of such postage-stamp or stamps.

To enable others skilled in the art to which my said invention and improvements relate to make and use the same, I will here pro-

951 ceed to describe the construction and operation thereof, which are substantially as follows; that is to say:

I construct the post-marking device or stamp (D) of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device and die or type.

E, fig. 3, is the mortice or recess, of suitable dimensions to receive the type for the month, day of the month, and for the year, and called or known as the dating-type, around which is the name of the town or post office where used, in relief letters, and upon the lower face of such post-marking stamp or device.

I construct the postage-canceling stamp or device G (for the purpose of canceling in a more perfect and thorough manner the postage-stamps on letters, envelopes, or packets) of wood, used endwise upon the postage stamp, or of cork, rubber, or of any suitable or elastic material, and insert the same in the tube or recess F, which is that part of the canceling device marked C of the accompanying drawings, and which is connected to and combined with the said cross-piece B as herein described.

I prefer to have the diameter of the canceling device and die or type F, figs, 2, 3, and 4, about the same as the width of the postage-stamp to be canceled or destroyed by means of the same.

The said canceling die or type (G) may be of any length required, and so made as to correspond with the tube or recess F, and closely to fit the same, and it may be made of wood, cork, rubber, or of any elastic material as aforesaid.

The face of this device may contain a plan or form for canceling the postage-stamp in, with, or by ink, like unto that shown at fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

The said device, die, or type G will project somewhat below the face of the post-marking device D, if deemed best so to do, and it may 952 be removed out of the said tube or recess (F) by means of a pin or bolt, substantially like that shown at fig. 8, the lower end of which operates in and through the aperture *a*, figs. 2 and 4, for the purpose of repairs, or to replace it by a new one, when desired.

A is the operating handle, firmly secured to the cross bar B by any suitable mechanical means, and it will be made of wood, etc.

The said postage-stamp canceling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and combined with the said device C, with recess or tube (F) therein as aforesaid, will receive and contain, on the face or configuration thereof, the ink aforesaid, in quantities sufficient to permanently cancel, efface or destroy the postage-stamp whereon the same is used while post-marking letters, packets, etc., in such manner as to prevent the said postage-stamp being cleansed of the said canceling-ink by any chemical or other process; for the said canceling-ink so put upon the postage-stamp by means of said cork, die or type would be so effectual that any attempt or effort to remove it therefrom would entirely destroy, or nearly so, the aforesaid postage stamp, and thus and thereby render the same incapable for or of a second or other use without immediate detection.

The said cork, rubber, or other suitable elastic material used as aforesaid will render the said post-marking and postage-stamp canceling die or type of a more easy, and consequently rapid use, because of there being a yielding of the said canceling die or type G, when the blow is given upon the letter, envelope, or packet and postage-stamp as aforesaid; the operator will not tire as much by means of a constant,

continuous, and rapid use of the same; and it will also somewhat aid the operator in raising the entire instrument or apparatus from the paper or packet and postage-stamp when the impression thereon
953 and the cancellation of such postage-stamp shall have been given by the operator, in the manner substantially as aforesaid.

The said canceling type or die can be easily repaired, or replaced by a new one, whenever desired, and at very little expense; and such canceling die or type G may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt. In such case there would not be any tube or pipe surrounding said canceling die or type G. The operation and effect produced would in such case of construction be the same.

The said postage-stamp canceling device, die, or type G, may be of any desired distance from the aforesaid post-marking or dating device or stamp D, or it may be securely fastened to the immediate side of the said post-marking and dating part or stamp or device D by any convenient and suitable mechanical means.

The said canceling die, type, or device G, I prefer to use made of cork, as it will hold a much greater quantity of canceling-ink upon and in the lower face thereof, and when it comes in contact with the printed surface of the postage-stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with the said canceling-ink, whereby such postage-stamp, so operated upon and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be re-used, or used a second time, in fraud upon the postal revenue, without immediate detection of the same.

Soft wood, used endwise, will answer nearly the same purpose. Still, long and continued use, after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the canceling die or type used upon postage-stamps as aforesaid.

954 The said tube or cylinder C, Figs. 2, 3, and 4, may be constructed in any suitable manner or by any convenient means, and thereafter fastened to the under side of the said cross-bar B in or by any mechanical means which will answer the required purpose. It may also be of any form or shape deemed best.

I also construct my said postage-stamp canceling device, die, or type of cast-iron, steel, or other suitable metal, substantially as shown at G′, Figs. 5 and 6, and which may be secured to the said cross-bar or piece B in like manner as the said tube or cylinder C, Figs. 2 and 4, and which is done either by screw and nut where the same unites with the said cross-bar, or it may there be firmly fastened by means of suitably constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece B, or otherwise attached thereto.

The said post-marking and dating device D is also secured to the under side of said cross-bar or piece B, and at or near the end thereof, opposite that where said tube or cylinder C or canceling die, type, or device G is securely fastened, as aforesaid, in like manner and by substantially the same means as used for such fastening of said canceling device to said cross bar upon the under side of the same as aforesaid.

The aforesaid metal canceling device, die, or type G′, figs. 5 and 6, may also be fastened or secured to the immediate side of the said post-marking device by any good and sufficient means, substantially as hereinbefore described and set forth, in reference to the said device C, or

tube, or cylinder, constructed to receive and contain the said type or die G, figs. 2, 3, and 4.

Such metallic device, die, or type may also have upon its lower face or lower surface any suitable configuration deemed best to use for the purpose of canceling the postage-stamp in, with, or by any suita-
955 ble ink at the same time, blow, and operation of the instrument or apparatus, as hereinbefore stated and set forth.

In any and every case the postmarking of the letter, envelope, or packet, and the effacing or cancellation of the postage stamp or letter-frank thereon representing value, are done at the same time and by the same blow or operation of the said several devices and parts, constructed and combined in the manner and by the means substantially as herein described and set forth.

Both the postmarking and cancellation of the said postage-stamp are done with indelible or other and suitable ink, used for such cancellation or effacing of the postage stamp, and that, too, without any injury to the letter, envelope, or packet, or to the contents thereof, as would be the case were the said postage-stamp canceled by being cut in several parts or places by means of cutters or knives, constructed for that express use and purpose, as is the case by the cutters or knives contained and set forth in letters patent granted to me on the 9th day of August, A. D. 1859, also on the 16th day of December, A. D. 1862, the first of which contains no guard or guards to said knives or cutters, while the second contains such guard or guards, for the purpose of preventing such cutters or knives from cutting too much or too deep in and upon said postage-stamps.

The said instrument and devices herein set forth and described will not, under any circumstances, cut either the letter, envelope, or postage-stamp thereon in any way or manner, but perform the cancellation required to be done in, with, and by ink only, as aforesaid, no cutting device whatever being used. But the said cork device, die, or type will, when it comes in contact with the printed or enameled-like surface of the postage-stamp, somewhat mar, bruise, or break the same, by means of the blow given by the instrument, whereby to prepare
956 the same to be filled by or impregnated with any suitable ink used for such cancellation, substantially as aforesaid.

In no case could a fraud be committed by a second or re-use of the government postage-stamp, or letter-frank representing value, without being discovered.

This arrangement and combination of devices will greatly hasten or facilitate the making up of the mails for transportation. It will also economize in labor and reduce the labor in postmarking letters, and in the canceling of the postage-stamps thereon to about, if not entirely, one-half of the number of workmen, laborers, or clerks absolutely necessary when and where this combined instrument is not used in the manner aforesaid.

It therefore saves at least one-half of the labor required in the postmarking of letters, envelopes, or packets, and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the postage-stamps more effectual or permanent, so as to prevent a second or reuse of such postage-stamps by any means whatever, which is very important in the successful management of the post-offices in this country, whereby and by means of which large sums of money are annually saved this government; and frauds upon the postal revenue, by the second and reuse of postage-stamps, are also prevented by the use of my invention and improvements herein contained, described, and set forth.

By the use of said invention the letters to be mailed and prepared for transportation, by means of postmarking the same, and in canceling the postage-stamps thereon as aforesaid, need not be handled over but once, thus and thereby economizing in time and in labor.

The cross-bar or piece B, figs. 1, 2, 3, and 5, may be of any suitable width or thickness, or of any metal which will answer the required purpose. It may also be of any length deemed best to use, in order
957 to get the said postmarking device and the said postage canceling device, die, or type suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened or attached, in the manner substantially as aforesaid.

The type, whereby to give the date, are arranged in the said mortise E, as shown at figs. 3 and 6, and are there held in their proper place by means of a set-screw, substantially as shown in figs. 2, 3, and 6.

The cork or other material used for the canceling device, die, or type will be pressed into the said tube or pipe at recess F, cylinder C, fig. 2, and the same is there firmly held, substantially as shown at G, fig. 4.

The device or configuration for the cancellation of the postage-stamp in the manner substantially as aforesaid may be seen at C and G, fig. 3, where cork is used; but when iron, steel, or other suitable metal is used, the device or configuration may be seen at G′, fig. 6.

The invention and improvements contained in and covered by the several claims hereto annexed or below given is and are not contained in the letters patent granted on my application, in due form, on "the 9th day of August, 1859," nor is nor are the same to be found in my said letters patent granted to me "December 16, 1862"; but the said invention and improvements are contained in my caveat duly filed in the United States Patent Office in the year 1853, containing, also, other improvements.

Having thus described my original invention and improvements in "postmarking" and "postage-canceling" devices, combined and arranged for the purposes aforesaid,

What I claim, and desire to secure by letters patent of the United States of America, is—

1. The postage-stamp-canceling device, cylinder or tube C, con-
958 taining a die or type, G, made of cork, wood, or other suitable material, or any equivalent for said cylinder or tube C, or for the said canceling die or type G, whereby to efface, cancel, or destroy the postage-stamp with indelible or other ink, in the manner and for the purposes substantially as herein described and set forth.

2. The canceling device, cylinder or tube C, with cork or wood, or any substantial equivalent thereof, forming the die or type G, therein, in combination with the cross bar or piece B, and with the postmarking device D, substantially as and for the purposes herein described and set forth.

3. The postmarking of letters, envelopes, and packets, and the cancellation of the postage-stamps thereon with ink, at one and the same blow or operation of the instrument, in the manner and by the means substantially as herein described and set forth.

4. The employment and combination of a post-marking device with a postage-stamp canceling device, both being operated by one and the same handle, for the post marking of letters, envelopes, or packets, and for the cancellation of the postage-stamps thereon with indelible or other ink, in the manner substantially as herein described and set forth.

In testimony whereof I have on this 14th day of September, 1870, hereunto set my hand, in the presence of two witnesses, to wit:

MARCUS P. NORTON.

Witnesses:
FRED'K KOONES.
EDW. W. DONN.

959 *Complainant's Exhibit L.—J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in Liber X^{13}, page 316.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR,
Commissioner.

X^{13}, p. 316.

Whereas I, Helen M. Ingalls, formerly of Troy, New York, am the owner by mesne assignment of one undivided third part of the entire interest granted by the United States to Frederick G. Ransford and Peter Low, as assignees of Marcus P. Norton, by letters patent, granted August 9th, A. D. 1859, for improvement in post-marking hand stamps;

And whereas I am in like manner the owner of the entire interest in three other patents for improvements in post-marking and postage canceling stamps granted by the United States to said Marcus
960 P. Norton, which said letters patent are respectively dated as follows, viz:

1st patent dated December 16th, A. D. 1862.

2d patent dated April 14th, A. D. 1863, and subsequently reissued August 23d, A. D. 1864, and again reissued August 3d, A. D. 1869, and again reissued as Div. A, on the 4th of October, A. D. 1870, and 3d patent dated July 13th, A. D. 1869;

And whereas Wm. W. Secombe, of the city and State of New York, is willing to accept the ownership and charge thereof:

Now, therefore, in consideration of the sum of five dollars, to me in hand paid by said Wm. W. Secombe, I have assigned, transferred, and set over, and by these presents do assign, transfer, and set unto the said Wm. W. Secombe and his assigns and personal representatives, all my right, title, and interest in and to each and all of the above recited letters patent, as fully as the same are vested in me, to have and to hold the same in trust for myself, my sister Minnie D., wife of said Marcus P. Norton, and the children of said Marcus P. Norton, as follows:

The said Wm. W. Secombe may manufacture under said patents, or grant licenses to others to manufacture, or may sell and assign said letters patent or any of them.

And I also assign to said Wm. W. Secombe all my right to compensation for the past use of said letters patent, or any of them, by the

United States or others, as conveyed to me by said Marcus P. Norton, on the twentieth day of October, A. D. 1869, and recorded in Liber B[13], p. 351, of transfers of patents, in the Patent Office of the United States; authorizing him to collect and receipt for the same.

The proceeds of sales, licenses, or collections to be accounted for according to the following rule: Said trustee is first to pay all the expenses of the trust, and reserving his compensation as trustee, to
961 pay over the balance of money remaining in his hands according to the terms of a declaration of trust executed contemporaneously herewith, to myself and the said wife and children of said Marcus P. Norton.

Executed at Washington, D. C., this fourth day of March, A. D. 1871.

HELEN M. INGALLS.

Witnesses:
MARCUS P. NORTON.
CHAS. P. BARNARD.

Recorded March 11, 1871.
[5-cent int. rev. stamp, canceled.]

962 *Complainant's Exhibit M.—J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Secombe Manufacturing Company, dated October 4th, 1870, No. 4144, for "Improvement in hand canceling stamps."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

(Here follows diagram marked page 963.)

No. 4144. Reissue.

The United States of America to all to whom these letters patent shall come:

Whereas Marcus P. Norton, of Troy, New York, assignor, by mesne assignments, to the Secombe Manufacturing Company, of New York, New York, has alleged that he has invented a new and useful improvement in hand canceling stamps (for which letters patent were issued to him dated April 14, 1863, the same surrendered, and new letters
964 issued to him dated August 23, 1864; which second letters were surrendered, and new letters issued to him dated August 3, 1869; which last letters having been surrendered, as well as letters patent for improvement in hand stamps, issued to Helen M. Ingalls as assignee of said Marcus P. Norton, dated August 23, 1870; the said two letters patent last named have been canceled and new letters ordered to issue

to said assignee on two separate amended specifications), and has made oath that he is a citizen of the United States, that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are therefore to grant to the said Secombe Manufacturing Company, its successors, or assigns, for the term of seventeen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington this fourth day of October, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

[SEAL.] W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
SAM'L S. FISHER,
Commissioner of Patents.

965 UNITED STATES PATENT OFFICE.

Marcus P. Norton, of Troy, assignor, by mesne assignments, to the "Secombe Manufacturing Company," of New York, N. Y. Letters patent No. 38175, dated April 14, 1863; reissue No. 1748, dated August 23, 1864; reissue No. 3586, dated August 3, 1869; reissue No. 4144, dated October 4, 1870; and also letters patent No. 106716, dated August 23, 1870. Division B. Improvement in hand canceling stamps.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer, and State of New York, have heretofore invented certain new and useful improvements in a "device or machine for printing, for dating upon, and for canceling internal-revenue stamps" of value, by cutting, puncturing, or piercing them at the same time and operation of printing or forming the date thereon in the manner and by the means substantially as herein described and set forth; which said invention, after having been duly sold, assigned, and transferred to Helen M. Ingalls, of said city of Troy, county, and State, by deed of assignment dated on the 9th day of August, 1870, and duly recorded in the United States Patent Office on the 9th day of Au-
966 gust, 1870, in Liber H[13], page 132, of Transfers of Patents; and the same was thereafter duly sold, assigned, and transferred by her, the said Helen M. Ingalls, to the "Secombe Manufacturing Company," of the city, county, and State of New York, by an instrument in writing, bearing date on or about the 29th day of August, 1870, and

which was duly recorded in the United States Patent Office on the 31st day of August, 1870, in Liber W[12], page 388, of Transfers of Patents; now, therefore, I, the said Marcus P. Norton, do hereby declare the following to be a full, clear, and exact description of the nature, construction, and operation of the same, reference being hereby had to the accompanying drawings and to the letters of reference marked thereon, which drawings so marked and lettered make a part of these specifications of my said invention and improvements for the cancellation of internal-revenue stamps, and now owned by the "Secombe Manufacturing Company," as before stated and set forth.

Like letters represent and refer to like or corresponding parts upon the accompanying drawings, made in one sheet, and marked "Division B," and which are a part of these specifications.

Figure 1 is a vertical section on a line through or near the centre of the canceling device or machine herein described and set forth.

Figure 2 is a side elevation and view of the same machine.

Figure 3 is a plan or face view of the said device, or machine, or invention, showing the printing, forming, or dating, and the cutting or puncturing parts, device, and devices.

Figure 4 represents an ordinary stationary frame to receive and contain such printing or dating and cutting parts or device or devices.

Figure 5 shows a face or plan view and a vertical section on a line crosswise the cutting-canceling device, at or near the centre of the machine or device herein described and set forth, showing the type
967 or device for printing or forming the date upon the revenue stamp, arranged between and combined with the outside cutting, puncturing, or piercing devices.

Figure 6 shows a plan or face view and a vertical section on a line substantially the same as described under Fig. 5, and showing the cutters, knives, or canceling device used for cutting, puncturing, or piercing the revenue stamp, arranged between the type or device for printing or forming the month, the day of the month, and the year upon said revenue stamp.

The nature of my said invention and improvements consists in the employment of cutters, knives, or cutting-canceling device, constructed of any width, thickness, or length required for cutting, puncturing, or piercing the internal-revenue stamp in one or more places, or in such place or places as may be desirable, and so arranging and combining the same with the type or device for the date as to print or form the month, the day of the month, and the year, or the date, upon such revenue stamp at the same time and operation of such cutting, puncturing, or piercing thereof for the cancellation, thus and thereby securing a more perfect and permanent cancellation of the revenue stamp, with the date of the same printed or formed thereon in a plain and intelligible manner, in the midst of, or outside of, or between such cuts, piercings, or punctures, substantially as herein shown, described, and set forth, so as to prevent frauds upon the government by or from a second or reuse of the same, after having been once used in the payment of the government tax, as by law required.

To enable others skilled in the art to which my said invention relates to make and use the same, I will here proceed to describe the construction and the operation of the same, which is substantially as follows, to wit:

968 A, Figs. 1, 2, and 3, represents a device or machine for containing and firmly holding the cutting-canceling and dating devices herein described and specified, and it may be of any desired diameter or

size whereby the better to carry into successful operation my said invention.

The said cutting, puncturing, or piercing device, or cutters, or knives *a*, are arranged and combined with the type or dating device or devices for the printing or forming of the month, the day of the month, and the year or the date, either between and outside of the same, as shown; or such cutters, knives, or cutting-canceling device may only be arranged outside of the said type or dating device; or the same may be arranged immediately between such dating type or device; or the same may be arranged in a close and parallel line with the dating-type or device; or the said dating-type or device may be arranged with such cutting, puncturing, or piercing device or parts, so that some of the knives or cutters will be outside of and other ones between the said type, as may be the most efficient and successful in canceling the said revenue stamp.

The said cutting-canceling device should be made of fine cast-steel, and it may be made in one or more parts, cutters, or knives, and then arranged with the dating-type or device, substantially in the manner herein described and set forth; such cutters, knives, or cutting canceling device, have sharp edges constructed upon the lower end thereof, by the which the cutting, puncturing, or piercing of the revenue stamp is thoroughly done at the same time and operation of printing or forming the date upon the same for the cancellation of such stamp, and giving and showing thereon the date of that cancellation.

At Figs. 1, 3, 5, and 6 of the accompanying drawings—

d is the type for the month;

e is the type for the day of the month;

f is the type for the year; and

969 *a*, same figures, is the cutting device for cutting, puncturing, or piercing the said revenue stamp, thereby canceling it, when, or at the time the date thereof is printed, or formed, or impressed upon it, substantially as herein described and set forth.

In any and every modification of my said invention shown or described, the cutting, puncturing, or piercing device or devices will be so arranged and combined with the dating-type or device as to cancel the revenue stamp upon its exposed surface, by the union of those devices, at the same time and operation of the entire machine.

When the said revenue stamp shall have been canceled by the use or means of my said invention, device, or canceling-machine, it will be cut, punctured, or pierced, in one or more places, and the date will have been formed thereon at the same blow or operation of the machine, substantially as shown by the accompanying drawings, and as herein described and set forth, cutting through the revenue stamp and into or through the paper, to or upon which it shall have been affixed in the usual manner of affixing revenue stamps to paper or documents in payment of the government tax.

Such cancellation will prevent frauds upon the government revenue, from or by a second or reuse of the revenue stamp, as the cutting, or puncturing, or piercing, and the dating of and upon the same will greatly discourage any illegal or unlawful use of the revenue stamp once used, as by law provided; and if the same shall have been used a second time, or reused in any form, the same will be detected and exposed by reason of and on account of the aforesaid mode or manner of the cancellation of such revenue stamps.

Each and every part or device contained in my said machine and invention, and hereinbefore mentioned and specified, must be constructed

of proper and durable material, and of such size and strength as
970 shall the more successfully carry out and into operation my invention and improvements hereinbefore named and set forth.

The aforesaid canceling and dating apparatus, having suitably-constructed knives or cutters and type or dating device united and combined into one device or machine, for the purpose of canceling revenue stamps by cutting and dating upon the exposed or upper surface of the said stamp, may have surrounding the same the name of any person, office, bank company, business firm, officer, or corporation, so as to print or form upon the revenue stamp such name as shall perform the work of such cancellation, substantially as shown at Figs. 3, 5, and 6, of the accompanying drawings.

The machine, device, or instrument aforesaid described, is operated by a downward blow or force of the same upon the immediate and exposed surface of the revenue stamp.

But one blow or operation of such machine or device will be required to secure the aforesaid cancellation; still, however, more than one blow or operation of such machine may be given, if found necessary to do perfect work, as contemplated and provided in or by the construction or manufacture of my said machine, invention or device.

The above-described canceling and dating device, so constructed and combined, may be arranged for practical use and operation in any suitable manner, and the same inked for such use by means of a suitable roller passing over the surface of the same, in any usual and well-known manner or the same may be inked for use by means of a chemically prepared inked ribbon, in the usual and well-known manner, or the same may be inked for use in any other suitable manner, and by any suitable and convenient means.

Having thus described my said invention and improvements,

What I claim, and desire to secure by the letters patent of the United States of America, is—

971 In an internal revenue stamp canceling device, or machine, the arrangement and combination of cutters, or knives (or cutting-canceling device), with the dating, printing, or forming-type, or device, substantially as shown and described, so as to cancel revenue stamps by cutting, puncturing, or piercing the same, and by the printing or forming the date thereon, in the manner substantially as herein specified and set forth.

In testimony whereof, I have, on this 14th day of September, 1870, hereunto set my hand, in the presence of two witnesses.

MARCUS P. NORTON.

Witnesses:
FREDK. KOONES.
EDW. W. DONN.

972 *Complainant's Exhibit N.—J. A. S., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in liber B [17], page 430.

In testimony whereof, I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fifth day of July, in the year of our Lord one thousand eight hundred

and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR,
Commissioner.

Liber B [17], page 430.

Whereas, at various times and under several and different dates, the letters patent of the United States of America were issued upon the application and petition of Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, for and upon improvements in hand printing and dating stamps, post-office postmarking stamps, internal revenue dating and canceling stamps, and for other improve-
973 ments not necessary here to name, among which were letters patent of the following date, to wit, January 14, 1862; December 16, 1862; August 4, 1865; and also during the years 1870 and 1871;

And whereas the aforesaid invention and letters patent were duly assigned, sold, and conveyed to the "Secombe Manufacturing Company," located at and doing business in the city, county, and State of New York, by the said Marcus P. Norton, inventor, and by Helen M. Ingalls, assignee of said Marcus P. Norton, which several deeds of assignment were duly recorded in and are now of record in the Patent Office of the United States, to which reference is now and hereby had for a more full and perfect description and understanding of the inventions and of the letters patent sold, assigned, and conveyed unto said Secombe Manufacturing Company by the said Marcus P. Norton and Helen M. Ingalls, assignee of said Marcus P. Norton or by either of them. And reference is now and hereby had to the invention and to the several letters patent mentioned in the said deeds of assignment to the said Helen M. Ingalls by the said Marcus P. Norton, and by the said Helen M. Ingalls and said Marcus P. Norton, or either of them, to the said "Secombe Manufacturing Company," or to William W. Secombe, as president of the said manufacturing company, for a more full and perfect description of the said several letters patent and inventions, and improvements so sold and conveyed, and herein and hereby sold and conveyed as hereinafter written;

And whereas the said Helen M. Ingalls is desirous of having and obtaining each and every of the aforesaid letters patent, inventions and improvements now held and owned by the said "Secombe Manufacturing Company," or by the said William W. Secombe, as president;

And whereas the said Helen M. Ingalls has purchased of the
974 said "Secombe Manufacturing Company" and of William W. Secombe, president, each and every of the aforesaid named and described inventions, improvements, and letters patent:

Now, therefore, for and in consideration of the sum of one thousand dollars, and in the other and further and valuable considerations, the receipt of which is hereby acknowledged, and in the additional consideration that the said Marcus P. Norton shall make no claim against the said "Secombe Manufacturing Company" for professional services rendered, we, the said Secombe Manufacturing Company, and William W. Secombe, president, have sold, assigned, and conveyed, and we do hereby sell, assign, and convey unto the said Helen M. Ingalls, her heirs, assigns, and executors, each and every of the said inventions, improvements, and letters patent, and all of our right, title, and interest in the same, or in either thereof, now and forever. The same to be held and enjoyed by the said Helen M. Ingalls, for her own benefit and behoof, and for the ben-

efit and behoof of her legal representatives, to the full end of the term or terms for which the said letters patent are granted or may be hereafter granted, issued, or extended, renewed, or reissued, as fully and freely as the same would or could have been held and enjoyed by us had this sale and assignment not been made as and in the manner aforesaid.

It is also the intention to sell, assign, and convey to said Helen M. Ingalls, each and every application for letters patent or for reissue of any letters patent, or for any extension of any letters patent, now pending in the U. S. Patent Office in the name of said Marcus P. Norton, in which said "Secombe Manufacturing Company," or by said William W. Secombe, president, have, or claim to have, any interest, right, or title whatever, and we do hereby sell, assign, and convey, now and forever, any and every right, title, claim, or interest we have, or either
975 have, in, to, or for any such pending case or application, to the said Helen M. Ingalls, her heirs and assigns, now and forever.

Meaning to convey, and we do hereby convey, unto her, the said Helen M. Ingalls, each and every claim, right, title and interest we now have, or can or would have, in any of said inventions, improvements, and letters patent, by means or reason of any contract between us, or either of us, and said Marcus P. Norton and Helen M. Ingalls, or either of them, in, to, or for the said inventions and said letters patent, or either of them, so that they, and each of them, shall have and possess the same rights, titles, interests, and privileges they, and each of them, would have *have* had and did have at the time of the making and executing of the said several deeds of assignments of said inventions, improvements, and letters patent to said "Secombe Manufacturing Company," or William W. Secombe, president.

In testimony whereof, I have, on this tenth day of July, A. D. 1873, hereunto set the hand and seal of the said "Secombe Manufacturing Company," and of the said William W. Secombe, president.

SECOMBE MANUFACTURING COMPANY. [SEAL.]
W. W. SECOMBE, *President*. [SEAL.]

Signed, sealed, and delivered in presence of—
S. A. CURTIS.
MARCUS P. NORTON.

Recorded September 20, 1873.

976 *Complainant's Exhibit O.—J. A. S., ex'r.*

39th Congress, 1st session. House of Representatives. Report No. 98.

NORTON'S MARKING AND CANCELING STAMP.

(July 24, 1866.—Ordered to be printed.)

Mr. Ferry, from the Committee on the Post-Office and Post-Roads, made the following report:

The Committee on the Post-Office and Post-Roads, to whom was referred a "letter from the Postmaster-General transmitting additional papers relating to Norton's marking and canceling stamp," report:

That they find that letters patent of date April 14, 1863, were granted to Marcus P. Norton, of the city of Troy, N. Y., and by him assigned to Jacob Shavor and Albert C. Corse, on the 20th day of April, 1863, and duly recorded, as required by law, and a reissue granted to said Shavor-

and Corse on the 23d day of August, 1864; which said invention, so patented, assigned and reissued, was for and upon improvements in "post-office postmarking and postage-stamp canceling device," and which invention has been in practical and continuously exclusive use by and under the order and direction of the Postmaster General since the 1st of April, 1863, without compensation whatever to said patentees, nor upon any other stipulation than their consent that the same might
977 thus be used until its utility and advantage to the government should be effectually tested, when a fair and equitable compensation for either its use or the patent should be made to them by the government.

The invention having been sufficiently proved, and its utility satisfactorily tested by uninterrupted use in various post-offices of the States, application was made to the Thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already referred to. Another claimant to said invention appearing, the committee of that Congress who were then considering the subject of compensation decided that since the validity of the title to the same was called in question, that should first be determined by the courts, and the case was accordingly thereupon remanded.

By a transcript of the proceedings and judgment, now submitted as rendered in the United States circuit court of the northern district of the State of New York, it appears that the question of validity of title was tried and decided in favor of the patentees, Shavor and Corse. Again, therefore, the patentees appear before the present Congress, claiming a suitable remuneration for their invention, on condition of an assignment of all their right and title to the same to the United States.

The value of this invention to the government is verified in the nature and manner following, to wit:

Having in use the said stamp, the postmasters at Washington, District of Columbia; Baltimore, Maryland; New York City, Brooklyn, Albany, Troy, Syracuse, Rochester, and Buffalo, New York; Hartford, Connecticut; Boston, Springfield and Worcester, Massachusetts; Cincinnati, Ohio; Detroit, Michigan; and Chicago, Illinois, formally certify that in their several offices the government is thereby saved from one-third to one-half the stamping and canceling clerk-hire theretofore employed, and that "it greatly facilitates the despatch of letters for
978 transportation in the mails"; that "it greatly economizes in time in the making up of the mails for transportation"; that "it cancels, in the most perfect and permanent manner the postage stamps on letters, packets, &c., and, at the same time, gives on the envelope an intelligent postmark"; and that "it prevents frauds by the chemical cleansing or washing of postage stamps for reuse or reissue after once used."

Its utility, facility, and economy are so far established that it is being introduced to the larger post-offices of the States as rapidly as they can be supplied. The government has contracted for their manufacture with Messrs. Fairbanks & Co., of New York, at the price of six dollars each, and is now supplying offices at the average rate of five hundred per annum. From the interruption of postal facilities, growing out of the late rebellion, the Southern States have not been supplied, but will be, as stated by the Postmaster-General, as fast as the department can effect their introduction.

The Post-Office Department seems committed to their general and continuous use, so long at least as no other improvement shall commend supersedure. The nearest approach to a practical substitute for this in-

vention is one of English device, manufactured by Turner & Co., London, and to be seen at the Washington post-office. This is a more complex and expensive stamp. Its only novel merit is self-inking. The stamp employed is the same combination of stamping and canceling covered by the "Norton patent," and is claimed by him to be an infringement of his invention, and that he holds a patent for his like combination stamp under the English crown of date February 4, 1863. The similarity of the two stamps, in this respect, is quite obvious. The cost of this English stamp is one hundred dollars, ninety-four dollars more than the Norton make, and, by the complication of its structure, must, by use, be subject to frequent repairs. A trial of the two methods
979 of execution, fairly tested in the presence of your committee, attested the superiority of the Norton stamp. The same number of letters (100) was stamped and canceled by the Norton stamp in twenty-eight seconds, which by the same operator required forty five seconds with the English stamp. The Norton stamp is therefore deemed the most perfect and serviceable device extant. The government, in consulting its interest, has fully committed itself to its adoption, and over three years' use determines it an indispensable requisite to the safe, rapid, and economical operation of marking, stamping, and canceling in the postal department.

The patentees claim, as a just compensation for the title and past and future use of their said invention, the sum of one hundred and twenty-five thousand dollars.

The Postmaster-General, on the other hand, in a letter on the subject, filed with the papers in the case, recommends as a proper compensation therefor the sum of twenty thousand dollars, and the further sum of $12,282.70, with interest, being the amount of expenses incurred by the patentees in establishing their legal title to the invention. It is set forth in said letter from the Postmaster-General that at the date thereof the government saved by the use of said stamp the compensation of 254 clerks of the various salaried classes. At an average salary of $800 per annum, this saving would amount to the sum of $203,200, and an aggregate at this rate, for the three years the government has enjoyed the use of the stamp, the sum of $609,600. In view of this computable saving directly traceable to the use of this stamp, and without approximating the gain by its future use in many more offices throughout the States where they are being rapidly substituted for the old discarded device, it would seem that the sum stated by the Postmaster-General is not an adequate or just compensation for such undeniable and
980 valuable benefits which the government derives. The committee, therefore, after a thorough consideration of the subject, have determined upon the sum of fifty thousand dollars as a full and just compensation to the patentees for the use of and the device and patent, with the alternative that if not accepted by the patentees withing thirty days from the approval of the resolutions providing for the same, as in full compensation for their claim, and the transfer of the patent, they, by their non-acceptance, elect to receive whatever may be adjudged to them therefor by the Court of Claims as full and final payment. To carry out such determination, the committee recommend the passage of the accompanying joint resolutions.

981 *Complainant's Exhibit P.—J. A. S., ex'r.*

Senate. 30th Congress, 2d session. Rep. Com. No. 164.

(In the Senate of the United States, February 9, 1867.—Ordered to be printed.)

Mr. VAN WINKLE made the following report (to accompany Senate bill No. 582):

The Committee on the Post-Offices and Post-Roads, to whom was referred the petition of Jacob Shavor and Albert C. Corse, asking compensation for past and future use of "Norton's marking and canceling stamp," report:

That they have duly considered the same, and they find that letters patent, dated April 14, 1863, were granted and issued to Marcus P. Norton, of the city of Troy, New York, and by him assigned to Jacob Shavor and Albert C. Corse, on the 20th day of April, 1863, and duly recorded as by law provided, and afterwards a reissue granted to said Shavor & Corse, on the 23d day of August, 1864, as by law provided, which said invention, so patented, assigned, and reissued, was for and upon improvements in "post marking and postage-canceling device," and
982 which invention has been in practical and continuously exclusive use, by and under the order and direction of the Postmaster-General, since the 1st day of April, 1863, the said invention having previously been tested in the most thorough manner in the New York City post-office for more than one year, and approved and recommended to the Postmaster-General by that office, without any compensation whatever to the said inventor or said assignees, nor upon any other stipulation than his and their consent that the same might thus be used until its utility and advantages to the government should be effectually tested, when a fair and equitable compensation for either its use or the patent should be made to them by the government.

This invention having been sufficiently proven as a labor-saving instrument, and its utility in every respect satisfactorily tested by uninterrupted use in various post-offices in the United States, application was made to the Thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already referred to. Another claimant to said invention appearing, the House committee of that Congress, who were then considering the subject of compensation, decided that since the validity of the title to the same, as well as that of prior invention, was called in question, that should first be determined by the courts, and the case was accordingly thereupon remanded.

By a transcript of the proceedings and judgment now submitted as rendered in the United States circuit court for the northern district of New York, it appears that the questions of invention and of the validity of title were tried, and decided in favor of the patent and the assignees, Shavor & Corse. Again, therefore, the assignees appear before the present Congress, claiming a suitable remuneration for said invention and patent, on condition of an assignment of all their right and title to the same to the United States.

983 The value and importance of this invention to the government is verified in the nature and manner following, to wit:

Having used the said invention, the postmasters at Washington, District of Columbia; Baltimore, Maryland; New York City, Brooklyn, Albany, Troy, Syracuse, Rochester, and Buffalo, State of New York; Hartford, Connecticut; Boston, Springfield, and Worcester, Massachu-

setts; Cincinnati, Ohio; Detroit, Michigan; and Chicago, Illinois, formally certify that, in their several offices, the government is thereby saved from one-third to one half the stamping and canceling clerk hire theretofore required and employed, and that "it greatly facilitates the despatch of letters for transportation in the mails"; that "it greatly economizes in the time in the making up of the mails for transportation"; that it "cancels, in the most perfect and permanent manner, the postage stamps on letters, packets, &c., and, at the same time, gives on the envelope an intelligent postmark"; and that "it also contributes to prevent frauds on the revenue by the chemical cleansing or washing of postage stamps for reuse or reissue after once used."

Its utility, facility, and economy in labor are so far established that the invention is being put into use in the larger post offices of the United States as rapidly as they can be supplied by the government manufacturers. The government has contracted for their manufacture with Messrs. Fairbanks & Co., of New York, at a price of six dollars each, whose contract bears date on or about the 1st day of April, 1863, and for a term of four years, and consequently it will expire on the 1st day of April, 1867. The Post Office Department is now supplying post offices at the rate of more than five hundred per annum.

The government, in consulting its interest, has fully committed itself, though the Post Office Department, to the adoption, general, and
984 continuous use of said invention; and over four years' use determines it an indispensable requisite to the safe, rapid, and economical operation of marking, stamping, and canceling in the postal department.

It is shown by a letter from Postmaster-General Dennison, under date of 15, 1866, addressed to Senate Committee on the Post Offices and Post Roads, that at that time the government was saving, by the use of said invention, the compensation annually of two hundred and fifty-four clerks of the various salaried classes. At an average salary of $900 per annum, this saving for labor alone would amount to the sum of $228,600, and an aggregate at this rate for the four years which the government has already enjoyed the use of this invention, it will amount to the sum of $914,400, to say nothing of the other benefits and advantages derived from this invention during the past four years. In view of this saving in labor, directly traceable to the use of said invention, the saving must be much larger annually, by its future and increased use in many more and other large post offices throughout the United States, where the Norton stamp is being rapidly substituted for the old, unreliable, and discarded device, used prior to the making of the Norton invention aforesaid.

The present Postmaster-General, in his letter to this committee, bearing date January 15, 1857, states that the Post Office Department has already saved several hundred thousand dollars by the use of said invention; that the question of value to that department has long since been settled; that the continued use of the invention by that department is a necessity beyond question; that it is the best invention there is for the post-marking of letters and packets, and for the cancellation of stamps thereon, and that there is no doubt but that the government will continue to save large sums by its future use.

The committee, therefore, after a most thorough examination
985 and consideration of the whole subject, have determined upon the sum of ($100,000) one hundred thousand dollars, as a full and just compensation to the assignees, Shavor & Corse, for the past and future use of said invention and patent, as in full compensation for the transfer

of the said patent to the Post Office Department. To carry out such determination, the committee recommend the passage of the accompanying bill.

986 *Complainant's Exhibit Q.—J. A. S., Ex'r.*

Senate. 41st Congress, 2d Session. Report No. 243.

In the Senate of the United States. July 6, 1870.—Ordered to be printed.

Mr. RAMSEY made the following report (to accompany joint resolution S. R. No. 207):

The Committee on Post Offices and Post Roads, to whom were referred the petition and accompanying papers of Marcus P. Norton, and Charles Eddy acting as trustee for himself and Jacob Shavor and Albert C. Corse, asking a settlement and compensation for the past and for the future use of Norton's post-marking and postage stamp canceling device or instrument, report:

That they have duly considered the same, and they find that the letters patent of the United States of America, dated the 14th day of April, 1863, were duly granted and issued to Marcus P. Norton, of the city of Troy, in the State of New York, and that the same were twice reissued under and bearing the following dates, to wit, August 23,
987 1864, and August 3, 1869, as by law provided, which invention and improvements so patented and reissued were for and upon a device or instruments for the post marking of letters and other mail matter, and for the cancellation of the postage stamps thereon. The device, as a whole, consists of two separate and distinct instruments, combined by suitable mechanical means into one device or machine, so that the post-marking was and is done upon the envelope of the letter at the same time and operation of the cancellation of the exposed surface of the postage-stamp by the canceling device or instrument coming into contact therewith, in the manner fully and particularly specified in said letters patent, whereby a more successful and permanent cancellation was secured, thereby preventing frauds by a second or reuse of washed or chemically cleaned postage stamps. The canceling instrument consists of the use of cork, rubber, or other suitable elastic material secured in proper position and especially constructed and arranged for successful operation, and operated in conjunction with the post-marking instrument by mechanical means constructed for that purpose. Upon the lower surface of such canceling instrument is constructed any form or configuration desirable for the purpose of holding a quantity of ink sufficient to impregnate and destroy the postage-stamp, thereby rendering the cancellation of the same permanent. The cork, rubber, or soft wood used endwise, upon coming into contact with the enameled like, or hard-ink surface of the postage stamp, by the blow or force of the instruments so combined will to a certain degree mar or break such ink and exposed surface of the stamp as to permit or allow the same instrument to inject into and impregnate the fibers of the paper of the postage stamp with ink of such kind or quality as may be used, and showing at once a full and perfect cancellation of the postage-stamp.

988 This invention and device has been in practical and continuously exclusive use in the postal service of the United States, by and under the order and directions of the Postmaster-General, since the month of March, 1863, it having been previously tested and experimented with in the most thorough manner in the New York City post-office for

setts; Cincinnati, Ohio; Detroit, Michigan; and Chicago, Illinois, formally certify that, in their several offices, the government is thereby saved from one-third to one half the stamping and canceling clerk hire theretofore required and employed, and that "it greatly facilitates the despatch of letters for transportation in the mails"; that "it greatly economizes in the time in the making up of the mails for transportation"; that it "cancels, in the most perfect and permanent manner, the postage stamps on letters, packets, &c., and, at the same time, gives on the envelope an intelligent postmark"; and that "it also contributes to prevent frauds on the revenue by the chemical cleansing or washing of postage stamps for reuse or reissue after once used."

Its utility, facility, and economy in labor are so far established that the invention is being put into use in the larger post offices of the United States as rapidly as they can be supplied by the government manufacturers. The government has contracted for their manufacture with Messrs. Fairbanks & Co., of New York, at a price of six dollars each, whose contract bears date on or about the 1st day of April, 1863, and for a term of four years, and consequently it will expire on the 1st day of April, 1867. The Post Office Department is now supplying post offices at the rate of more than five hundred per annum.

The government, in consulting its interest, has fully committed itself, though the Post Office Department, to the adoption, general, and
984 continuous use of said invention; and over four years' use determines it an indispensable requisite to the safe, rapid, and economical operation of marking, stamping, and canceling in the postal department.

It is shown by a letter from Postmaster-General Dennison, under date of 15, 1866, addressed to Senate Committee on the Post Offices and Post Roads, that at that time the government was saving, by the use of said invention, the compensation annually of two hundred and fifty-four clerks of the various salaried classes. At an average salary of $900 per annum, this saving for labor alone would amount to the sum of $228,600, and an aggregate at this rate for the four years which the government has already enjoyed the use of this invention, it will amount to the sum of $914,400, to say nothing of the other benefits and advantages derived from this invention during the past four years. In view of this saving in labor, directly traceable to the use of said invention, the saving must be much larger annually, by its future and increased use in many more and other large post offices throughout the United States, where the Norton stamp is being rapidly substituted for the old, unreliable, and discarded device, used prior to the making of the Norton invention aforesaid.

The present Postmaster-General, in his letter to this committee, bearing date January 15, 1857, states that the Post Office Department has already saved several hundred thousand dollars by the use of said invention; that the question of value to that department has long since been settled; that the continued use of the invention by that department is a necessity beyond question; that it is the best invention there is for the post-marking of letters and packets, and for the cancellation of stamps thereon, and that there is no doubt but that the government will continue to save large sums by its future use.

The committee, therefore, after a most thorough examination
985 and consideration of the whole subject, have determined upon the sum of ($100,000) one hundred thousand dollars, as a full and just compensation to the assignees, Shavor & Corse, for the past and future use of said invention and patent, as in full compensation for the transfer

of the said patent to the Post Office Department. To carry out such determination, the committee recommend the passage of the accompanying bill.

986 *Complainant's Exhibit Q.—J. A. S., Ex'r.*

Senate. 41st Congress, 2d Session. Report No. 243.

In the Senate of the United States. July 6, 1870.—Ordered to be printed.

Mr. RAMSEY made the following report (to accompany joint resolution S. R. No. 207):

The Committee on Post Offices and Post Roads, to whom were referred the petition and accompanying papers of Marcus P. Norton, and Charles Eddy acting as trustee for himself and Jacob Shavor and Albert C. Corse, asking a settlement and compensation for the past and for the future use of Norton's post-marking and postage stamp canceling device or instrument, report:

That they have duly considered the same, and they find that the letters patent of the United States of America, dated the 14th day of April, 1863, were duly granted and issued to Marcus P. Norton, of the city of Troy, in the State of New York, and that the same were twice reissued under and bearing the following dates, to wit, August 23,
987 1864, and August 3, 1869, as by law provided, which invention and improvements so patented and reissued were for and upon a device or instruments for the post marking of letters and other mail matter, and for the cancellation of the postage stamps thereon. The device, as a whole, consists of two separate and distinct instruments, combined by suitable mechanical means into one device or machine, so that the post-marking was and is done upon the envelope of the letter at the same time and operation of the cancellation of the exposed surface of the postage-stamp by the canceling device or instrument coming into contact therewith, in the manner fully and particularly specified in said letters patent, whereby a more successful and permanent cancellation was secured, thereby preventing frauds by a second or reuse of washed or chemically cleaned postage stamps. The canceling instrument consists of the use of cork, rubber, or other suitable elastic material secured in proper position and especially constructed and arranged for successful operation, and operated in conjunction with the post-marking instrument by mechanical means constructed for that purpose. Upon the lower surface of such canceling instrument is constructed any form or configuration desirable for the purpose of holding a quantity of ink sufficient to impregnate and destroy the postage-stamp, thereby rendering the cancellation of the same permanent. The cork, rubber, or soft wood used endwise, upon coming into contact with the enameled like, or hard-ink surface of the postage stamp, by the blow or force of the instruments so combined will to a certain degree mar or break such ink and exposed surface of the stamp as to permit or allow the same instrument to inject into and impregnate the fibers of the paper of the postage stamp with ink of such kind or quality as may be used, and showing at once a full and perfect cancellation of the postage-stamp.

988 This invention and device has been in practical and continuously exclusive use in the postal service of the United States, by and under the order and directions of the Postmaster-General, since the month of March, 1863, it having been previously tested and experimented with in the most thorough manner in the New York City post-office for

more than one year, and was approved and recommended in writing under date of January 3, 1863, after such test and use, to the Postmaster-General by the postmaster at that office, without any compensation whatever to the inventor and patentee—Marcus P. Norton—nor upon any other stipulation than his consent that the same might thus be used until its utility and advantages to the postal service and government should be effectually tested and proven, when a fair, just, and equitable compensation for either its use or for the letters patent should be made to him by the government.

This invention and device having been sufficiently proven and admitted to be a great labor-saving machine by many postmasters throughout the country, and its utility in each and every respect, as claimed for it by the said inventor and patentee, satisfactorily tested and maintained by uninterrupted use in the larger post-offices in the United States, application was made by said inventor and patentee to the thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already referred to. Another claimant to the invention appeared before the House committee, and, without any letters patent, claimed this invention as having been made by him, as the original and first inventor of the same. While still, and at the same time, another person appeared, claiming on behalf of himself and others to own the title to the said invention. Under this state of the case, the House committee of that Congress, who were then considering the subject of compensation, determined and decided that since the validity of the patent and
989 of the title to the same as well as that of prior invention was thus called in question, those should first be determined by the proper courts, and accordingly the case was thereupon suspended and remanded.

By a transcript of the proceedings and judgment of the court and jury in a suit founded upon the said letters patent and submitted for the consideration of that committee, under the certificate of the clerk and seal of the court, as rendered in the circuit court of the United States for the northern district of New York, Judges Hall and Nelson presiding, it fully and satisfactorily appears that the questions of the invention and of the validity of the said letters patent and title thereto were duly tried, determined, and decided in favor of the letters patent, dated April 14, 1863, and at that time reissued, with the date of August 23, 1863, and also in favor of Marcus P. Norton, as the original and first inventor of the invention for which compensation is now asked of the government.

The same petitioners appear before the present Congress, claiming and asking that a suitable compensation be awarded them for the said invention, device, and letters patent through the Postmaster-General, on condition of an assignment and transfer of the exclusive right and title to the said letters patent to the United States, and an acquittance and release for the past use of said invention and device for more than eight years. They ask that Congress refer the matter to the Postmaster-General for investigation and final settlement, and express a willingness to abide his findings and judgment in the premises as to the amount of compensation to be paid them for the past and future use of this valuable and important invention to the postal service of the United States.

The value and importance of this invention to the postal service in the post-offices and upon the postal railway cars throughout the country is beyond any question an established fact. It is, in fact, fully
990 admitted by the Post-Office Department to be an indispensable device for the post-marking of letters and for the cancellation of postage stamps, and there are many proofs submitted to this committee upon the same points, by which it is conclusively shown that by its use

the government has actually saved from one-third to one-half the stamping and canceling clerk hire theretofore required and employed; and that it greatly facilitates the dispatch of letters for transportation in the mails; that it greatly economizes in the time for the preparation of the mails for transportation; that it cancels, in the most perfect and permanent manner, the postage stamps on letters, packets, etc., and at the same time gives upon the envelope, near the postage stamp, a plain and intelligent post-mark; and that it also contributes largely to prevent frauds on the postal revenue by the washing or chemical cleansing of postage stamps that have been once used, for reuse or reissue, and that the letters do not require to be handled over the second time, as was the case under the old system for the performing of the post-marking and postage stamp cancellation.

Its utility, facility, importance, and economy in labor or clerk hire are so far established that the invention and device protected by and embraced in the said letters patent has already been put into general and extensive use in all the larger post-offices throughout the country, and it is being put into use in all of the post-offices of the United States of any considerable size, and known in the Post-Office Department as first, second, third, and fourth class, as rapidly as they can be supplied by the government manufacturers. The Postmaster-General desiring that the department and postal service should have the benefit and advantages of this simple and yet most useful and important invention, in the early part of the year 1863 entered into a contract with Fairbanks & Co., of New York City, for a term of four years, commencing on the 1st day of April, 1863, to manufacture for and deliver to the Post-
991 Office Department the said device and instruments for use in the postal service at a price of six dollars for each completed instrument. That contract expired on the 1st day of April, 1867. A new contract was made by the Postmaster-General with B. Chambers, jr., of the city of Washington, D. C., to manufacture for the Post-Office Department the same device and instrument for another term of four years, for use in the postal service of the United States. This contract went into operation on the 1st day of April, 1867, and has but a few months longer to run before it will expire by its own limitation. The contract price with Mr. Chambers is five dollars for each completed device. The Post-Office Department is now supplying post offices at the rate of more than one thousand per annum.

The government, in consulting its interests, has fully committed itself, through the Post Office Department, to the permanent adoption, general, and continuous use of the said invention and device; and more than eight years' use determines it an indispensable requisite to the safe, rapid, and economical operation of post-marking, stamping, and canceling postage-stamps in the postal service and department.

It is shown by a letter from Postmaster-General Dennison, under date of March 15, 1866, addressed to Senate Committee on Post Offices and Post Roads, that at that time the government was actually saving, by the use of the said invention and device, the compensation annually of two hundred and fifty-four clerks of the various salaried classes, at an average salary of $900 per annum. This saving for labor alone would amount to the sum of $228,600, and an aggregate at this rate for the eight years which the government has already enjoyed this invention, it will amount to the sum of $1,828,800, to say nothing of the other and many benefits and advantages derived from this invention dur-
992 ing the past eight years. It is believed that at this time there is at least the saving to the government annually the compensation

of three hundred clerks, at an average salary of $1,000 per annum, in the post-offices alone, without taking into this account the postal railway cars. In view of this saving in labor, directly traceable to the use of said invention and device, the saving must be much larger annually by its future and increased use in many more and other post-offices throughout the United States, where this invention and device is being rapidly substituted for the old, unreliable, and discarded device, used prior to the making and introduction into general use of the aforesaid Norton invention and device.

The Postmaster-General, in a letter to the Senate Committee on Post Offices and Post Roads, bearing date January 15, 1867, stated that the Post Office Department had already saved several hundred thousand dollars by the use of said invention and device; that the question of value to that department had long since then been settled; that the continued use of the invention by that department was a necessity beyond question; that it was the best invention known for the postmarking of letters and packets, and for the cancellation of postage-stamps thereon, and that there was no doubt but that the government would continue to save large sums by its future use.

The present Postmaster-General, in a letter to this committee, in answer to inquiries made by this committee to him concerning the matter set forth in the joint resolution introduced and referred to this committee, states that the said invention and device is very useful, valuable, and important in the postal service of the United States, and, in substance, that it is regarded as almost indispensable to a safe, rapid, and economical management of certain postal affairs. He says that the claim should be now settled upon fair, just, and honorable terms, and leaves the matter for Congress to determine what course
993 shall be taken to perfect a settlement with claimants for the past as well as future use of the invention during the term of the letters patent.

The committee, therefore, after a most careful and thorough examination and consideration of the whole subject, have determined that the better way to dispose of the matter in a manner more satisfactory to the government and to the claimants is to refer the entire case to the Postmaster-General for investigation, settlement, and final determination as between the government and claimants for the past and future use of the said invention, device, and letters patent granted and reissued as before stated. To carry out such determination and conclusion, the committee recommend the passage of the accompanying amendment to Senate joint resolution No. 207.

994 *Complainant's Exhibit R.—J. A. S., Ex'r.*

[Private resolution No. 36.]

A resolution authorizing the Postmaster-General to continue to use in the postal service a certain invention and device for the postmarking of mail packages and for the more permanent cancellation of postage-stamps, and to make a just and equitable compensation for the past and future use of the same by the Post Office Department.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster-General be, and he is hereby, authorized and directed to investigate the right and title of claimants to the invention, device, or instruments for the postmarking and postage-stamp cancel[l]ing in the postal service, pat

ented on the fourteenth day of April, eighteen hundred and sixty-three, reissued the twenty-third day of August, eighteen hundred and sixty-four, and again reissued the third day of August, eighteen hundred and sixty-nine, and now and for many years past in general use in the postal service of the United States; and to ascertain and determine upon a fair, just, and equitable compensation for the use of the said invention and device from the date of its use by the Post Office Department, and also to ascertain and determine upon a fair and equitable com-
995 pensation for its future use and value to the Post Office Department and government while the said letters patent shall continue, and to whom it should be paid under the said letters patent and reissues thereof; and to report the amount thus ascertained and determined to Congress at its next session.

Approved July 14, 1870.

996 *Complainant's Exhibit S.—J. A. S., Ex'r.*

Senate. 41st Congress, 3d session. Ex. doc. No. 49.

Letter of the Postmaster-General, communicating information in relation to the claims to the invention for postmarking and postage-stamp canceling in use in the postal service.

March 1, 1871.—Referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

POST-OFFICE DEPARTMENT,
Washington, February 25, 1871.

SIR: By a joint resolution of Congress, approved July 14, 1870, the Postmaster-General is authorized and directed to investigate the right and title of claimants to the invention, device, or instruments for the postmarking and postage-stamp canceling in the postal service, patented on the 14th day of April, 1863, reissued the 23d day of August, 1864, and again reissued the 3d day of August, 1869, and now and for many years past in general use in the postal service of the United States, and to ascertain and determine upon a fair, just, and equitable compensation for the use of the said invention and device, from
997 the date of its use by the Post-Office Department, and also to ascertain and determine upon a fair and equitable compensation for its future use and value to the Post-Office Department and government while the said letters-patent shall continue, and to whom it should be paid under the said letters-patent and reissues thereof; and to report the amount thus ascertained and determined to Congress at its next session. (See pamphlet laws, 41st Congress, 2d session, page 68.)

In endeavoring to carry this resolution into effect, I have given every reasonable opportunity to all parties in interest to present their claims. They have been fully heard, in person and by counsel, when they have presented themselves for the purpose, and the hearing has been repeatedly postponed, on the applications of the claimants, to allow them every facility in procuring their testimony.

The patent referred to in the above-mentioned resolution of Congress was issued to Marcus P. Norton, as No. 38175, on the 14th April, 1863, reissued to his assignees as No. 1748, on the 23d August, 1864; again reissued to him as No. 3586, on the 3d August, 1869; and again reissued since the date of the private resolution of Congress as No. 4143, on the 4th October, 1870, to Helen M. Ingalls, assignee of Marcus P. Norton.

It appears from the certified abstract of title furnished by the Commissioner of Patents, that the original patent of 1863 was assigned by Marcus P. Norton, on the 20th of April, 1863, to Jacob Shavor and Albert C. Corse; that on the 23d day of February, 1864, they reassigned to said Norton; and that on the 20th October, 1869, he assigned his entire interest in the invention, and all right to compensation for the use of the same by the United States; to Helen M. Ingalls. She afterwards surrendered the letters-patent and procured a reissue thereof in her own name, in two parts, or divisions, of which division A is identical with the reissued patent of 1869. It is believed that this
998 action of the Patent Office vests the title of the patent of 1863, and the subsequent reissues to Norton, in Helen M. Ingalls.

Other letters-patent were issued to Peter Low and F. G. Ransford, as assignees of Marcus P. Norton, on the 9th day of August, 1859, for a post-marking and postage-stamp canceling device, in which a post-marking stamp is shown with a steel cutter attached, having sharp cutting edges to cut and mutilate the adhesive stamp. It seems that a number of stamps made after the plan suggested in that patent were tried by the department and condemned as unfit for use, because of the injury done to the contents of letters.

In 1862, Mr. Norton took out letters-patent for an alleged improvement on the 1859 stamp, in which the attempt was made to provide against the injury done by the cutter, by combining therewith guards to limit the depth of the cut; but I can find no evidence that this stamp was ever used by the department.

The stamp patented in 1863 has been in use in the department, and furnished by contractors, under contracts commencing April 1, 1863, and April 1, 1867, each for four years. No other stamp appears to have been used in the department containing this combination for postmarking and canceling at one and the same blow, except experimentally, all the cutting cancellers having been rejected as worthless.

A claim has been set up by Messrs. Peter Low, F. G. Ransford, and William B. Hatch to a share of any compensation that may be paid for the use of the patent of 1863, founded upon the allegation that the machine made under the patent of 1863 is subject to and infringes the patent of 1859. This question of title and the rights of the parties claiming compensation for the use of the combined stamp and canceler is one that, in my judgment, can only be properly settled by judicial authority, and hence I feel unwilling to take the responsibility of
999 deciding it. While there can be no question that the canceler covered by the patent of 1863 is the one the department has been using, and is still using, I do not feel authorized by the aforesaid joint resolution to undertake to decide whether it is subject to and infringes the patent of 1859, as has been alleged. When the joint resolution was adopted it was not probably known to Congress that there were parties who claimed a share of compensation for the use of the patent of 1859; and I think it my duty now to submit the whole matter, with all the evidence, to the end that Congress may pursue such course as justice demands in the settlement of the rights of the several claimants.

The combined stamp has been demonstrated, by continuous use during nearly eight years, to be valuable in the larger post-offices and in the railway service. Simple as it is, no other device has been hit upon that will do the work of this one without adding largely to the number of stamping clerks employed, and consequently increasing the expenses of the department. It is impossible to estimate, with any degree of ac-

curacy, the amount of money which has been or which may be saved by its use. Since the 1st day of April, 1863, the number of these stamps purchased by the department is 3,707, as will more fully appear by a detailed statement herewith filed, marked I. Nothing has been paid by the government to any one as royalty for the use of the invention. Although I indorse its usefulness in decided terms, I am obliged to wait an authoritative settlement of title before expressing an opinion as to the amount of money that should be paid for its use, or as to the manner and proportion of its distribution.

I submit with the accompanying exhibits an application made by the Hon. Horatio King for a share, in satisfaction of his services as an attorney to Mr. Norton, of whatever compensation may be allowed. Claims of this character do not appear to come within the scope of the reso-
1000 lution; I nevertheless, at his request, forward his papers, with an affidavit of Mr. Norton in relation thereto.

The House Post-Office Committee has also presented certain papers filed by Mr. C. E. Wheeler, in which he claims to have invented the combined postmarking and canceling stamp known as the Norton stamp, and charges that the patent for the same was improperly given to Mr. Norton. A certificate, issued by the Commissioner of Patents, shows that on the 12th of September, 1863, Mr. Wheeler filed an application for letters patent, which on the 21st of September was rejected on a reference to Mr. Norton's patents, and that on the 10th of December, 1863, the Commissioner refused to grant Wheeler's application for an interference with Norton's patent of 1859. This seems to have ended Mr. Wheeler's case. The papers relating to it are, however, herewith inclosed.

Another paper, dated February 23, 1871, has been filed by Helen M. Ingalls, the owner by assignment and reissue of the patent of April 14, 1863, notifying the department that the postmarking and canceling device now used in the postal service has been manufactured under a parol license, granted to the contractor in 1867, and subject to the right of the inventor to claim compensation therefor from the United States; that the contract and parol license to manufacture said stamps terminates on the 1st day of April, 1871; and that the department has invited proposals for a new contract for similar stamps. (See advertisement filed with accompanying exhibits, which fixes the time of the letting of said contract on the first day of March next.)

Miss Ingalls proceeds to give the department notice that unless a just compensation for the past use of this device is made and a contract entered into with her for the right to use it, she will, after the 1st day of April next, invoke the interposition of the courts of the United States to enjoin any contractor, not properly licensed by her, from man-
1001 ufacturing any stamps covered by any of the patents originally issued to Marcus P. Norton, and now held by her as assignee; and further, that she will in like manner seek to enjoin the postmasters now using said combined stamps and cancels from the further use thereof, the license and authority heretofore given having been conditional and not absolute; and that, unless said conditions are complied with upon the part of the United States, in manner aforesaid, the license to make and use said stamps shall stand revoked.

Accompanying this report will be found all the testimony taken in this investigation, together with the exhibits filed, with a schedule of the same.

Submitting the whole matter for the consideration of Congress, I have the honor to be, with great respect,

JOHN A. J. CRESWELL,
Postmaster-General.

Hon. SCHUYLER COLFAX,
Vice-President of the United States.

1002 *Complainant's Exhibit T.—J. A. S., Ex'r.*

Senate, 42d Congress, 2d session. Report No. 186.

In the Senate of the United States, May 15, 1872.—Ordered to be printed.

Mr. GILBERT submitted the following report:

The Committee on Post-Offices and Post-Roads, to whom, at the first session of the Forty-second Congress, was referred S. 213, a bill authorizing the Postmaster-General to continue in use in the postal service of the United States a machine for postmarking and for the cancellation of postage stamps, and to make settlement with the inventor, patentee, and assignees thereof for the past and future use of the same by the Post-Office Department, and on the 4th of May, 1872, were referred to same committee Senate bills 1077 and 1078, report:

That they have duly considered the same, and heard the inventor and patentee, Marcus P. Norton, in person, and by an argument in writing, in explanation of such machine and the invention, of its utility, of its use by the government and saving in clerk hire, and in the an-
1003 nual expenditures of the Post-Office Department. As that argument contains the facts in the case, and in order that the Senate may be fully advised of the same, it is herewith submitted, having ascertained that the statement of facts therein contained is correct, not only from the mass of evidence submitted for the consideration of the committee, but by referring the written argument itself to the Postmaster-General for his examination and opinion thereon, who informed the committee that the facts therein contained are substantially true and correct.

Your committee, after a careful and thorough examination of the whole subject, have determined that the better way to dispose of the matter is to refer the same to the United States Court of Claims, with full jurisdiction for investigation and determination of the entire case as between the government and the claimants for the past and future use of the inventions and letters patent thereon, as claimed by them and admitted by the Post-Office Department.

To carry out such conclusions and determinations, your committee recommend the passage of the accompanying bills, S. 1077 and S. 1078, as substitute for Senate bill 213, of the first session of the Forty-second Congress, and referred to this committee on the 15th day of March, 1871.

Argument of Marcus P. Norton, inventor and patentee of the "Norton postmarking and postage-canceling-machine," now in general use in the postal service of the United States; also of the type-wheel dating and printing machine now in use in the Postal and Internal Revenue Departments of the government.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: In appearing before you to-day in the matter now before you for your consid-
1004 eration, I shall endeavor to briefly state the main facts and law

upon which this claim is founded. Every fact I shall state is amply verified and sustained by the proofs in the case, and much of my argument will be quotations from the official records of the Post-Office Department.

On the 14th day of April, 1863, the letters patent of the United States of America were duly and lawfully granted and issued to me for and upon an invention and improvements for the postmarking of letters and other mail matter, and for the cancellation of the postage-stamps. The device, as a whole, consists of two separate and distinct instruments, combined by suitable mechanical means into one device or machine, so that the postmarking is done upon the envelope of the letter at the same time and operation of the cancellation of the exposed surface of the postage-stamp by the canceling device or instrument coming into contact therewith, in the manner fully specified in the letters patent now before you in evidence, whereby a more successful and permanent cancellation of the postage-stamp is secured, thereby preventing frauds from a second or re-use of washed or chemically cleaned postage-stamps. The canceling instrument consists of the use of cork, rubber, or other elastic material, secured in proper position and especially constructed and arranged for successful operation, and is operated in conjunction with the postmarking instrument or device by mechanical means constructed for that purpose. Upon the lower surface of such canceling instrument is constructed any form or configuration desirable for the purpose of holding a quantity of ink sufficient to impregnate and to destroy the postage-stamp, thereby rendering the cancellation of the same permanent. The cork, rubber, or soft wood used endwise, upon coming in contact with the enameled-like or hard indelible ink surface of the postage-stamp, by the blow or force of the instrument so con-
1005 structed and combined will to a certain degree mar or break such exposed ink surface of the postage-stamp, and permit or allow the same instrument to inject into the postage stamp, and impregnate it with the ink of such kind as may be used, and a full and perfect cancellation of the same will at once appear without injury to the letters or packages or to the contents of the same.

This machine or device so patented has been in successful and continuously exclusive use in the postal service of the United States, by the order and directions of the Postmaster-General, since the month of March, 1863, it having been previously tested by an experimental use in the most thorough manner in the New York City post-office for more than one year and a half, and it was approved and recommended in writing, by a letter under date of January 3, 1863 (after such test or trial use), to the Postmaster-General by the postmaster at that post-office, to whom it had been referred by the Postmaster-General for experimental use, and for his opinion thereon as to the success of the invention and of its value and importance to the postal service. Such use was without any compensation to the inventor or any other person, nor upon any other stipulation than my consent that the invention and improvements might be so used until its utility and advantages to the postal service and government should be effectually tested and proven, when a fair, just, and equitable compensation for either its use or for the purchase of the letters patent should be made by the Government of the United States.

The letter to which I have referred is in the following words, to wit:

POST OFFICE,
New York, January 3, 1863.

SIR: Some time since you requested that I should test the
1006 utility of Norton's double postmarking and canceling stamping-iron, and report my opinion thereon. It was in use in this office when I first entered upon my duties. Since then the canceling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation, but it is liable, even if used with the greatest care, to injure the contents of the envelope, especially if the inclosures are cards, photographs, and the like. We have also used cork by inserting it in the cylinder of the canceler. This has proved successful and our cancellation is now performed in this way. I am confident no office in the country performs cancellation more thoroughly. The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interest of the department would be subserved by securing its general use. We are now testing a stamp and canceler on Norton's plan made of boxwood. It promises well, and can be made at a very trifling expense. I am fearful, however, its liability to yield to the wear to which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obedient servant,

ABRAM WAKEMAN,
Postmaster.

Per Secretary.

A. N. ZEVELY, Esq.,
Third Assistant Postmaster-General.

This device having been sufficiently proven and admitted to be a labor-saving machine, not only by the postmaster at the New York post-office, but also by many postmasters throughout the country, and its utility in each and every respect having been satisfactorily tested and maintained by uninterrupted use in the larger post-offices in the
1007 United States, and its general adoption having taken place on the 1st day of April, 1863, and a contract concluded for the manufacture and supply of the same to the Post-Office Department for a term of four years, I made application to the Thirty-eighth Congress for the settlement and compensation promised me therefor by and in accordance with the informal stipulation to which I have before referred you in this argument.

A person claiming the invention as having been made by him appeared before the House committee, and, without any letters patent, claimed to be the original and first inventor of the invention, device and improvements; while, at the same time, another person appeared before the same committee, claiming, on behalf of himself and others, to own the right and the title to said invention by a deed of assignment from Marcus P. Norton, who, being present at that time, in positive language denied the truthfulness and the lawful right of each of said claims. Under this state of the case the House committee of that Congress, who were then considering the subject of compensation, determined and decided that, since the validity of Norton's letters patent, and of the right and the title to the same, as well as that of prior invention, was thus assailed and called into question, that should first be determined by the proper courts; and accordingly the case was thereupon suspended and remanded, with the understanding that a suit should be brought in the

proper court to settle and to determine, by a judicial investigation, the question of the original and prior invention of said machine or device; and also in like manner to settle and determine the right and the title to the invention, improvements, device, and letters patent thereon, and sufficient time was given for that purpose.

In about one year and a half thereafter, as appears from the records now before you, a transcript of the proceedings and judgment of
1008 the court and jury, in a suit founded upon the aforesaid letters patent, was presented to and submitted for the consideration of that committee, under the seal of the court, as rendered in the circuit court of the United States for the northern district of New York, Judges Hall and Nelson presiding, from which it fully and satisfactorily appears that each and every question of priority of the invention, and of the validity of the said letters patent, and also of the right and of the title thereto, were duly and regularly tried, adjudicated, and decided in favor of the said letters patent, dated the 14th day of April, 1863, and at that time reissued, bearing date the 23d day of August, 1864; and also in the favor of Marcus P. Norton as the real or the original and first inventor of the invention, machine, or device for which compensation is now and was then asked of the government for the past and future use thereof in the postal service.

The said original inventor and assignees appear before the present Congress, claiming and asking that suitable compensation be awarded them for the said invention, device, and letters patent, on condition of an assignment and transfer of the said letters patent to the United States, and an acquittance and release for the past use of said invention and device.

The value and importance of this machine and invention to the postal service in the post-offices and upon the postal railway-cars throughout the country is beyond any question an established fact. It is admitted by the Post-Office Department to be an indispensable device or machine for the rapid post-marking of letters, and for the cancellation of postage-stamps thereon, and there are many proofs submitted to you, gentlemen, by which it is most conclusively shown that by its use the government has actually saved, and is now saving, from one-third to one-half the post-marking and postage-stamp canceling force or clerk hire
1009 heretofore required and employed in that business; and that it greatly facilitates the despatch of letters for transportation in the mails; that it greatly economizes in the time of the preparation of the mails for transportation; that it cancels in the most perfect and permanent manner the postage-stamps upon letters, packets, or other mail matter, and at the same time and operation of the machine gives upon the envelope or wrapper, at or near the postage-stamp, a plain and intelligent post-mark and the date of the mailing and of the cancellation of the postage-stamp; and that it also contributes largely to prevent frauds on the postal revenue by the reuse or reissue of postage-stamps that have been once used, as the cancellation is so permanent that no successful washing or chemical cleansing can be had of postage-stamps once used in the payment of postage, thereby preventing any reuse of the same; and that letters do not require to be handled over the second time, as was the case under the old system, in order to post-mark, to give the date thereof, and to cancel the postage-stamp. The proofs submitted to you, gentlemen, show several other advantages gained and benefit derived to the postal service by the use of this invention and machine, which is unnecessary for me to mention in detail at this time, having given the

main or leading features of value and importance in that service by the use of the said device under said letters patent.

Its utility and economy in time, labor, and clerk hire are so far established that the invention and device protected by the said letters patent and the reissue thereof has already been put into general and extensive use in all the larger post-offices and upon all the postal railway cars throughout the country, and it is now being put into use in all the post-offices of the United States of any considerable size. The Post-Office Department is now supplying post-offices and postal railway
1010 cars at the rate of about two thousand per annum, with a constant increase in the demand for the use of the same from all parts of the country. The government, in consulting its interests, has fully determined, through the Post Office Department, a necessity for the permanent and general use of the said invention, machine, or device; and nearly ten years' use of the same determines it to be an indispensable requisite to the safe, rapid, and economical operation of postmarking, stamping, dating, and canceling postage-stamps in the postal service of the United States. The highest and best authorities have borne testimony to the efficacy of the aforesaid postmarking, dating, and canceling hand stamp; the amount which it has saved to the government in the past is large and the fact is unquestionable; and many of those whose testimonials have been given and put before you, gentlemen, have emphatically declared that the business of the department cannot be carried on without it, unless it be done by a very large increase of clerical force, as well as increased expenditure in money, increased labor, and great delays in making up the mails for transportation. Hence the expediency and necessity for its use. Its continued employment seems to be demanded beyond any doubt.

Letters patent, gentlemen, were also granted to me upon a type-wheel dating and printing and canceling machine, dated August 9, 1859, numbered 25036, for a term of fourteen years from the date of the same. This invention consists of a series of cylinders or type-wheels for printing the dates, such as the year, month, day of the month, and a stationary form used in combination therewith. The canceling device was combined therewith, and was for cutting the postage or internal revenue stamp, when forming the date of the use of the same. These devices are fully described in said letters patent, as well as their mechanical changes and separate combined uses. These devices and improve-
1011 ments have also been extensively used by the government in its several departments, money order bureau, Internal Revenue Department, and elsewhere, by the order of the Commissioner of the Internal Revenue Bureau, and by the heads of other departments. The said patents being owned by different assignees, two separate and distinct claims thereupon appear against the government in connection with the same inventor and patentee, and hence the necessity for the two bills referred to you.

The Postmaster-General, in a letter to the Senate Committee on Post-Offices and Post-Roads, under date of the 15th day of January, 1867, says:

"The department has already saved several thousand dollars by its use, and I have no doubt will continue to save large sums by its future use. The question of value to the department has been long settled. The necessity to the department of its continuing it in use is beyond question. It is also necessary that some settlement be immediately made with the owners of the patent for this canceling and postmarking

and dating stamp. If no settlement is made by the government, so that these stamps can be made and furnished to the department without interference or embarrassment from the owners of the patent, it is apprehended the department will be compelled to resort to a more expensive and less approved method of postmarking and canceling stamps, and thus incur great expense and suffer great loss."

The same Postmaster-General, in another letter to the same committee, bearing date the 13th day of March, 1867, calling the attention of the committee to the fact that the department desired to enter into a four years' contract with the government contractor to furnish,
1012 for use in the postal service, this invention and device under the letters patent of April 14, 1863, and its reissue of August 23, 1864, and granted to said Marcus P. Norton, says:

"Information has been received at this department that no arrangement or settlement was made by the last Congress for the payment for the past use, and for the purchase of the invention made by Marcus P. Norton, of Troy, N. Y., for the postmarking of letters and for the canceling of postage stamps thereon. This being the state of facts, the department finds itself very much embarrassed. It desires, and must, as a matter of economy and facility in the making up of the mails for transportation, continue in use this invention.

"If this department cannot have the right to continue to use this invention, it will be compelled to increase the stamping force about one-half in all the large post-offices, in which event the postage stamps would not be as perfectly canceled. It has been ascertained that if the government owned Norton's patent at the time of making contracts to furnish to the department postmarking and postage-canceling stamps, it would be able to save from $1 to $2 on each stamp, and, as there are several hundred required during each year, it is submitted that for the four years of this contract a saving in the manufacture of these instruments alone would be several thousand dollars. Permit me to urge for these reasons that Congress make immediately some settlement for the continued use of this valuable and almost indispensable invention by this department. In conclusion, I most earnestly hope that some arrangement will be made by Congress with the owners of the patent, in order to relieve the department of much trouble and expense. I would not have called your attention to this matter, at this time, but for the great necessity that the same should now be disposed of, so as to give relief to the department."

1013 Again, in another letter, dated the 24th day of April, 1868, the same Postmaster-General says:

"I have always understood that when the department was about to enter into a contract for marking stamps, with Norton's canceling device combined therewith, he expressed an entire willingness that the same should be used by the department without let or hindrance on his part, he relying upon the justice and liberality of the government for such compensation as he was fairly and equitably entitled to for the use of his patent. It has always been conceded by my two immediate predecessors, as well as myself, that he should receive a just and fair compensation for his invention, which has proved a great saving of expense to the department."

The present Postmaster-General, in a letter to the Senate committee, in answer to inquiries made by that committee to him concerning the

matters set forth in a bill referred to your honorable committee by the Senate, and bearing date the 14th day of June, 1870, says:

"In reply, I beg to state that a postmarking and canceiing stamp, known as the 'Norton stamp,' has been in use by this department for several years. No compensation has been paid to the inventor and patentee, or his assignees, for the past use of said stamp. The invention is valuable to the department, and the inventor and patentee of it, in my judgment, deserves to be fairly and reasonably compensated by the government for its past and future use in the postal service."

He also says, in substance:

"It is regarded as almost indispensable to a safe, rapid, and economical management of certain postal matters. The claim should
1014 now be settled by the government upon fair, just, and honorable terms, and I leave the whole matter for Congress to determine what course shall be taken for a settlement for the past as well as for the future use of the invention during the term of the letters patent, which I now have before you, bearing date the 14th day of April, 1863, numbered 38175, and its last reissue, dated October the 4th, 1870, and numbered 4143 of reissued patents and 'Division A.'"

In a letter from the Postmaster-General to the Senate of the United States, dated the 25th day of February, 1871, and in answer to the requirements of a joint resolution of Congress concerning the aforesaid letters patent, approved the 14th day of July, 1870, and in reference to the invention and machine contained in the aforesaid letters patent, he says:

"The stamp patented in 1863 has been in use in the department, and furnished by contractors, under contracts commencing the first day of April, 1863, and April first, 1867, each for four years. No other stamp appears to have been used in the department containing this combination for postmarking and canceling at one and the same blow, and containing the devices and mechanical arrangement and combinations specified and covered by that patent."

Long-continued use of this machine by the department in the postal service must be satisfactory evidence of the value and importance of the same in and to that service.

It also appears from the proofs I have submitted to you, gentlemen, that there have been three different contracts made by the Postmaster-General, each for a term of four years, and for the furnishing for the use of the department, in the postal service, of the invention and machine patented under the dates and numbers of letters patent as here-
1015 inbefore stated, and at large set forth, with which contracts we have nothing whatever to do, and was made with the lowest responsible bidder, as by law provided concerning that department.

In the same letter, dated the 25th day of February, 1871, the Postmaster-General also says:

"The combined stamp has been demonstrated by continuous use during nearly eight years to be valuable in the larger post-offices and in the railway service. Simple as it is, no other device has been hit upon that will do the work of this one without adding largely to the number of stamping-clerks employed, and consequently increasing the expenses of the department. It is impossible to estimate, with any degree of accuracy, the amount of money which has been or which may be saved

by its use. Nothing has been paid to any one as royalty for the use of the invention. I indorse its usefulness in decided terms."

By a recent decision of the Supreme Court of the United States, letters patent upon mechanical invention are held as, and by that court declared to be property, the same as real estate or personal property, and that the inventor and his lawful representatives are justly entitled under the law to full protection as against any one using the invention under the letters patent without having first obtained a right or license to use the same. In that decision the court use the following language, to wit:

"Inventions secured by letters patent are property in the holder of the patent, and as such are as much entitled to protection as any other property, consisting of a franchise, during the term for which the franchise or the exclusive right is granted."

In view of this decision, coming from the highest court in the land, it has occurred to me whether or not the inventor and his assignees might not, by proceedings in the equity court of the United States, be
1016 lawfully entitled to an injunction against any person or persons using this machine and invention, to prevent and to restrain further use of the same; and that should we pursue that course it would make very great trouble to and might greatly inconvenience the Post-Office Department, and also delay the transportation of the mails by preventing the making up of the same ready to go upon the cars, until the old post-marking and postage-canceling stamps could be refurnished from the government manufacturers, and the clerical stamping force in the post-offices and upon the postal railway cars could be increased to that number sufficient to do the work required by the change, to wit, double the force now required in post-offices and on postal cars. Were this course to be pursued, it is manifest that serious inconveniences and delay would follow, necessitating a large increase in the annual appropriations for the expenses of the Post Office Department, and in many ways work injuries and delays in the postal service. All such results may now be prevented by the act of Congress in the making of some fair, just, and equitable provisions for the speedy settlement and adjudication of this claim.

Article five of the amendments of the Constitution of the United States, among other things, provides:

"Nor shall private property be taken for public use without just compensation." "Private property" is the sacred right of individual dominion. It is one of the great absolute rights of every citizen of the republic to have his property protected, and the government has no right whatever to deprive the citizen of his property except for the use of the public; not even then without a fair, just, and equitable compensation or remuneration; and, continuing a little further on with this doctrine of the law, it is a well-settled principle that no man "shall be disseized of his freehold or of his private property without a fair and just compensation therefor when taken for the use, gain, and profit of the
1017 public by the order, directions, or by the contract, specific or implied, on the part of the government."

The learned Mr. Story says:

"This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded on natural equity, and is laid down by jurists as a principle of universal law."

I need not say to you, gentlemen, that more than ten years have passed away since this invention first went into use, and the govern-

ment promised to compensate me for it in a fair and just manner in case it proved successful. It is now in general use in the post-offices and upon the postal railway cars of the country, and I need not here recapitulate the facts concerning its utility, economy in time, and saving of expenses to the government in the postal service.

1018 *Complainant's Exhibit Y.—J. A. S., Ex'r.*

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE *against* EDMUND HOOLE. } At law.

Plaintiffs' costs:

For fee by statute on trial before a jury		$20 00
Fees of witness three days, at $1.50		4 50
Six miles' travel for witness		60
Marshal's fees, service of capias on defendant, $2; six miles' travel fee, 60 cents; service of narr., $2		4 60
For narr. filed with United States circuit court clerk		10 00
Government stamp on capias		50
		$40 20

Clerks' fees:

Issuing capias, $1; two certified copies, $1; docketing case, $1	$3 00	
Narr. filing and rule, 50 cents; entering of dockets, 50 cents; do. narr. and stipulation, 50 cents	1 50	
1019 Issuing in all six subpœnas and six copies for term	$4 50	
Filing and entering answer, 50 cents; do. amended one, 50 cents; issuing second capias, $1	2 00	
Calendar fees, $1; trial fees, oaths, orders, filings, etc., $5	6 00	
Certified minutes of trial, 50 cents; do. of stipulation, 50 cents	1 00	
Making judgment record, 165 folios, at 15 cents	24 75	
Final fee on taxation and "proofs" in case	3 00	
Execution, $1; filing papers on tax, and certified return of execution, 50 cents	1 50	
		$47 25
		$87 45

Taxed at eighty-seven dollars and forty-five cents, this 22d November, 1864.

A. A. BOYCE, *Clerk.*

Circuit court of the United States, in and for the northern district of New York, ss:

Pleas in the circuit court of the United States for the northern district of New York, of the term of October, A. D. 1864.

Witness Hons. Samuel Nelson and Nathan K. Hall, judges: A. A. Boyce, clerk.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, in the term of June last past, in said court, the said Jacob Shavor and Albert C. Corse, plaintiffs,
1020 by John B. Gale, their attorney, came and brought into the said court, before the said judges thereof, their certain declaration against Edmund Hoole, defendant, and which follows in the words and figures, to wit:

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. } At law.

The President of the United States of America to the marshal of the northern district of New York, greeting:

We command you that you take Edmund Hoole, if he shall be found in your district, and that you safely keep him so that you may have his body before the circuit court of the United States of America for the northern district of New York, to be held at Albany, in the second circuit, in and for the said northern district of New York, before the judges of the same court, on the second Tuesday of October next, to answer unto Jacob Shavor and Albert C. Corse, in an action of trespass on the case for infringement of (their) letters-patent issued by the United States, to their damage $300,000, and that you also have then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Canandaigua, in the said northern district of New York, the 29th day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth.

[L. S.] A. A. BOYCE, *Clerk.*

JOHN B. GALE,
Plaintiffs' Attorney, Troy, N. Y.

[U. S. rev. stamp, 50 cts.]

1021 United States district court, northern district of New York. Of the term of June, 1864, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. } At law.

Jacob Shavor and Albert C. Corse, citizens of the United States of America, and residing at the city of Troy, county of Rensselaer, and State of New York, and citizens of said State of New York, plaintiffs in this suit, by John B. Gale, of the city of Troy, county of Rensselaer, and State of New York, their attorney, and by capias duly served herewith, commence this their action against Edmund Hoole, defendant, residing at Mount Vernon, county of Westchester, State of New York, and a citizen of said State of New York, and thereupon file this their declaration or complaint in the office of the clerk

of this honorable court, at the city of Utica, in said district, entering with the said clerk a rule to plead thereto, and serving a copy of said declaration with a notice of said rule upon the said defendant according to the rules of this court, and thereupon complain of the said defendant in an action or plea of trespass on the case.

For that whereas Marcus P. Norton of the city of Troy, county of Rensselaer, and State of New York, then a citizen of the United States of America before and at the time of the granting of the letters patent as hereinafter set forth, was the original an first inventor and discoverer of new and useful improvements in "post-marking letters, packets, and canceling postage stamps thereon," to wit, at Troy, within the State of New York, and thereupon, heretofore, to wit, on the 14th day of April, one thousand eight hundred and sixty-three, at the city
1022 of Washington, District of Columbia, upon the application of the said Marcus P. Norton, in due form of law, and upon the payment of fifteen dollars into the Treasury of the United States upon said application, and upon the further payment of twenty dollars upon the granting of the patent upon said application before the issuing of the same, as by law provided, and in all other respects complying with the act or acts of Congress in such case made and provided, letters patent were duly granted and issued in due form of law unto the said Marcus P. Norton, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, according to the provisions and requirements of the law, bearing date on the day, the month, and the year as aforesaid, to wit, on the 14th day of April, 1863, and were afterwards duly delivered to the said Marcus P. Norton, wherein and whereby was granted to the said Marcus P. Norton, his heirs, administrators, or assigns, for the full and only term of seventeen years from and after the date thereof, the full and exclusive right or liberty of making, constructing, using, and vending to others to use or to be used, the said new and useful improvement hereinbefore mentioned, all of which was in due form of law, as will fully appear by said letters-patent ready in court to be produced, as by law, rule, or order of this honorable court may be required.

And the said Marcus P. Norton afterwards, to wit, on or about the 20th day of April, 1863, at the city of Troy, county of Rensselaer, State of New York, by a certain deed of assignment then and there made and delivered by him, the said Marcus P. Norton, to the said plaintiffs, Jacob Shavor and Albert C. Corse, which said deed of assignment, sealed with the seal of the said Marcus P. Norton, the plaintiffs now bring here into court, for good and valuable consideration therein named, did assign, sell, and transfer unto the said Jacob Shavor and
1023 Albert C. Corse, their heirs, administrators, or assigns, the entire said letters patent, and the invention and improvements therein and thereby secured to him, the said Marcus P. Norton, by the said letters patent, or as might afterwards be secured by any reissue of the said letters patent, which said deed of assignment afterwards, to wit, on or about the 8th day of March, A. D. 1864, was duly recorded in the said Patent Office, at the city of Washington, District of Columbia, in liber C7, page 453 of Transfers of Patents, as by reference to the said deed of assignment and to the certificate of the recording thereof thereon indorsed, will fully and at large appear. By virtue of which said deed of assignment so made and recorded, the said plaintiffs, Jacob Shavor and Albert C. Corse, became and were on the 20th day of April, A. D. 1863, and have ever since been, and still are, the exclusive owners of, and vested with all the rights, liberties, and privi-

leges so as aforesaid granted to the said Marcus P. Norton, in and by the said original letters patent, dated April 14, 1863, and all reissues thereof.

And whereas the said Jacob Shavor and Albert C. Corse, plaintiffs in this action, thereafter, to wit, on or before the first day of June, 1864, in pursuance of the statute in such case made and provided, did surrender the said letters patent so as aforesaid granted to the said Marcus P. Norton, and the same were duly canceled as by law provided and required, and new letters patent were ordered to issue to the said Jacob Shavor and Albert C. Corse, on amended and corrected specifiactions, and thereupon and thereafter, to wit, on or about the 23d day of August, 1864, at the said Patent Office, upon the application of the said Jacob Shavor and Albert C. Corse, in due form of law made to the honorable Commissioner of Patents, letters patent for and upon the said new and useful improvements in "post-office stamps for
1024 post-marking letters, etc., and canceling postage-stamps thereon," were duly reissued on the aforesaid amended and corrected specifications in the name of the United States of America, signed by J. P. Usher, Secretary of the Interior, and countersigned by D. P. Holloway, Commissioner of Patents, bearing date on the 23d day of August, 1864, wherein and whereby was granted to the said Jacob Shavor and Albert C. Corse, their heirs, administrators, or assigns, for the term of seventeen years from and after the said 14th day of April, 1863, the full and exclusive right and liberty of making, constructing, using, and vending to others to use or to be used, the said improvements in "post-office stamps for postmarking letters, etc., and canceling postage-stamps thereon," as by the said letters patent, with the specifications, claims, and description hereto annexed, and which make a part of the pleadings in this complaint, which said letters patent, so as aforesaid granted, assigned, and reissued, with the corrected and amended specifications annexed thereto and forming a part thereof, the said plaintiffs bring here into court.

And the said plaintiffs in fact and in truth say, that the said exclusive right and privilege so as aforesaid secured to the said Marcus P. Norton in and by the said letters patent granted as aforesaid and sold, assigned, and transferred to the plaintiffs, Jacob Shavor and Albert C. Corse, and by them reissued as aforesaid, has been and is possessed and used by them, the said assignees, and the said patentees, plaintiffs, since the said granting of the same by reissue on the 23d day of August, 1864, as aforesaid, and is of great and important value to the said plaintiffs, to wit, of the value of "three hundred thousand dollars." And also of great and important value to the public, and especially so to the Post Office Department or Government of the United States of America, in the postmarking of letters, packets, etc., and in the
1025 cancellation of postage-stamps thereon, so that great labor is saved in the postmarking of letters, etc., and in the cancellation of the postage-stamps thereon, and in facilitating the making up of mails for transportation, and in canceling postage-stamps in such thorough and effectual manner as to prevent frauds by a second or reuse of any postage stamp, substantially as described and set forth in the specifications attached to and forming a part of the letters patent assigned, reissued, and bearing date August 23, 1864, as hereinbefore set forth.

Yet the said defendant, well knowing the premises, but contriving and wrongfully intending to injure the said plaintiffs, and to deprive them of the value, profits, benefits and advantages which they might and otherwise would have acquired and derived from the said exclusive

right and privilege of making, using, and vending to others the right to sell and to use the said invention and improvements in "post-office stamps for postmarking letters, etc., and for canceling postage-stamps thereon," described and set forth in the said letters patent, and thereby secured, which said reissued letters patent bear date the 23d day of August, 1864, and hereinbefore described, a correct and printed copy of which, together with a description and claims of the invention and improvements thereof, is hereto annexed as hereinbefore stated, and accompanied by a copy of the drawings thereof, which said letters patent were granted, delivered, assigned, and reissued as aforesaid; and after the assignment and reissue of the said letters patent as aforesaid, and during the term of time of the said reissued letters patent, from August 23, 1864, and on divers days and times thereafter, and before the commencement of this suit, hitherto, to wit, at the village of Mount Vernon, county of Westchester, and State of New York, unlawfully and wrongfully, and without the consent or allowance and against the will of the said plaintiffs, Jacob Shavor and Albert C. Corse, did
1026 manufacture, use, vend, and put in practice the said invention and improvements, and did vend to others to sell, to use, and to be used, and did cause to be used, vended, and put in practice by others, "post-office stamps for postmarking letters, etc., and for canceling postage-stamps thereon," which were and are constructed in accordance to and with, and containing the invention, plan, features, and improvements, invented, patented, assigned, and reissued, as hereinbefore stated and set forth, in violation of and infringement upon the said exclusive rights and privileges so secured to said plaintiff by said assignment and letters patent as aforesaid, and contrary to the form of the statute of the United States in such case made and provided.

And the said plaintiffs say, and charge the fact and the truth to be, that the said defendant is now, and has for a long time been, engaged in the manufacture of the said post-office stamps for postmarking of letters, packets, etc., and for the cancellation or destruction of postage-stamps thereon, substantially as specified in said patent, for Fairbanks & Co., of the city, county and State of New York, under a certain contract with the said Fairbanks & Co., which said stamps, so manufactured by said defendant, are an infringement upon and infraction of plaintiffs' said reissued letters patent, bearing date August 23, 1864, and in violation of plaintiffs' exclusive rights and privileges, so secured to them by said assignment and said reissued letters patent, which said stamps, so manufactured, were and are manufactured at Mount Vernon, Westchester County, and are delivered by the said Fairbanks & Co. to the United States Post-Office Department, unlawfully and against the will of plaintiffs, as hereinbefore stated.

Whereby and by means of which grievances the said plaintiffs have been greatly injured and deprived of great gains, profits, sales, and advantages, which they might and otherwise would have derived
1027 from said invention, in said letters patent, specifications, claims, and drawings described as aforesaid, to wit, at the said village of Mount Vernon, in the county of Westchester and State of New York, and southern district of New York, and have sustained by such acts of infringement actual damages to the amount of three hundred thousand dollars.

By means of which several premises, and by force of the statutes aforesaid, an action has accrued to them the said plaintiffs, Jacob Shavor and Albert C. Corse, to recover the said actual damages, and such additional amount, not exceeding in the whole three times the

amount of such actual damages, as the court may see fit to order and adjudge.

Yet the said defendant, Edmund Hoole, though often requested so to do, has not settled or paid the same or any part thereof to the said plaintiffs, but has refused, and still does refuse so to do, to the damage of the said plaintiffs of three hundred thousand dollars, to recover which, together with just costs, they bring suit.

JACOB SHAVOR.
ALBERT C. CORSE.

JOHN B. GALE,
Plaintiff's Attorney, Troy, N. Y.

[U. S. rev. stamp, 50 cts.]

NORTHERN DISTRICT OF NEW YORK,
City of Troy, County of Rensselaer, ss:

On this 31st day of August, 1864, before me, the subscriber, a United States commissioner, personally appeared Jacob Shavor and Albert C. Corse, plaintiffs in the foregoing action, and each for himself made oath, according to law, that they have heard read the foregoing narr or complaint by them subscribed, respectively, and know the contents thereof, and that the same is true of their own knowledge, except as to
1028 those matters therein stated on information and belief, and as to those matters they and each of them for himself believes it to be true.

mmissioner, Northern District of New York.

(Here follows diagram marked page 1029.)

Reissue No. 1748.

The United States of America, to all to whom these letters patent shall come:

Whereas Jacob Shavor and Albert C. Corse, of Troy, New York, assignees of Marcus P. Norton, of the same place, have alleged that said M. P. Norton invented a new and useful improvement in post-office stamps (for which letters patent were reissued to him, dated April 14, 1863, which letters patent having been surrendered by said assignees, the same have been canceled and new letters ordered to issue to them on an amended specification), which he stated had not been known or used before his application; had made oath that he was a citizen of the United States; that he did verily believe that he was the original and first inventor or discoverer of the said improvement; and that the same hath not, to the best of his knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Shavor & Corse, their heirs, administrators, or assigns, for the term of seven-
1030 teen years from the fourteenth day of April, one thousand eight hundred and sixty-three, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the

said Shavor and Corse in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States of America the eighty-ninth.

[L. S.]

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same:

To all whom it may concern:

Be it known that Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, invented new and useful improvements in post-marking letters, packets, etc., and canceling the postage-stamps thereon, in the manner and by the means substantially as hereinafter described and set forth. That the same were duly assigned and transferred to the undersigned, Jacob Shavor and Albert C. 1031 Corse, on the 20th day of April, 1863, and recorded in the United States Patent Office on the 8th day of March, A. D. 1864, Liber C[7], page 458 of transfers of patents; and we do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being hereby had to the accompanying drawings and to the letters of reference marked thereon, which drawings make a part of these specifications.

(Like letters refer to and represent like or corresponding parts.)

Fig. 1 is a side elevation of the post-marking and postage-stamp canceling device hereinafter described and set forth, for canceling stamps issued by the "Post-Office Department," with indelible or other ink, at the same time and operation of the making of the post-mark on the packet one side of such frank or postage-stamp so canceled.

Fig. 2 is a vertical section taken through the centre of the various parts of the post-marking and postage canceling device herein described and set forth.

Fig. 3 is a face view showing the post-marking stamp ready for use and the postage canceling stamp or device made of wood, cork, rubber, or other and similar material and therein inserted, and more fully described hereinafter.

Fig. 4 shows a device to cancel postage-stamps, or letter franks, with indelible or other ink by means of wood, cork, rubber, or any elastic or similar material for type or blotter, which may be used for that purpose separate and alone or in combination with the post-marking device, substantially as shown at Fig. 3.

Fig. 5 is a vertical section of a post-marking and canceling postage-stamp device combined, and entirely made of iron, steel, or similar material, and described hereinafter more fully.

Fig. 6 is a plan or face view of Fig. 5, and fully showing the postage canceling device made of iron, steel, or similar material.

Fig. 7 shows the wrench for securing the type for the month, day of month, and year, in the postmarking device.

Fig. 8 shows the punching tool or device for forcing the cork, wood, rubber, or similar material, from the tube in which the same is held for use, so as to repair or replace the same with a similar blotter or postage-stamp canceling device.

The nature of the said invention and improvements herein described consists in the employment and combination of a device for the more complete and perfect cancellation of postage-stamps by means of wood, cork, rubber, or similar material, whereby such stamps are blotted or effaced with indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of a postage canceling device, having wood, cord, rubber, or any similar material, for the type or blotter, with any post-marking device, so as to blot, cancel, or efface postage-stamps with indelible or other ink at the same time, blow, or operation of the instrument by which the post-mark is made upon the letter, envelope, or packet, substantially as herein described and set forth.

It also consists in the post-marking of letters, envelopes, or packets, and in the cancellation of postage-stamps thereon with ink or similar material by means of wood, cork, rubber, steel, iron, or any other suitable material, so combined with the post-marking instrument as to blot or efface such postage-stamps at the same blow or operation of the instrument thus constructed for such purpose.

To enable others skilled in the art to which said invention or improvements relate to make and use the same, we will here proceed to describe the construction and operation thereof, which is as follows, to wit: We construct the post-marking device, or stamp (D), of any suitable material and of any size in diameter required, while in length it must
1033 correspond to the canceling device herein described. E, Fig. 3, is the mortice or recess of suitable dimensions to receive the type for the month, day of the month, and the year, around which is the name of the place where used, and is similar to the post-marking device described and set forth in our letters patent, bearing date the 16th day of December, 1862, which was issued to the said Marcus P. Norton, and by him afterwards assigned and transferred to us, and which said type is secured to the cross-piece (B) in the same manner and by the same means as described and set forth in the said patent, as well as in this specification hereinafter.

We construct the postage-canceling stamp, or device (G), for the purpose of canceling in a more perfect and thorough manner the postage-stamps on letters, packets, etc., of wood, cork, rubber, or any similar or elastic material, and insert the same in the tube or recess (F), which is in that part of the canceling device (C), connected to and combined with the said cross-piece (B), as herein described.

The said tube, or recess (F), Figs. 2, 3, and 4, may be of any diameter or depth desired.

We prefer to have the diameter thereof at least the same as the width of the postage-stamp to be canceled or destroyed with ink as aforesaid. The said canceling device (G) will, of course, be so made as to correspond with each tube or recess, and to closely fit the same, and may be made of cork, wood, rubber, or any elastic material, as aforesaid. The face of this device may contain a plan or form for canceling postage-stamps with ink like that shown at Fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid. This device (G) will project somewhat below the lower end of the said tube (F), as seen at Figs. 1 and 4, and it may also project somewhat below the face of the post-marking or rating device (D), if deemed best so to do, and it may

be driven out of the said tube or recess (F) by means of a pin or
1034 bolt substantially like that shown at Fig. 8, the lower end of which operates in and through the hole (a), Figs. 2 and 4, for the purpose of repairs or to replace it by a new one. (A) is the handle firmly secured to the cross bar (B).

The said postage stamp canceling device (G), being thus constructed, with cork, rubber, or other elastic material for the type or blotter, and combined with the said device (C), with recess (F), therein as aforesaid, will receive and hold on the face or configuration thereof ink in quantities sufficient to permanently blot, efface, and cancel the postage-stamp whereon the same is used in such manner as to prevent the said postage-stamp being cleansed of the said canceling ink by any chemical or other process; for the said ink so put on would be so effectual that any attempt to remove it therefrom would entirely destroy the said postage-stamp and thereby render the same incapable of a second or other use without immediate detection. The said cork, rubber, or other elastic material as aforesaid will render the said stamp and canceling device of an easy and rapid use, for there being a yielding of the same when the blow is given, the operator will not tire as soon by a constant or continuous use of the same, and it will somewhat aid in raising the entire apparatus from the paper and postage stamp when the impression and cancellation shall have been given by the operator. The said type, blotter, or canceling device can be easily repaired or replaced by a new one at very little expense or trouble. The said cork, rubber, wood, or elastic device for canceling postage-stamps as aforesaid may extend upward to the said cross-bar (B), and there be connected to the same by means of a screw, pin, bolt, or similar device, if desired. The operation and effect produced would in such case be the same. The said postage canceling device may be of any desired distance from the said post-marking or rating device, or it may be securely fastened
1035 to the immediate side of the said post-marking or rating part or stamp by any proper and sufficient means.

The said postage canceling device may also be made of iron, steel, or similar material, as shown at (G′), Figs. 5 and 6, which may be secured to the said cross-piece (B) in like manner as the said device (C), Figs. 2 and 4, which is done either by screw and nut where the same unites with the said cross bar, or it may there be firmly fastened by means of pins or rivets, or soldered, as deemed best. The said post-marking or rating device is secured to said cross bar (B) in like manner, and by substantially the same means. The said metal canceling device (G′), Figs. 5 and 6, may also be fastened to the immediate side of the said post-marking device by any good and sufficient means as hereinbefore described in reference to the said device (C), Figs. 2 and 4. This metal device may also have upon its face or lower surface any configuration deemed best for the purpose of canceling the postage-stamp in ink at the same blow of the instrument or apparatus, as hereinbefore stated. In every case the post-marking of the letter or packet, and the effacing or cancellation of the postage-stamps thereon, is done at the same time, and at one operation of the devices, constructed and combined substantially as herein described and set forth. Both the post-mark and the cancellation of the said postage-stamps are done with indelible or other kind of ink, and without any injury to the said letter or packet, or contents thereof, as would be the case were the said postage-stamp canceled by being cut in several places by means of cutters or knives constructed for that purpose. The instrument and devices herein described will not cut either the letter, envelope, or postage-stamp thereon, but

performs the cancellation aforesaid with ink only as aforesaid; no cutting device whatever is used.

In no case could any fraud be committed by a second or reuse of the government postage-stamp or frank without being immediately
1036 discovered. This combination of devices will greatly facilitate the making up of mails for transportation, will reduce the labor in post-marking letters, and in canceling the postage-stamps thereon, to about one-half of that required where this combined instrument is not used. It therefore saves about one-half of the labor in the post-marking of letters and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the said postage-stamps more effectual, so as to prevent a second or reuse by any means whatever, which are very important items in the successful management of the post-offices in this country, whereby large sums of money are annually saved this government.

Having thus described the original invention and improvements of the said Marcus P. Nortion in post-marking and canceling devices combined as and for the purposes aforesaid, what we claim and desire to secure by letters patent of the United States of America is:

First. The postage canceling device (C) with "wood," "cork," or "rubber" type, or blotter (G) therein, or any equivalent therefor, so as to cancel, blot, or efface the postage stamp with indelible or other ink, in the manner and for the purposes substantially as herein described and set forth.

Second. We claim the canceling device (C) with wood, cork, or rubber, or any equivalent thereof, forming the type or blotter (G) therein, in combination with the cross-piece (B) and with the post-marking device (D), substantially as and for the purposes herein described and set forth.

Third. We claim the post-marking of letters, envelopes, and packets, and the cancellation of the postage stamps thereon with ink, at one and the same blow or operation of the instrument, in the manner and by the means substantially as herein described and set forth.

Fourth. We claim the employment and combination of post-
1037 marking device with postage-stamp canceling device, both being operated by one or the same handle for the postmarking the letter, envelope, or packet, and for the destruction of postage stamps thereon, with indelible or other ink, substantially as herein described.

In testimony whereof we have, on this 27th day of May, A. D. 1864, hereunto set our hands.

JACOB SHAVOR.
ALBERT C. CORSE.

Witnesses:
B. H. HALL.
C. L. ALDEN.

Deed of assignment.

Whereas, I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, have invented "new and useful post-mark and canceling-stamp," for and upon which I did, on the 14th day of April, 1863, obtain of and from the United States of America letters patent, to which reference is hereby had, for the invention this day sold and assigned;

And whereas Jacob Shavor and Albert C. Corse, each of the city of Troy, county and State aforesaid, are desirous of purchasing and have

purchased of and from me all the right, title, and interest secured to me in said invention by said letters patent, or which may be secured to me by reissue of the same or otherwise: now, therefore, this indenture of assignment witnesseth that for and in consideration of the sum of five hundred dollars to me in hand paid, the receipt whereof is hereby acknowledged, I have sold, assigned, and transferred, and do hereby sell, assign, and transfer unto the said Jacob Shavor and Albert C. Corse, their heirs, assigns, executors, or administrators, all the right, title, and interest which I have in the said invention as secured
1038 to me by said letters patent, or as may be secured to me by reissue of the same or otherwise, the same to be held and enjoyed by them, the said Jacob Shavor and Albert C. Corse, for their own use, benefit, and behoof, and for the use, benefit, and behoof of their legal representatives, to the full end of the term for which the same were and are granted, as by reference to said patent will fully appear, as fully, freely, and entirely as the same would have been held and enjoyed by me had this sale, assignment, and transfer not been made.

In testimony whereof I have, on this 20th day of April, 1863, hereunto set my hand and seal.

MARCUS P. NORTON. [L. S.]

Signed and sealed in presence of—
CHARLES D. KELLUM.
CHARLES E. PATTERSON.

[15 cent U. S. revenue stamp.]

U. S. PATENT OFFICE.

Received and recorded March 8, 1864, in liber C[7], page 458, of Transfers of Patents.

In testimony whereof I have hereunto caused the seal of the Patent Office to be affixed.

[L. S.] D. P. HOLLOWAY,
Commissioner of Patents.

Order for defendant to answer.

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
EDMUND HOOLE. } At law.

On issuing capias ad respondendum, and on filing narr or com-
1039 plaint in this action, and on motion of John B. Gale, attorney for plaintiffs, ordered, that defendant plead to or answer the plaintiffs' said narr. or complaint within twenty days after service thereof and of this order upon defendant, and on failure thereof, judgment by default, etc., etc.

JOHN B. GALE,
Solicitor for Plaintiffs, Troy, N. Y.

TROY, August, 1864.

To EDMUND HOOLE, Esq.,
Defendant.

Answer to narr or complaint.

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. } At law.

The above-named defendant, Edmund Hoole, of Mount Vernon, county of Westchester, State of New York, and southern district of New York, for answer to the narr or complaint in the above entitled action, answers and says that he has been informed, and believes it to be true, and therefore admits the same, that letters patent of the United States of America were duly issued and delivered to Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, a citizen of the said United States of America, upon improvements in pos-toffice stamps for post-marking letters, packets, etc., and for the cancellation of postage stamps thereon, bearing date April 14, 1363, as charged and set forth in the said complaint. And this defendant also admits that the said plaintiffs are citizens of the United States; that the said letters patent were duly assigned to them, the said Jacob Shavor and Albert C. Corse, by the said Marcus P. Norton, and
1040 afterwards duly recorded in the United States Patent Office at the city of Washington, as stated and set forth in their said complaint in this action.

And this defendant, further answering said complaint, hereby admits, that after the making and recording of the said assignment, as stated in said complaint, the said plaintiffs, Jacob Shavor and Albert C. Corse, duly surrendered the said letters patent of April 14, 1863, as by law provided, and upon their application, in writing, made to the Commissioner of Patents, consisting of a petition, amended and corrected specifications, new drawings, oath, and of the payment of thirty dollars into the Treasury of the United States upon said application, the said original letters patent of April 14, 1863, were duly canceled, as by law provided and required, and new letters patent were duly granted as a reissue of the said original letters patent, as by law provided, upon the said amended and corrected specifications and new drawings, which said reissued letters patent were signed by J. P. Usher, Secretary of the Interior, and countersigned by D. P. Holloway, Commissioner of Patents, as charged and set forth in the said complaint in this action, all of which was in due form of the law and in compliance with the provisions of the statutes in such case made and provided.

And this defendant, further answering the said complaint, hereby admits, that he now is, and has for a long time past been, engaged at Mount Vernon, county of Westchester, southern district of New York, in the manufacture of post-office stamps for postmarking of letters, packets, etc., and for the cancellation of postage-stamps thereon, and in vending the same to Fairbanks & Co., of the city of New York, who deliver the same to the Post Office Department of the Government of the United States of America, under and in pursuance with a contract with the said Post-Office Department as the party of one part, and the said Fairbanks & Co., party of the second part, which said post-office
1041 stamps, so made and delivered, were and are for use in the several post-offices of the said United States named upon the face or printing surface of such stamps. And the said post-office stamps, so made and delivered by this defendant, were and are made in the man-

ner and for the purpose described and set forth in the specifications and drawings attached to and forming a part of the plaintiffs' said reissued letters patent, bearing date August 23, 1864, and were made substantially in accordance to and with the plan and principle described and set forth in the plaintiffs' said reissued letters patent, as charged and set forth in the said narr. or complaint in this action.

And this defendant, further answering the said complaint, hereby admits that the said post-office stamps for postmarking of letters, packets, etc., and for cancellation of postage-stamps thereon, so made and vended, and described and set forth in the specifications and drawings of the plaintiffs' said reissued letters patent bearing date the 23d day of August, A. D. 1864, are valuable, labor saving, and important to the said Post-Office Department for the postmarking of letters, packets, etc., and in the cancellation or destruction of postage-stamps thereon, as charged and set forth in said complaint.

And this defendant, further answering the said complaint, denies that he has damaged the said plaintiffs by reason of such manufacture and vending of the aforesaid post-office stamps in the manner hereinbefore admitted by this defendant, or to the amount of any any other sum whatever, as charged and set forth in the said complaint inthis action.

And this defendant, further answering the said complaint, avers and charges the fact and the truth to be that the said plaintiffs, Jacob Shavor and Albert C. Corse, are not and never were the sole and exclusive owners of and vested with all the rights, liberties, and privileges of the aforesaid invention and improvements for the use and purpose aforesaid, or of any material and substantial part thereof, as
1042 stated and set forth in their said complaint; but, on the contrary, defendant charges the fact and the truth to be that the said invention and improvements are now, and have for a long time prior to the commencement of this suit been, owned, enjoyed, and held by the following firm and persons, to wit, Charles Eddy & Co., Frederick G. Ransford, and Peter Low, each and all now, and then, residing at the city of Troy, county of Rensselaer, State of New York, and William B. Hatch, of the city and county of New York, who is a member of and a partner in the firm of said Fairbanks & Co., of said city of New York, who purchased the said invention and improvements of the said Marcus P. Norton by deed of assignment duly executed and delivered by said Norton to the said Frederick G. Ransford and Peter Low, and dated May 2, 1859, and afterwards by them duly recorded in the said United States Patent Office on or about the 6th day of May, 1859, who afterwards duly assigned a certain interest in the said invention and improvements to the said Charles Eddy and Co., and to the said William B. Hatch, by deeds of assignment duly executed and delivered by said Ransford and said Low to the said Charles Eddy & Co., and to the said Hatch, as by reference to the said assignments, duly recorded as aforesaid, and now ready here in court to be produced, will fully and at large appear.

And this defendant, further answering the said complaint, avers and charges the fact and the truth to be, that the said invention and improvements mentioned in the said complaint, and described and set forth in the drawings, specifications, and claims of plaintiffs' said letters patent, dated April 14, 1863, and reissued, bearing date August 23, 1864, as stated in said complaint, were patented to the said Frederick G. Ransford and Peter Low on the 9th day of August, A. D. 1859, as by the said original letters patent, or a certified copy thereof,
1043 now here in court, ready to be produced, will fully appear, which

said letters patent were so granted and delivered by reason and virtue of a deed of assignment, made and dated the 2d day of May, 1859, and duly recorded May 6, 1859, and delivered to them by the said Marcus P. Norton, as hereinbefore stated, who made the application to the Commissioner of Patents as the original and first inventor of the said invention and improvements, upon which the said letters patent of August 9, 1859, were granted as aforesaid, which said assignment was duly recorded in the United States Patent-Office before the granting of the said patent, and subsequent to the said application by said Norton to said Commissioner of Patents for said patent of August 9, 1859, to issue as aforesaid, and which said application was so made some time during the forepart of the year 1859, and more than two years prior to any application by said Marcus P. Norton to the Commissioner of Patents, upon which the plaintiffs' said letters patent bearing date the 14th day of April, 1863, were granted and issued, as stated in the plaintiffs' said complaint. And the said Ransford & Low afterwards sold, assigned and transferred unto the said Charles Eddy & Co., and said William B. Hatch, certain rights, liberties, and privileges in and to the said letters patent of August 9, 1859, as by reference to said assignments duly recorded as by law required, and as hereinbefore stated, will fully and at large appear, through which and by which the said Fairbanks & Co. did obtain the right and privilege to contract with this defendant to manufacture for them, the said Fairbanks & Co., to be delivered by them to the Post-Office Department at Washington, D. C., the kind and character of post-office stamps named in said complaint, and described and claimed in the plaintiffs' said reissued letters patent bearing date August 23, 1864, and having reference and relation to the said original letters patent dated April 14, 1863, issued and delivered
1044 to the said Marcus P. Norton, as set forth in said complaint

And this defendant avers and claims, as a part of his defense in this suit, that the said Fairbanks & Co., of the said city of New York, had and now have the full and legal right and privilege to contract with the Post-Office Department of the government of the said United States to furnish and deliver to the said department, for use in the various post-offices in the said United States, post-office stamps of the same kind, character, and nature as those mentioned in plaintiffs' said complaint, and described, set forth, and claimed in the specifications of their said original patent, dated April 14, 1863, and also in the specifications of their said reissued letters patent bearing date August 23, 1864, and also had such right to contract with the defendant to manufacture and deliver to them, the said Fairbanks & Co., such post-office stamps, to be delivered to and used by the said department or government of the said United States aforesaid.

And this defendant, further answering said complaint, avers and charges the fact and truth to be that the said Marcus P. Norton was not the original and first inventor of the invention and improvements described, set forth, and claimed in the plaintiffs' said original letters patent bearing date the 14th day of April, 1863, and reissued upon amended and corrected specifications on the 23d day of August, 1864, and fully shown by the drawings thereto annexed and forming a part thereof and mentioned in the complaint or declaration in this cause, or of any substantial or material part thereof; but that, on the contrary, the said invention and improvements and substantial and material parts claimed as new were prior to any invention thereof by the said Norton well known to and publicly used by divers persons in the said United States of America; and that among the persons who had such prior knowledge

of said invention and improvements and of substantial and ma-
1045 terial parts thereof, and who publicly used the same as aforesaid,
are Major-General John A. Dix, then postmaster at the city of New York, and who now resides at said city, and there had such prior knowledge of said invention and improvements, and publicly used the same in the New York City post-office in the fall of the year A. D. 1860, and also C. E. Wheeler, a clerk in the post-office at the city of Cleveland, State of Ohio, and and who now resides at said city, and there had such prior knowledge of the said invention and improvements, and there publicly used the same in the month of August, A. D. 1861, in the post-office at the said city of Cleveland, Ohio, and who communicated such knowledge and public use of the said invention and improvements and of material and substantial parts thereof to the "Post Office Department," at thecity of Washington, in the fall of the year A. D. 1861, or at or about that time.

Wherefore this defendant demands judgment for his costs and disbursements in this suit, and that plaintiffs' said patent of August 23, 1864, and their alleged title thereto be declared void.

Dated at Mount Vernon, southern district of New York, this 6th day of September, 1864.

EDMUND HOOLE,
Defendant and Attorney, in Person, Mount Vernon, New York.

NORTHERN DISTRICT OF NEW YORK,
City of Troy, County of Rensselaer, ss:

On this 6th day of September, 1864, before me, the subscriber, a United States commissioner, personally appeared Edmund Hoole, defendant in the foregoing action, and made oath according to law that he has read the foregoing "answer" by him subscribed and knows the contents,
thereof, and that the same is true of his own knowledge except
1046 as to those matters therein stated on information and belief, and
as to those matters he believes it to be true.

JOHN T. LAMPORT,
U. S. Commissioner, Northern Dist. of N. Y.

[U. S. rev. stamp, 5 cents.]

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. } At law.

JOHN B. GALE, Esq.:

SIR: Take notice that the paper hereto appended is a copy of my amended answer filed in the above-entitled suit.

EDMUND HOOLE,
Attorney, in Person.

Dated New York, October 8, 1864.

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. } At law.

The above-named Edmund Hoole, pursuant to the stipulation made

by John B. Gale, esq., attorney for plaintiffs in the action dated the 24th day of September, 1864, hereby alters and amends the answer heretofore filed in this action and dated the 6th day of September, 1864, as follows, to wit:

1047 By striking out of said answer all after the first paragraph thereof which ends with the words "and in compliance with the provisions of the statutes in such cases made and provided," and inserting instead thereof the following:

And this defendant, further answering and pleading, says that as to the truth of the allegation contained in said bill that the said Norton was the original and first inventor and discoverer of any new and useful improvement or improvements in postmarking letters and packets and cancelling postage stamps thereon, described and claimed in said letters patent and in said reissue, or as to any of said allegations, defendant has no knowledge or information save what is contained in the said bill, and leaves the plaintiffs to make such proof of the same as they may be advised.

And this defendant, further answering and pleading, says that he has no knowledge save what is contained in the said bill of complaint as to the truth of the allegation contained in the said bill; that the said specification and claim, forming part of the said reissued patent, is an amended and corrected specification and claim, and leaves the plaintiffs to make such proof of the same as they may be advised.

And this defendant, further answering said complaint, says that he has no knowledge save what is contained in the said bill of complaint that the said reissued letters patent are for the same invention described and set forth in the said patent dated 14th of April, 1863, surrendered as aforesaid, and leaves the plaintiffs to make such proof thereof as they may be advised.

And this defendant, further answering said bill of complaint, says as to the allegations contained in the said bill that the exclusive right and privilege granted to the plaintiffs by the said patent dated 14th April, 1863, assigned as aforesaid and reissued on the 23d day of August,

1048 1864, as aforesaid, is of great and important value to the said plaintiffs, to wit, of the value of $300,000, and also of great and important value to the public and especially to the Post-Office Department or Government of the United States of America; that he denies each and every said allegation except as herein otherwise stated, and says that the said right and privilege is not an exclusive right and privilege to the joining of a canceling blotter of whatever kind employing ink to the printing stamp, because a canceling blotter employing ink to assist in canceling and destroying postage stamps had been long previously known and used and had been long previously patented by said Norton and assigned to other and different parties.

And this defendant, further answering the said complaint, avers, on information and belief, that the said improvement is not of the value of three hundred thousand dollars, or of any other considerable sum.

And this defendant, further answering the said complaint as to the allegations that he has contrived and wrongfully intended to injure said plaintiffs, and to deprive them of the value, profits, benefits, and advantages which they might and otherwise would have acquired and derived from the said exclusive right and privilege of making, using, and vending to others the right to sell and use the said invention and improvements in post office stamps for post-marking letters, etc., and for canceling postage stamps thereon, described and set forth in the said reissued

letters patent bearing date 2 3d day of August, 1864, by unlawfully and wrongfully manufacturing, using, vending, and putting in practice the said inventions and improvements, or by vending to others to be used, vended, and put in practice by others, post-office stamps which are constructed in accordance to and with, and containing inventions and improvements invented, patented, assigned, and reissued, as herein-
1049 before said and set forth, in violation of and infringement upon said exclusive rights and privileges secured to said plaintiffs, by said assignment and letters patent as aforesaid, denies each and every of the said allegations.

And this defendant, further answering the said bill of complaint, in reference to the said allegation, hereby admits and avers that he is by trade an engraver of dies and stamps, and that he is and has been for considerable time engaged in the manufacture of hand stamps for post-office use; and that he has, within the four years last past, manufactured post office stamps adapted to cancel the postage stamp with ink at the same time and the same blow or operation with the printing or impression on the letter or packet of the place and date of mailing; that he has manufactured altogether in the interval of time from the beginning of 1859, down to the present date, the number as follows: Seven sold to General Dix, for the New York post-office, five sold to William B. Taylor, or Abram Wakeman, for the same post-office; sundry single specimens, less than ten specimens, for various parties; and four hundred and forty-one made for and delivered to Messrs. Fairbanks & Co., of the city, county, and State of New York, under an agreement with the said Fairbanks and Co. And this defendant is informed and believes that the said four hundred and forty-one stamps made for Fairbanks & Co. have been delivered by them to the Post Office Department at Washington, under a contract made between said Fairbanks & Co. and the Post-Office Department of the United States; that such contract has several years yet to run, and requires the delivery of said stamps at such a price that the said articles are so manufactured and delivered at a loss to this defendant, or to the said Fairbanks & Co., or to both, because of and during the continuance of the present extraordinary high
1050 prices of materials and labor. But this defendant denies that the said four hundred and forty-one hand stamps for printing and canceling as aforesaid, made by him as aforesaid, or any hand stamps or instruments or articles made by him and delivered to the said Fairbanks & Co., or sold by him to any parties, or delivered by him or with his knowledge or contrivance to the Post-Office Department, or to any parties to be by them sold or delivered for use in the Post-Office Department, or to be used in any post-office, or made by him, or sold by him, or used by him in any place or places, were made, sold, or used in violation of the plaintiffs' exclusive right and privileges secured to them by said assignment and said reissued letters patent.

And this defendant further says that the following is a full and exact description of the combined printing and canceling stamps made by him and delivered to Fairbanks & Co., as aforesaid: Each of said stamps is made entirely of metal, with the exception of the handle. The handle is round, as usual, armed with a brass ferrule at its lower end, and receives a shank of iron to form an attachment for the printing and canceling pieces. This shank is widened immediately below the handle, and the canceling and printing parts are attached thereto, side by side, with about one-fourth of an inch clear space between them.

The printing device is a piece of steel engraved or otherwise lettered in a circle on its lower face, and adapted to receive changeable type,

with straight steel bodies, in the centre, and to confine the same by aid of a binding screw inserted through the side, all substantially the same as has been made by this defendant for more than twenty years past.

The canceling device is a solid piece of steel. Its face is engraved or otherwise prepared with four concentric circles adapted to strike upon and print corresponding impressions on the postage stamp. The
1051 circles project about one thirty-second of an inch beyond the surface in the spaces between them, but not sufficiently sharp to cut into the postage stamp. They cancel the stamp by blotting it with ink; all substantially the same as has been made by this defendant for upwards of fifteen years, except that it is attached to the same handle and forms one instrument with the aforesaid printing piece.

The printing piece is cylindrical in form, as usual. The canceling piece is also cylindrical. The diameter of the printing piece is one inch, and that of the canceling piece three fourths of an inch.

Each of these said pieces is one inch long, and is secured independently to the shank piece by a separate screw countersunk into the shank and tapped each into the separate pieces. The printing piece is more nearly in a right line with handle than is the canceling piece, but neither is exactly in a line with the handle. The centre of the printing piece is about three-eighths ($\frac{3}{8}$) of an inch from the prolonged axis of the handle, and the centre of the canceling piece is about three forths ($\frac{3}{4}$) of an inch from such prolonged axis. All these stamps are very accurately proportioned according to the gauges provided for the work. This defendant is informed and believes that they operate successfully and give good satisfaction. Defendant has operated them and seen them operated, in printing the date, etc., and canceling the postage stamp at a single blow. The operation of these stamps is as follows: The instrument is taken hold of by the handle, and the ink pad and the letters or packages to be marked are struck therewith alternately in rapid succession. The blow upon the ink pad supplies the face of both the printing piece and the canceling piece with ink, and the succeeding blow upon the letter or packet, being skilfully aimed, prints the name of the place and the date, in black ink, upon the plain surface of the letter, and prints the canceling circles or marks with similar ink upon the face of
1052 the postage stamp, and thereby cancels it with ink, so that it can not be afterwards removed or used again.

This defendant, further answering the said complaint, says that he did not, either directly or indirectly, individually or in connection with any other person or parties, make, use, or vend any post-office stamps for post-marking letters, etc., and canceling postage-stamps thereon at the same time and operation of the making of the post-mark thereon, on or after the date of the said reissued patent, to wit, the 23d day of August, 1864, and before the commencement of the suit; and that he did not in or during that time make, use, or vend any of the alleged improvements patented by said Norton, or make, use, or vend any article or thing containing any of said alleged improvements, and did not perform or do any act or thing which was an infringement upon said letters patent.

And this defendant, further answering said bill of complaint, says that all the hand stamps or instruments adapted to print the date, etc., and to cancel the postage-stamps with ink at the same time, and by the same blow by which the printing of the date, etc., is effected, so manufactured and delivered by him as aforesaid, in and since the year 1860, to the successive New York city postmasters, and to the said Fairbanks & Co., were made under and according to certain letters patent of the

United States issued to F. G. Ransford and Peter Low, of Troy, of the county of Rensselaer, in the State of New York, as earlier assignees of the said Marcus P. Norton, which letters patent were duly applied for, granted, signed, countersigned, sealed, and issued according to law, and bear date on the 9th day of August, 1859, and are numbered 25036, and that a consent and agreement that he (this defendant) should manufacture the combined printing and canceling hand stamps so made by this defendant was contained in the aforesaid agreement with
1053 Fairbanks & Co., and that an interest in said patent and a right to so authorize him was acquired by them, Fairbanks & Co., from the patentees, through certain assignments, as follows: One assignment from the said Ransford & Low, the original patentees, as assigns of said Norton, duly executed and delivered to Charles Eddy & Co., of Troy, aforesaid, for one-fourth part of said patent, dated December 31, 1860, and recorded January 22, 1861, in liber A[6], page 446, Transfer of Patents, and another assignment from said Ransford, and said Low, and said Eddy to William B. Hatch, of New York City aforesaid, one of the said firm of Fairbanks & Co., for one-fourth part of said patent, dated April 19, 1861, and recorded April 26, 1861, in liber E[6], page 372, Transfer of Patents, both of which assignments are ready to be produced on the trial of this cause.

And this defendant, further answering said bill of complaint, says that he is advised and believes that the said hand stamps, so constructed and delivered by him as aforesaid, were made and operated in accordance with the principle of the whole or a material and important and substantial part of the new and original invention, described and set forth in said patent, dated 9th August, 1859, issued to Ransford and Low, as aforesaid, and not in accordance with the principle of the whole or any part of any new and original invention described and set forth in the patent, dated 14th April, 1863, assigned to the plaintiffs and reissued as aforesaid.

And this defendant, further answering the said plaintiffs' said bill of complaint, says, on information and belief, that if the first clause of the claim of the aforesaid patent, reissued in 1864, be held to include a claim to the use of a canceling device of any and all kinds adapted to cancel with ink and affixed to the printing stamp, or be held to include a claim to such a blotting stamp thus affixed, as is made and delivered by this defendant as above described, then said reissued patent
1054 is void, so far as such claim is concerned, for the reason that the construction and operation of defendant's stamp is the same, and a material and substantial part of the same, as is described in the patent issued in 1859, and assigned, etc., as aforesaid.

And that if the second clause of the claim of the aforesaid patent, reissued in 1864, be held to include a claim to the exclusive right to the use of a cross-piece or widened shank as a means of connection to connect two separate stamps or marking devices to one and the same handle for operating at a single blow as aforesaid, or of connecting the parts in the same manner as in the hand-stamp made by this defendant as above described, then said reissued patent is, so far as such claim is concerned, void, for the reason that similar plates or cross-pieces, or widened shanks for similar purposes, were not first invented by said Norton, but have been known upwards of twenty years before, and that such devices, so made and so used, prior to any invention thereof by said Norton, were known generally to the trade of die-sinkers and engravers, and made for a great variety of purposes; and that they were known generally to the trade of bookbinders for stamping different

marks and words at different points on book backs by one and the same stamp; and to bank clerks generally for stamping words and marks similarly situated on checks; and to bakers generally for docking and stamping crackers with marks and impressions similarly situated; and were known to the leather and fur trade generally for stamping impressions and marking leather and hides, and especially furs, with separate marks similarly situated; and were known to the soap trade generally for stamping soap with marks similarly situated; and were known to gentlemen generally for marking linen with movable types confined in such cross bar and producing with such types separate marks similarly situated. And this defendant says that such making and using
1055 of such cross-piece, handle, and separate printing or impressing devices, prior to any invention thereof by said Norton, was known specifically to James Harper, one of the firm of Harper & Brothers, in New York City, twenty years ago; and to John R. Hoole, of New York City, twenty years ago; and to Henry McCollom, formerly of New York City, but now residing at Owego, in the county of Tioga, in the State of New York, twenty years ago; and to Isaac McGay, of New York City, fifteen years ago; and to Robert Rogers, of New York City, fifteen years ago.

And that if the third clause of the claim in the aforesaid patent, reissued in 1864, be held to include a claim for all modes or methods of postmarking and cancellation of postage-stamps with ink at a single blow, or be held to include a claim to such method of so doing, as is practiced in using the hand-stamps made by this defendant, as above described, then such patent is, so far as such claim is concerned, void, for the reason that the same is described in the patent issued in 1859, and assigned as aforesaid.

And that if the fourth clause of the claim in the aforesaid patent, reissued in 1864, be held to include a claim to the employment and combination of postmarking devices with (any and all) postage-stamp canceling devices, both being operated by one and the same handle for the postmarking of letters, packets, etc., and for the destruction of postage-stamps thereon with ink, or be held to include such instruments as are made by defendant as above described, then said reissued patent is, so far as such claim is concerned, void, for the reason that the same is contained in the patent issued in 1859, and assigned as aforesaid.

And this defendant, further answering and pleading, avers, on information and belief, that if the said letters patent, dated 14th April, 1863, assigned and reissued, as aforesaid, shall be held to include
1056 in either of the above or any other point such a construction of hand-stamp as shall cancel the postage-stamp with ink, and print the place and date at the same operation, or shall be held to include such a construction and such mode of operation for so doing as is involved in the said hand-stamp and canceler manufactured and delivered by this defendant, as aforesaid, then the said letters patent of 1863, reissued 1864, aforesaid, owned by the said plaintiffs, are, so far as such claim is concerned, void, for the reason above cited, and for the further reason that if the said patent of 1863, reissued 1864, be so held to contain any point in said stamps so made by defendant not contained in said 1859 patent, which had been contained in the caveats of said Norton, dated 1853 and 1854, or had been invented by said Norton at an earlier date than May 2, 1859, such point was conveyed to the said Ransford and Low, and through them to the present owners of the 1859 patent, by the deed of assignment executed by said Norton, dated May 2, 1859, and recorded in liber G^5, page 73; and for the further reason

that if it shall be held to have been not so assigned, then that it had been either abandoned or was fraudulently concealed by said Norton.

And this defendant, further answering said bill of complaint, avers, on information and belief, that if the said letters patent dated 14th April, 1863, assigned and reissued as aforesaid, shall be held to include a claim to all means of constructing a hand-stamp which shall cancel the postage-stamp with ink, and print the place and date at the same operation, or shall be held to include such a construction and such mode of operation as is involved in the said hand-stamp and canceler, manufactured and delivered by this defendant, as aforesaid, then the said letters patent of 1863, reissued 1864, aforesaid, owned by the said plaintiffs, are, so far as such claim is concerned, void, for the rea-
1057 son that said Norton was not the original and first inventor of such point or feature, but that such invention had been previously made by this defendant and others, which fact was known to Thomas H. Corbett, now residing at New York as aforesaid, and Abram C. Beardsley, now residing in said city, and to Wm. A. Clement, Charles Smith, Munson Clark, John Post, James Gaylor, James Riley, and others, now employed in the New York City post-office, and residing in said New York City; and for the further reason that such stamps were in use more than two years prior to the application for patent of 1863, reissued in 1864, aforesaid, which was dated January 5, 1863, and that such stamps were made by Thomas H. Corbett, at his manufactory, at No. 167 William street, New York City, aforesaid, and sold by him for the purpose of being used in the New York post-office and elsewhere, in the year 1860, and that this was known to the said Thomas H. Corbett, now of the city of New York, and to Abram C. Beardsley, of said city, and for the reason that the said invention was publicly used, and was used for profit as a part of the post-office machinery of the United States for stamping the date, etc., and canceling the postage-stamps with ink at the same operation on many thousands of letters per day, with the knowledge and consent of said alleged inventor, Norton, in the year 1860, and that such extensive and prolonged use in 1860 was known to General John A. Dix, of the city of New York aforesaid, and to Charles Smith, a stamper in the New York City post-office, and to John Post and W. A. B. Clement, aforesaid, and to the aforesaid Thomas H. Corbett and Abram C. Beardsley, now of said city, and to Cyrus A. Sherwood, of Troy, aforesaid, and that such use was in the New York City post-office during that year; and for the further reason that the said reissue dated 23d day of August, 1864, so far as it can be held to include any claim to the hand-stamps made by this defendant, as
1058 aforesaid, was surreptitiously and fraudulently obtained, and was obtained by misrepresenting the scope and character of said reissue, and of the said patent dated 1863, and of the said previous patent dated 1859, which fact will be proved on the trial of this cause.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove in such manner as this honorable court shall direct, and he prays that he may hence be dismissed with judgment against the plaintiffs for his reasonable costs and disbursements in his behalf most wrongfully sustained.

EDMUND HOOLE,
Attorney in Person.

NEW YORK, *October* 8, 1864.

Wherefore it is now ordered that the issue so joined by and between the parties aforesaid be tried, adjudged, and determined at a circuit

court in and for the said district, to be held at the city hall in the city of Albany, in said district, before the said judges, on the second Tuesday of October, A. D. 1864, and to which time and place the proofs and pleadings is continued and brought by a certain stipulation in writing signed by the said parties and duly filed in the office of the clerk of said court on the 8th day of September, 1864, and bearing date the 6th day of September, 1864, as hereto annexed. And now at the said term, this day, to wit, the second Tuesday of October, A. D. 1864, at the city hall, in the said city of Albany, come the said plaintiffs Jacob Shavor and Albert C. Corse, by their said attorney, John B. Gale, and the said defendant Edmund Hoole comes in person and by his counsel, George Gifford. Whereupon, as to the issues of each and every matter of fact so joined between the parties aforesaid, it is now ordered by the
1059 said court then and there, to which time and place the same is continued and brought by the aforesaid stipulation, that the same be tried and determined by a jury.

At which time and place, and on Thursday, the 13th day of said October, A. D. 1864, before the honorable Nathan K. Hall, judge of said court, come the said Jacob Shavor and Albert C. Corse, plaintiffs, by their counsel, Joel Tiffany; and the said defendant, although duly and solemnly called, comes not on this said day, but makes default; whereupon the jurors of the jury, being duly summoned, do come, who to speak the truth of all the matters aforesaid, being duly chosen and sworn on this said 13th day of October, in the term aforesaid, say upon their oaths and upon the proofs produced, that Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, is the original and first inventor of the invention and improvements mentioned, contained, and set forth in the said plaintiffs' declaration above thereof described, and so as especially specified and contained in their letters patent thereto annexed and forming a part thereof, which said original patent was dated on the 14th day of April, 1863, and reissued bearing date the 23d day of August, 1864, and for and upon improvements in postmarking letters, packets, etc., and canceling postage-stamps thereon, as and in the manner therein described and claimed.

And that the said invention and improvements so described and claimed in said reissued letters patent is useful, valuable, and important as and for the purposes specified and set forth in the plaintiffs' said declaration.

And that the said invention and improvements contained in said letters patent is now the sole and exclusive property of the said plaintiffs as set forth in their said declaration, and owned and held by them under and by virtue of a certain deed of assignment executed and delivered to them by the said Marcus P. Norton, said original and first in-
1060 ventor of said invention and improvements, which said deed of assignment bears date the 20th day of April, A. D. 1863, and duly recorded in the U. S. Patent Office, as set forth in their said declaration.

And that the said defendant, Edmund Hoole, has violated the said exclusive rights and privileges of the said plaintiffs, and infringed upon their said letters patent reissued, bearing date the 23d day of August, 1864, in the manner as the said plaintiffs hath alleged, complained, and set forth in their said declaration (here in the court aforesaid) against him, the said defendant, Edmund Hoole, and they assess the damages of the said plaintiffs, by reason of the said premises, over and above their just costs, at six cents—(nominal damages only being asked by the said plaintiffs upon the trial of said cause).

Therefore it is now considered that the said plaintiffs do recover against the said defendant, Edmund Hoole, damages to the sum of six cents, by the jurors in form aforesaid assessed, and costs, now here adjudged to the said plaintiffs, which said damages, costs, and charges, in the whole, amount to eighty-seven dollars and fifty-one cents. And the said defendant in mercy, etc.

Judgment signed this 23d day of November, 1864.

A. A. BOYCE, *Clerk.*

Stipulation for trial of this cause.

United States circuit court, northern district of New York.

JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. } At law.

It is hereby agreed, by and between the above-named plaintiffs
1061 and the above-named defendant, that this cause may be brought on for trial at the next term of this court, to be holden at the city hall, in the city of Albany, in said district, on the second Tuesday of October, 1864, or as soon thereafter as the court will hear the same or order trial thereof.

Trial of this cause may, at such time, be moved by either party; and the respective parties will, at such time, be ready to proceed to the trial of this cause, and if either party shall then fail to be ready for trial thereof, the party ready for trial may then and there proceed to the trial of this cause without any objection by the other party.

Dated at Troy, northern district of New York, this 6th day of September, 1864.

(Signed) JACOB SHAVOR,
ALBERT C. CORSE,
Plaintiffs, Troy, N. Y.

EDMUND HOOLE,
Defendant, Mount Vernon, N. Y.

Witness—
(Signed) CHARLES D. KELLUM.

A true copy.—Attest: A. A. BOYCE, *Clerk.*

At a United States circuit court, held in and for the northern district of New York, in Albany, at the city hall in said city, on the 13th day of October, A. D. 1864—

Present, the Hon. Nathan K. Hall, judge.

1062 JACOB SHAVOR AND ALBERT C. CORSE
against
EDMUND HOOLE. }

On motion of Mr. J. Tiffany, of counsel for the plaintiffs, ordered that a jury be empanneled in the cause, and that the parties proceed to trial.

The defendant being called failed to appear. Ordered, that his appearance be entered, etc. The following jurors, having been duly summoned, appeared, were openly drawn and sworn, to wit:

Jurors sworn: James Coats, Andrew Keef, N. Armitage, John Young, George Davison, John Wilkins, William Adams, James McBride, J. Rundall, R. S. Orcutt, Jacob Ebel, F. Hughes.

Plaintiffs' testimony: Marcus P. Norton.

Documentary evidence was then read on behalf of plaintiffs.

The jury having agreed upon their verdict, and being called, on their oath do say that they find for the plaintiffs six cents damages. Ordered judgment nisi.

AUGUSTUS A. BOYCE, *Clerk.*

UNITED STATES OF AMERICA:

Circuit court clerk's office, northern district of New York, ss:

I, Charles Mason, clerk of said court, do hereby certify that I have compared the foregoing copy of judgment record with the original now on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof I have caused the seal of the said court to be affixed at the city of Utica, in said district, this 21st day of December, A. D. 1877.

[SEAL.] CHARES MASON, *Clerk.*

1063 (Endorsed:) United States circuit court, northern district of New York. Jacob Shavor and Albert C. Corse vs. Edmund Hoole. (Copy)—Judgment record. J. B. Gale, plaintiffs' attorney. Damages, $00.06; taxed costs, $87.45—amount, $87.51. Filed Nov. 23, 1864.

1064 *Complainant's Exhibit P P.—April 25, 1878.—A. J. Falls, special examiner.*

POST-OFFICE DEPARTMENT,
April 24th, 1878.

I hereby certify that, by the records of this department, the post office at Pleasant Grove, in the county of Alleghany, and State of Maryland, was established on the 28th day of January, 1850, and that Edmond S. Zevely was appointed postmaster at said office on the same day. I further certify that the office was discontinued on the 2d day of May, 1854, and that it was re-established on the 10th day of January, 1855, and Edmond S. Zevely was appointed postmaster at said office on that day. And I further certify that the office was discontinued on the 1st day of April, 1856.

In testimony whereof I have hereunto set my hand and caused the seal of the Post Office Department to be hereunto affixed, at Washington City, the twenty-fourth day of April, in the year of our Lord 1878.

[SEAL.] D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1065 *Complainant's Exhibit Q Q.—April 25, 1878.—A. J. Falls, special examiner.*

United States Court of Claims.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
THE UNITED STATES. } No. 2571.

Deposition of Edmund Hoole, filed December 2d, 1867.

The deposition of EDMUND HOOLE, a witness on the part of the claimants in the above-entitled cause, taken at the city of New York on the eighteenth day of November, 1867, before John J. Latting, a commissioner of the Court of Claims of the United States, in the presence of A. L. Merriman, esq., of counsel for the claimants, and of John J. Weed, esq., assistant solicitor of the said court and of counsel for the United States.

First interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence for the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry in this suit, and whether, and in what degree, you are related to the claimant.

Answer. My name is Edmund Hoole; my occupation manufacturer of baggage checks; my age is forty-seven; my residence the past
1066 year the city of Brooklyn, Kings County, New York. I have no interest, direct or indirect, in the claim which is the subject of inquiry in this suit, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimants, the witness says:

For the last seventeen years I have been engaged in manufacturing marking, rating, and canceling stamps for the Post-Office Department of the United States Government, said stamps being used for postmarking, rating, and canceling the postage-stamps on letters in the several post-offices of the United States. Prior to 1860 the postmarking and canceling were done by separate instruments or stamps; the first combined canceling and postmarking stamp put in use, to my knowledge, was invented by Marcus P. Norton, manufactured by me, and used in the New York City and Troy City post-offices. In April, 1863—the first of April, 1863—I commenced to manufacture said combined postmarking and canceling stamps for Fairbanks & Co., of New York City, who then held the contract from the United States Post-Office Department; said stamps were made according to the patent of Marcus P. Norton. I manufactured for them two years and seven months, during which time I made about thirteen hundred stamps. They were delivered by me to the Post-Office Department on behalf of Fairbanks & Co. I then gave up the work in favor of Mr. Chambers, of Washington City, who has continued to manufacture them up to the present time. In February, 1863, I was a bidder for the contract which was awarded to Fairbanks & Co. Others bid for it at the same time, but Fairbanks & Co. took the contract. These bids were put in in pursuance of advertisements in the manner provided by law. I have been conversant with the manufacture and using of postmarking stamps in the New
1067 York post-office since 1838. I have observed the working of the combined postmarking and canceling stamp patented by Marcus

P. Norton in the New York City post-office, and consider it a great labor-saving contrivance, enabling one man to postmark a letter and cancel the postage-stamp with one blow of the instrument, whereas under the former mode of stamping two persons were required to do the same work; also effecting a more permanent cancellation of the postage-stamp than has been effected by any other contrivance.

Having been engaged in the manufacture of postmarking stamps for the past twenty-nine years, and conversant with their general use, I feel competent to form a correct estimate of the value of this invention by Mr. Norton. I should say that one hundred dollars for each stamp manufactured would be a fair price for the government to pay for the use of this patent.

Another advantage of this invention is that it is a great saving of time in the making up of the mail and expediting it for transportation. From my knowledge of its working, I am of opinion that it is a saving of nearly one-half of the labor of preparing letters for the mail.

On cross-examination by JOHN J. WEED, Esq., assistant solicitor of the Court of Claims and of counsel for the United States, the witness says:

Mr. Norton furnished me with the model from which I made the stamps. No model was ever furnished me by the Post-Office Department. The model stamp on which the contract was awarded to Fairbanks & Co. was one manufactured by me. I changed the model subsequently by adopting a cross-bar, on account of simplicity of construction. The first stamp I ever saw was one with a canceling attachment brought to me by Mr. Ransford, of Troy, and was, as I understood at the time, the invention of Mr. Norton. I had no knowledge on the subject of an arrangement having been made with the govern-
1068 ment for the use of this stamp. On the contract being awarded to Fairbanks & Co., I said to Governor Randall, who was then First Assistant Postmaster General, that Fairbanks & Co. had not the right to manufacture those stamps. He stated to me that he should hold them to the contract; that they were responsible parties; but that if I would take the contract and furnish the patent stamp, it would be awarded to me. I declined, not having the control of the patent. This was all the conversation I had on the subject with the authorities of the Post-Office Department.

(The counsel for the claimants objects to this testimony of the witness relative to the alleged conversation with Governor Randall.)

I was made a party to a proceeding instituted in the United States court for the northern district of New York to test the validity to this patent. I did not defend that suit at the instance of the United States. They did not give me any instructions in relation to it. I was not present at the trial, neither was my counsel, Mr. Gifford, of this city, who was to have been there, but did not get there, but he left the case in the hands of my expert in the case, who was present. I was not there by advice of my counsel, Mr. Gifford. I called no witnesses for the purpose of proving the facts set up in my answer. Three witnesses, however, were subpœnaed, but it was not considered expedient by my counsel to try the case. I commenced the thing, believing that Marcus P. Norton was not the inventor of the patent. I came out of it believing that he was. The failure of my efforts to procure testimony to the contrary was the cause of my believing that Mr. Norton was the original first inventor.

On further direct examination by the counsel for the claimants, the witness says:

The change I made in the model did not change the invention in any respect.

1069 Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. I don't know of anything else.

EDMUND HOOLE.

Subscribed and sworn to before me this eighteenth day of November, 1867.

JOHN J. LATTING,
Commissioner of U. S. Court of Claims.

Commissioner's return.

United States Court of Claims.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
THE UNITED STATES.

STATE OF NEW YORK,
City and County of New York, ss:

The foregoing deposition of Edmund Hoole, the witness within named, was duly taken by and before me, pursuant to the consent of the counsel for the parties, and upon waiver of notice, on the eighteenth day of November, 1867, at the city of New York, in the presence of the persons and parties named in the caption of said deposition. The said witness was first, and before any questions were put to him, properly and duly sworn by me, to tell the truth, the whole truth, and nothing but the truth, relative to the said cause; and the answers and testimony of the said witness were taken down by me, and read over by me to him, and by him signed in my presence.

JNO. J. LATTING,
Commissioner of U. S. Court of Claims.

[Revenue stamp canceled.]

1070 In the Court of Claims.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
THE UNITED STATES.
No. 2571.

I certify that the foregoing is a true copy of the deposition of Edmund Hoole, filed December 2d, 1867, in the cause aforesaid in the Court of Claims.

In testimony whereof I hereunto set my hand and affix the seal of said court at Washington, this 24th day of April, 1878.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

(Endorsed:) 2571. Shavor and Corse vs. The United States. Certified copy of deposition of Edmund Hoole. Filed Dec. 2, 1867. Opened and filed as per stipulation, this first day of July, 1878.

1071 *Complainant's Exhibit R. R.—April 25, 1878.—A. J. Falls, special examiner.*

POST-OFFICE DEPARTMENT,
OFFICE OF THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., October 7th, 1862.

Your letter of 2d inst., to the Postmaster-General has been referred to me.

Your "postmarking and canceling stamp," as originally presented, seems to be approved at New York and other large offices where it has been tested.

The improvement which you now speak of evidently makes the instrument still more effective, and, indeed, fully obtains the end desired by this department, namely, the destruction of the postage stamps.

The only doubt about it arises from the danger of cutting through the envelope and damaging letters and enclosures. If you expect soon to visit Washington on other business, please call at this department.

The Postmaster-General is now absent, but I think he will view your invention favorably, and while he might not be able to make you any direct allowance, he might possibly arrange with you to manufacture stamps for the larger post-offices.

Very respectfully,

A. N. ZEVELY,
Third Assistant Postmaster-General.

MARCUS P. NORTON, Esq.,
Attorney at Law, Troy, N. Y.

1072 POST OFFICE DEPARTMENT,
April 24th, 1878.

I hereby certify that the foregoing is a true copy of a letter now on the records of the office of the Third Assistant Postmaster-General.

In testimony whereof I have hereunto set my hand and caused the seal of the Post-Office Department to be affixed, at Washington City, the twenty-fourth day of April, in the year of our Lord 1878.

D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1073 *Complainant's Exhibit S S.—April 25, 1878.—A. J. Falls, special examiner.*

POST-OFFICE DEPARTMENT,
OFFICE OF FIRST ASSISTANT POSTMASTER-GENERAL.
Washington, D. C., July 25th, 1862.

MARCUS P. NORTON,
Troy, N. Y.:

SIR: Your letter of the 23d inst. is received, and will be referred to the postmaster at New York for a full report as to whether the experience of his office shows that your canceling stamp so effectually destroys the postage-stamp as to prevent its being cleansed and used a second time.

In regard to the use heretofore made of your stamp in offices, the department can only be held responsible (if at all) in cases where it has authorized its use. Other parties using it without the approval of the

department, or the consent of the patentee, have done so on their own responsibility, and with these cases the department can have nothing to do.

Propositions for a canceling stamp, distinct from the postmarking stamp, which will (it is claimed) so effectually destroy the postage-stamp without injury to the letter enclosed as to preclude the possibility of its being used a second time, are now under consideration in the department.

GEN'L SKINNER,
First Assistant Postmaster General.

1074 POST-OFFICE DEPARTMENT,
April 24th, 1878.

I hereby certify that the foregoing is a true copy of a letter now on the records of the office of the First Assistant Postmaster General.

In testimony whereof I have hereunto set my hand and caused the seal of the Post-Office Department to be hereunto affixed, at Washington City, the twenty-fourth day of April, in the year of our Lord 1878.

[SEAL.] D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1075 *Complainant's Exhibit T T.—April* 25, 1878.—*A. J. Falls, special examiner.*

POST-OFFICE, NEW YORK,
January 3, 1863.

A. N. ZEVELY, Esq.,
Third Assistant Postmaster-General, Washington, D. C.:

SIR: Some time since, you requested that I should test the utility of Norton's double postmarking and canceling stamping iron, and report my opinion thereon. It was in use in this office when I first entered upon my du ies. Since then the canceling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation, but it is liable, even if used with the greatest care, to injure the contents of the envelope, especially if the enclosures are cards, photographs, and the like.

We have also used cork by inserting it in the cylinder of the canceler. This has proved successful and our cancellation is now performed in this way. I am confident no office in the country performs cancellation more thoroughly.

The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interests of the department would be subserved by securing its general use.

We are now testing a stamp and canceler, on Norton's plan, made of boxwood. It promises well and can be made at a very trifling expense.

I am fearful, however. its liability to yield to the wear to
1076 which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obt. serv't,

ABRAM WAKEMAN,
Postmaster.

Per Sec'y.

(Endorsed:) Postmaster at New York, Jan. 3, 1863. As to the utility of Norton's postmarking and canceling stamp.

UNITED STATES OF AMERICA:

POST OFFICE DEPARTMENT,
Washington, D. C., July 13, 1877.

I, D. M. Key, Postmaster-General of the United States of America, certify that the annexed is a true copy of the original letter now on the files of this department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.] D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1077 *Complainant's Exhibit U U.—April* 25, 1878.—*A. J. Falls, special examiner.*

POST-OFFICE, NEW YORK, 28*th August*, 1860.

Gen'l SKINNER:

DEAR SIR: I have received your favor in regard to the combination stamp of Mr. Ransford. I fear Mr. Norton's letter refers to a different stamp, and not to the one exhibited to me by Mr. Ransford. The latter gentleman had two with him, one to be used with type, and the other with rotating alphabet and numbers. I wanted the latter. If made by machinery, they may be afforded for $6 apiece; if by hand, I should think not. Still, I shall consider Mr. Norton's letter as referring to the kind we want. It is, of course, a very important object to have them introduced, and presume there will be no difficulty about it. I enclose an article I wrote for "The World," in reply to a very plausible and, indeed, an able article, published in that paper last week, attacking the new "post-office regulations," as the number denominated the late orders in regard to the carriers' department.

I thought it proper to answer this article, though I think I shall stop here, unless there is some special misrepresentation to be corrected. Our carrier system is working very well, and with increasing vigilance I think there will be no cause of complaint. The attacks come,
1078 for the most part, I believe, from the patrons or friends of the private expresses.

I am, dear sir, yours truly,

JOHN A. DIX.

(Endorsed:) Aug. 29, 1860. N. Y. New York postmaster wants new marking stamp.

UNITED STATES OF AMERICA:

POST-OFFICE DEPARTMENT.
Washington D. C., July 1877.

I, D. M. Key, Postmaster-General of the United States of America, certify that the annexed is a true copy of the original letter now on the files of this department.

In testimony whereof I have hereto set my hand and caused the seal

of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.] D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1079 *Complainant's Exhibit V V.—Davis, April* 25, 1878.—*A. J. Falls, special examiner.*

POST-OFFICE DEPARTMENT,
OFFICE OF THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., April 22, 1878.

GEORGE H. WILLIAMS,
Washington, D. C.:

SIR: Referring to your request of this date, you are informed that the original correspondence in the case in question was sent to the postmaster at New York for the use of the U. S. district attorney. It is therefore impracticable to comply with your request to furnish a certified copy of the letter of C. E. Wheeler to the then Third Assistant Postmaster General.

Respectfully,

A. D. HAZEN,
Third Assistant Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1080 *Complainant's Exhibit W W.—Davis, April* 25, 1878.—*A. J. Falls, special examiner.*

E. S. ZEVELY'S CONTRACT.

This agreement, made and entered into this first day of April, A. D. 1863, between the United States of America, of the first part, by Montgomery Blair, Postmaster-General of said United States, and Edmund S. Zevely, of the city of Cumberland, in the State of Maryland, of the second part, witnesseth:

That whereas the said Postmaster-General did, on the 13th day of January last past, or soon thereafter, cause to be inserted in certain newspapers printed within the United States, a certain advertisement, headed "Proposals for circular marking and rating stamps," a copy of which advertisement is hereunto annexed; and whereas, on the day named in the said advertisement, to wit, on the 21st day of March, 1863, the several proposals which had been received, in answer to said advertisements, at the Post-Office Department at the city of Washington, were opened and examined, and after due deliberation it was decided that the proposals of the party of the second part should be accepted for stamps designated in his proposals by the following words, viz, "Class No. 1 (or for No. 4 or any other class), boxwood office stamp, with brass rim or ferrule, brass screw, cocoa handle, and copper-faced date changes, one dollar and fifty cents ($1.50 each, made any size or style, and no additional charge for inserting additional words or figures within the circle), three extra year blocks, 10 cents each." Also for class No. 3, "boxwood office stamps, without brass rim, and ordinary type-metal changes and walnut handle, 90 cents each, either class
1081 made any size or style, and no additional charge for extra words

or figures within the circle, such as are used in foreign stamps, etc." Also for rating stamps named in said proposals, to wit, "Rating stamps of boxwood with walnut handles, free, paid, ship, due, due 1, 10, 15, etc., without brass rims, 18 cents. Missent, forwarded, advertised, steamboat, paid 10, paid 15, due 3."

"Unclaimed, etc., without brass ferrules, 20 cents." "United States, 6 cents; P. O. B, free, held for postage, missent, and forwarded, without brass rims, 25 cents." "Canceling stamps, separate, of hard wood, 12 cents," which said proposals are to be taken and construed in connection with said advertisement, both of which are to form a part of this contract.

Now, therefore, the said party of the first part hereby agrees to order such stamps mentioned in said advertisement and proposals as are above described, as may from time to time be required, from the first day of April, 1863, until the 31st day of March, 1867, under the rules, regulations, and orders of the Post-Office Department as are now existing or hereafter be made, for such post-offices and route agents in the United States as are to be furnished therewith, to be made by the said party of the second part, under this contract, and to pay for the same at the rates named in the said proposals of the said party of the second part; which payment shall be made on the presentation of the account of the said party of the second part, with proper vouchers at the Post-Office Department in the city of Washington, quarterly, to commence on the first day of July next.

And the said party of the second part agrees to deliver at the Post-Office Department in the city of Washington, at his own cost and expense, within a reasonable time after the same may be ordered by the Postmaster-General, any stamps named in said advertisement and proposals as herein described, at the prices named in said proposals, the names of the office and State, and railroad and river lines in
1082 the circular stamps to be such as the Postmaster-General shall in each case direct.

It is further agreed that each of the stamps shall be made in the filling up, mounting, materials, and workmanship, in all respects equal to the samples furnished by the said party of the second part to the Postmaster-General, which said samples shall be deposited with, and kept by, the First Assistant Postmaster-General, subject to the inspection and use of all parties interested.

And it is further agreed and understood that the said party of the second part shall furnish the rating stamps named in his proposals and said advertisement, as herein described, of the material and at the prices named in said proposals, and all other rating stamps which may be ordered by said Postmaster-General at pro rata prices.

And it is further agreed and understood that no member of Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom, and this agreement shall, in all parts, be subject to the terms and requisitions of an act of Congress passed on the 21st day of April, 1808, entitled, "An act concerning public contract."

And it is further agreed that this contract may be annulled or repealed for repeated failures, or for not furnishing the articles ordered of the kind and quality required by this contract, within a reasonable time after the same shall be ordered.

In witness thereof the said party of the second part has affixed his

hand and seal, and the said Postmaster-General has affixed the seal of the said Post-Office Department, this first day of April, 1863.

M. BLAIR, [SEAL.]
Postmaster General.
E. S. ZEVELY. [L. S.]

Signed, sealed, and delivered by the Postmaster-General in presence of—

ST. JOHN B. L. SKINNER.
Witness: J. WICKARD.

1083 In consideration of the making of the foregoing contract by the United States, and of the sum of one dollar to us in hand paid by the said United States, we, the undersigned, do hereby undertake and guarantee that the party of the second part in the said contract named shall faithfully and promptly in all things comply with, fulfill, and perform the foregoing contract; and that in case of his failure so to do, we will pay to the United States, on demand, all damages which they may sustain in consequence of such failure.

In witness whereof we have hereunto set our hands and seals this first day of April, 1863.

JNO. H. YOUNG. [L. S.]
HENRY FLURY. [L. S.]

Witness:
J. WICKARD.

The undersigned, postmaster of the city of Cumberland, Maryland, hereby certifies that he believes the above-named sureties to be fully able to make good their guaranty.

GEO. A. HOFFMAN.

PROPOSALS FOR MARKING AND RATING STAMPS.

Hon. A. W. RANDALL,
First Assistant Postmaster-General:

Referring to specimen impressions and specimen stamps herein and herewith presented for your inspection, I desire to bid for furnishing post-office marking and rating stamps, as follows:

1084 Class No. 1 (or for No. 4, or any other class.)

Boxwood office stamp, with brass rim or ferrule, brass screw, cocoa handle, and copper-faced date changes, $1.50.

(Made any size or style, and no additional charge for inserting additional words or figures within the circle.) 3 extra year blocks, 10c.

Class No. 2.

Boxwood office stamp, with brass rim and screw, but with ordinary type metal changes, and walnut handle, $1.00.

Class No. 3.

Boxwood office stamp, without rim, and ordinary type-metal changes, and walnut handle, 90c.

☞ Either class made any style or size, and no additional charge for

extra words or figures within the circle, such as used in foreign stamps, etc.

New style boxwood office stamp.

As per specimen stamp and specimen impressions on sheet with other impressions, and on envelopes, made in one solid block so as to cancel the postage stamp and leave the name of the post-office and date on the envelope clear of the postage stamp—this new style boxwood office stamp, any size or shape made for $1.50.

I also bid for making Norton & Co.'s patent combined stamp, with their permission. Also, for Miller's hammer stamp, with his permission, as follows:

I will furnish Norton's combination stamp of steel (not iron), made as per specimen submitted to the department, provided the de-
1085 partment adopts (*i. e.*, purchases said stamps) office stamp with canceller attached, for $10.00.

I will furnish Miller's hammer stamps, under his patent, as per specimen stamps and patent papers submitted to, and now in possession of the department.

Made of steel, not iron, case-hardened, or cast.

Office hammer stamp, etc., as per specimen, $8.00.

Circular rating hammer stamp, as per specimen, each $1.00.

Stamps on the periphery of said circular stamp, or if for four rating stamps only, they be made in form of a cross +. See on page 3.

Rating stamps of boxwood, with walnut handles (as per specimen).

Free, paid, ship, due, due 1, 10, 15, etc., with brass rim, 25c.

Ditto, ditto, without brass rim, 18c.

Missent, forwarded, advertised, steamboat, paid 10, paid 15, due 3, unclaimed, etc., with brass ferrules. 30c.

Same, without brass ferrules, 20c.

United States, Cd., P. O. B., and all, held for postage, missent, and forwarded, with brass, 35c.

Same, without brass, 25c.

Canceling stamps, separate, common wood, say dogwood, 10c.

Same, hard wood, 12c.

Same, brass tubes with cork, gum, etc., 20c.

(Canceling stamps in form of a star, same price.)

I will furnish pads, as per specimen, for 25c.

1086 Box black printers' ink, 25c.,

and directions how to use and keep in order the stamps, and how to make the ink and pad, I will furnish without extra charge.

All sorts of foreign stamps (class 4), I furnish at same price, viz:

Such as similar to office stamps.....90 cents to $1 50
Such are without dates, but large circular.....50c.
Other sorts.....25 to 35c.

☞ I beg to call your attention to many advantages of wooden stamps (besides their cheapness), one of which is that they retain the ink better, and give clearer impressions than metal.

I would also furnish for large offices, office stamps cut solid, daily re-

newed, at such low figures as to make the use of boxwood stamps in the New York post-office, using a new one every day, less per annum than it now costs for metal stamps. I will thus furnish, giving me the use of the stamps after each day, returning them to me for alteration and re-cutting, 366 office stamps with solid dates furnished along during the year for each day as wanted, for $35.

(See enclosed slip and impressions.)

Being known in the department, I am prepared in all respects to comply with the terms of your advertisement as to the contract, and hoping for your very favorable consideration, am very respectfully yours, etc.,

E. S. ZEVELY.

1087 The Miller hammer-stamp.

E. S. Zevely has, by arrangement with the patentee, the exclusive right to make and vend these stamps.

See patent, letters, and sample herewith, and will furnish them of steel or wood, as follows:

Steel office hammer-stamp, with attachment as the model, $8.00.

Same, of boxwood, with brass ferrules, and copper type-metal changes, $2.00

Same, of boxwood, without brass ferrules, and common type-metal changes, $1.50.

The circular rating hammer-stamp as stated at bottom of page 2. Each, $1.00.

Same, of wood, 50 cents each.

E. S. ZEVELY.

Self-inker.

I also herewith present a self-inking pad, which I will furnish to the department at $2 each.

(Endorsed:) Contract of E. S. Zevely, for making and rating stamps. For four years from April, 1863.

POST-OFFICE DEPARTMENT,
April 24, 1878.

I hereby certify that the within is a true copy as shown by the records of this department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post-Office Department to be affixed, at Washington City, the twenty-fourth day of April, in the year of our Lord 1878.

[SEAL.] D. M. KEY,
Postmaster-General.

Opened and filed, as per stipulation, this first day of July, 1878.

1088 *Complainant's Exhibit X X.—King, April* 25, 1878.—*A. J. Falls, special examiner.*

TROY, NEW YORK, *April* 11, 1859.

HON. HORATIO KING,
First Assistant Postmaster-General, Washington, D. C.:

SIR: In relation to my communication to your department, dated the 2d inst., and your reply thereto, dated the 4th instant, I have to say

that I think your department have not understood me as regards the request contained in my letter of the date as above referred. The refusal to comply with my wish therein expressed is the evidence by which I judge such to be the fact. I simply asked, and I to day renew it, for the privilege of testing my "postmarking stamp" in the post-office in this city for the space of sixty days from the date thereof, and that the postmaster here be directed, under the authority of your department, to receive such stamp for trial, etc., as furnished him by myself. I am not asking or seeking a contract now, nor am I making a proposition, neither do I wish to, under the late advertisement. The fact of a contract having been "concluded and executed for making stamps of all descriptions" does by no means in anywise interfere with my request. While the order given by your department was in force I was unable, in consequence of sickness, to thoroughly test my stamp. It was used upon about three thousand letters only during that time.

I have since made some changes in it which seem to make it a
1089 much better thing for the purpose designed. Now, I ask the opportunity to test it without any expense to the government; am I asking too much of your department? Shall I be denied this request of importance, perchance, to me as well as the government? Will your department be wronged or the government in anywise injured by allowing me the sixty days, or even more "if needs be," to test and prove my invention? If so, then I will not press my request further upon your consideration. In all of my business transactions at and with your department I have been kindly, generously, and gentlemanly dealt with. If now I have asked of you too much, the error is mine; if not, I hope you will grant me the order. I herewith enclose you an envelope containing a postmark from the stamp at the left, and an erasure upon the stamp made at the same operation of postmark. As now constructed, is believed to work well.

Respectfully, your ob't serv't,

MARCUS P. NORTON.

(Endorsed:) Marcus P. Norton, April 11, '59.

TROY, N. Y., *Oct. 31st*, 1859.

Hon. HORATIO KING,
First Assistant Postmaster General, Washington, D. C.:

SIR: I send you per mail this day a government post-office circular stamp with canceling improvement attached thereto, which is under an arrangement with Judge Allen, and is designed for trial at
1090 the post-office at Washington, under the supervision of Mr. Tree.

Your ob't serv't,

MARCUS P. NORTON.

(Endorsed:) Oct. 31, 1859, Troy, N. Y. Marcus P. Norton sending circular stamp with canceling improvement attached. 3 Nov. Given to Mr. Tree for trial. 7 inst. Mr. Tree reports this stamp consumes too much time. Ans's Norton hold stamp to his order.

POST-OFFICE DEPARTMENT,
Washington, D. C., April 24, 1878.

I certify that the annexed are true copies of the originals now on file in this department.

In testimony whereof I have hereto set my hand and caused the seal

of the Post-Office Department to be affixed the day and year above written.

[SEAL.] D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1091 *Complainant's Exhibit Y Y.—Davis, April* 25, 1878.—*A. J. Falls, special examiner.*

F. S. ZEVELY'S CONTRACT.

This agreement, made this first day of April, in the year of our Lord one thousand eight hundred and sixty-seven, between the United States of America, by Alex. W. Randall, Postmaster-General, of the first part, and Edmund S. Zevely, of Cumberland, in the State of Maryland, of the second part, witnesseth: That whereas the Postmaster-General did cause to be published in certain newspapers in the United States a certain advertisement bearing date the 12th day of February, 1867, inviting "Proposals for circular and octagon marking stamps and rating stamps," a copy of which is hereunto annexed; and whereas certain proposals were made pursuant to said advertisement, and received at the Post-Office Department in the city of Washington, and were duly opened and examined and, after mature consideration, it was decided by the Postmaster-General that so much of the proposals of the party of the second part hereto as is hereinafter specified should be accepted, in conformity to the advertisement aforesaid, and the proposals offered; and whereas the same were accepted as aforesaid:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements of the parties aforesaid, herein contained, it is hereby covenanted and agreed between the parties aforesaid as follows, to wit:

The said party of the second part hereby covenants and agrees
1092 to and with the said party of the first part to make, furnish, and deliver to the blank and stamp agency of the Post Office Department in the city of Washington, D. C., the following-described circular marking-stamps, and rating-stamps, at the prices specified for the same, and following the description thereof, the same being accepted by the Postmaster-General as aforesaid, and designated as follows, to wit:

Class 3.

Circular office marking-stamps, with type for months and dates, about one inch in diameter, of solid hard wood, and of model and size similar to the sample furnished and equal thereto in workmanship and finish, and of the same material as the sample, at eighty-five cents for each stamp furnished.

Rating-stamps.

For cancel stamps of solid wood, and equal to the sample furnished, at ten cents for each stamp.

All other rating-stamps of the various kinds mentioned in the advertisement, cut on solid hard wood and equal to the samples furnished, at twenty-two cents each (22c.).

And the said party of the second part hereto further covenants and agrees to comply in every respect with the particulars named in his

said proposals, so far as the same have been accepted by the Postmaster-General, and to deliver at the agency aforesaid any quantity of said stamps as above specified, within a reasonable time after the same may be ordered, at his own cost and expense and in good order and condition, and equal to the samples presented, and at the prices herein specified.

And it is further covenanted and agreed between the parties hereto, that in case of repeated failures upon the part of the party of the second part hereto to furnish and deliver as aforesaid any quantity
1093 of marking and rating stamps that may be ordered, of the kinds accepted, in due time thereafter, then the Postmaster General shall be at liberty to annul and rescind these presents, and all covenants and agreements entered into by virtue of this indenture, but unless so annulled and rescinded, this agreement shall be and remain in full force and effect for four years from and after the date hereof.

The said party of the first part hereby covenants and agrees to and with the said party of the second part to pay the said party of the second part for any stamps furnished, at the prices aforesaid, and for the kinds accepted, within one month after the expiration of each quarter of a year, upon the production of the proper vouchers therefor to the auditor of the treasury for the Post-Office Department.

And it is further covenanted and agreed upon the part of the party of the second part hereto, that no member of Congress of the United States shall be admitted to any share any part of these presents, or to any benefit to arise therefrom.

In witness whereof the seal of the Post-Office Department, the signature of the Postmaster-General, and the hand and seal of the party of the second part hereto are hereunto affixed.

ALEX. W. RANDALL, [SEAL.]
Postmaster-General.

E. S. ZEVELY. [SEAL.]

Witnesses to the signature of E. S. Zevely—
JNO. H. YOUNG.
JOHN H. ZEVELY.

In consideration of the making of the foregoing contract by the United States, and in consideration of one dollar to us in hand
1094 paid by the United States, we, the undersigned, do hereby undertake and guarantee that the party of the second part in said contract named, shall faithfully and promptly in all things comply with, fulfill, and perform the foregoing contract; and in case of the said party failing to do so, we will pay to the United States, on demand, all damages which it may sustain in consequence of such failure.

In witness whereof, we have hereunto set our hands and seals.

AMOS GROSS. [SEAL.]
HENRY FLUNY. [SEAL.]

Signed, sealed, etc., in the presence of us—
CHAS. F. BEAN.
BENJAMIN BARRITT.

[$1 stamp canceled.]

I certify that the above-named Amos Gross and Henry Fluny, sureties to the foregoing contracts executed by the said E. S. Zevely, are, in my opinion, good and able to respond to all damages which may arise from any default on the part of the principal in said contract.

JOHN H. YOUNG,
Postmaster.

[5 cent stamp canceled.]

Advertisement on file.

MARCH 25, 1867.

To Gen'l ST. JOHN B. L. SKINNER,
First Assistant Postmaster-General:

I propose to furnish stamps under the annexed advertisement
1095 for four years from the first of April, at the following prices, and as per models or samples accompanying this, i. e.:

Class 1. (I do not bid on.)

Class 2.

Brass-bound office stamps, with coppered dates, $1.30.
Brass-bound office stamps, with canceler attached, $2.00.

Class 3.

Office stamp, 85c.
Octagon, with year, $1.25.

Rating-stamps. (For class 2 and 3.)

All the various or different kinds of rating-stamps mentioned in the advertisement, made by attaching a heavily-coppered plate to a handle, as per samples, all same price, each 18c.

☞ If cut on solid wood, 22 cts. all round.
☞ Cancelers of solid hard wood, 10c.

I refer to my past record as to my ability to comply with my bid.

Yours, truly,

E. S. ZEVELY.

[Hammer-stamp, F. 2.]

(Endorsed:) Contract of E. S. Zevely for marking-stamps. For four years from 1867.

POST OFFICE DEPARTMENT,
April 24, 1878.

I hereby certify that the within is a true copy as shown by the records of this department.

1096 In testimony whereof I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, at Washington City, the twenty-fourth day of April, in the year of our Lord 1878.

[SEAL]

D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1097 *Complainant's Exhibit Z Z.—King, April* 25, 1878.—*A. J. Falls, special examiner.*

POST-OFFICE DEPARTMENT,
Washington, D. C., April 24th, 1878.

HON. GEO. W. WILLIAMS,
Washington, D. C.:

SIR: Referring to your letter of April 18th, 1878, asking, among

other thing, for a copy of a letter from the office of the First Assistant Postmaster-General to the postmaster at Troy, N. Y., and dated May 4th, 1859, I have to state that after dilligent search having been made for the same, it cannot be found.

Very respectfully, etc.,

JAMES H. MAN,
Acting 1st Assistant Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1098 *Complainant's Exhibit No.* 1.—*Post-Office Department.—J. G. Pomerene, special examiner, June 1st,* 1878.

POST-OFFICE, NEW YORK,
August 8, 1860.

HON. HORATIO KING,
First Assistant Postmaster-General:

SIR: The order of the Postmaster General of the 23d ult., prohibiting the canceling of postage-stamps by the dating or postmarking stamp, and requiring the work to be done by separate instruments, could not be executed in this office without an increase of the clerical force. We were compelled a few days ago to keep back a mail nearly half an hour, in order that the postage-stamps on the letters to be transmitted by it might be properly canceled.

When the letters amount to tens of thousands, the duplication of the work of canceling and postmarking is a very serious matter. On Monday our carriers and messengers brought to the office 11,985 letters for the mail. In this extremity, and with an extreme reluctance to augment the clerical force of the office for the purpose of doing the work, I have hit upon an expedient which answers the purpose perfectly.

It occurred to me that the separate instrument required by the department might be attached to the postmarking stamps, and I sent
1099 for the stamp-maker and gave him my ideas, which he has carried out very well. The canceling stamp is soldered on to the other, so that one handle answers for both. The double operation is performed with one blow. There is, therefore, no increase of work. I send on a specimen of the work on the enclosed envelope.

Respectfully yours,
(Signed) JOHN A. DIX,
Postmaster.

1100 *Complainant's Exhibit No.* 2.—*Post-Office Department.—J. G. Pomerene, special examiner, June 1st,* 1878.

POST-OFFICE DEPARTMENT,
Washington, D. C., August 10th, 1860.

SIR: I have to acknowledge the receipt of your letter of the 8th inst., in relation to canceling stamps. The arrangement is an excellent one, and will save much labor in making up the mails; but I fear the attachment you have affixed to your marking stamps has not only been thought of before, but has actually been patented; if so, it may at some future time subject your office to a heavy charge to the patentee for its use, or perhaps to a law-suit.

The Postmaster-General, therefore, desires that you will give the subject such timely attention as will be calculated to avoid such consequences.

Advertisement on file.

MARCH 25, 1867.

To Gen'l ST. JOHN B. L. SKINNER,
First Assistant Postmaster-General:

I propose to furnish stamps under the annexed advertisement
1095 for four years from the first of April, at the following prices, and as per models or samples accompanying this, i. e.:

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☞ If cut on solid wood, 22 cts. all round.

☞ Cancelers of solid hard wood, 10c.

I refer to my past record as to my ability to comply with my bid.

Yours, truly,

E. S. ZEVELY.

[Hammer-stamp, F. 2.]

(Endorsed:) Contract of E. S. Zevely for marking-stamps. For four years from 1867.

POST OFFICE DEPARTMENT,
April 24, 1878.

I hereby certify that the within is a true copy as shown by the records of this department.

1096 In testimony whereof I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, at Washington City, the twenty-fourth day of April, in the year of our Lord 1878.

[SEAL]

D. M. KEY,
Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1097 *Complainant's Exhibit Z Z.—King, April* 25, 1878.—*A. J. Falls, special examiner.*

POST-OFFICE DEPARTMENT,
Washington, D. C., April 24th, 1878.

Hon. GEO. W. WILLIAMS,
Washington, D. C.:

SIR: Referring to your letter of April 18th, 1878, asking, among

other thing, for a copy of a letter from the office of the First Assistant Postmaster-General to the postmaster at Troy, N. Y., and dated May 4th, 1859, I have to state that after dilligent search having been made for the same, it cannot be found.

Very respectfully, etc.,

JAMES H. MAN,
Acting 1st Assistant Postmaster-General.

Opened and filed as per stipulation this first day of July, 1878.

1098 *Complainant's Exhibit No.* 1.—*Post-Office Department.—J. G. Pomerene, special examiner, June* 1*st*, 1878.

POST-OFFICE, NEW YORK,
August 8, 1860.

Hon. HORATIO KING,
First Assistant Postmaster-General:

SIR: The order of the Postmaster General of the 23d ult., prohibiting the canceling of postage-stamps by the dating or postmarking stamp, and requiring the work to be done by separate instruments, could not be executed in this office without an increase of the clerical force. We were compelled a few days ago to keep back a mail nearly half an hour, in order that the postage-stamps on the letters to be transmitted by it might be properly canceled.

When the letters amount to tens of thousands, the duplication of the work of canceling and postmarking is a very serious matter. On Monday our carriers and messengers brought to the office 11,985 letters for the mail. In this extremity, and with an extreme reluctance to augment the clerical force of the office for the purpose of doing the work, I have hit upon an expedient which answers the purpose perfectly.

It occurred to me that the separate instrument required by the department might be attached to the postmarking stamps, and I sent
1099 for the stamp-maker and gave him my ideas, which he has carried out very well. The canceling stamp is soldered on to the other, so that one handle answers for both. The double operation is performed with one blow. There is, therefore, no increase of work. I send on a specimen of the work on the enclosed envelope.

Respectfully yours,
(Signed) JOHN A. DIX,
Postmaster.

1100 *Complainant's Exhibit No.* 2.—*Post-Office Department.—J. G. Pomerene, special examiner, June* 1*st*, 1878.

POST-OFFICE DEPARTMENT,
Washington, D. C., August 10*th*, 1860.

SIR: I have to acknowledge the receipt of your letter of the 8th inst., in relation to canceling stamps. The arrangement is an excellent one, and will save much labor in making up the mails; but I fear the attachment you have affixed to your marking stamps has not only been thought of before, but has actually been patented; if so, it may at some future time subject your office to a heavy charge to the patentee for its use, or perhaps to a law-suit.

The Postmaster-General, therefore, desires that you will give the subject such timely attention as will be calculated to avoid such consequences.

He also desires me to call your attention to the imperfect impression made by the marking stamps in your office, and to ask if a remedy cannot be found for the defect.

Complaints are received at the department almost daily from all parts of the Union on the subject, and the Postmaster-General would be much gratified if some plan could be devised to make them less frequent.

Very respectfully, etc.,
(Signed) ST. JOHN B. L. SKINNER,
Acting First Assist. Postmaster-Gen'l.

POSTMASTER, *New York, N. Y.*

1101 *Complainant's Exhibit No. 3.—Post-Office Department.—J. G. Pomerene, special examiner, June* 1, 1878.

POST-OFFICE, NEW YORK,
January 3d, 1863.

A. N. ZEVELY, Esq.,
Third Assistant Postmaster-General, Washington, D. C.,

SIR: Some time since you requested that I should test the utility of Norton's double postmarking and canceling stamping iron, and report my opinion thereon. It was in use in this office when I first entered upon my duties.

Since then the canceling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation, but it is liable, if even used with the greatest care, to injure the contents of the envelopes, especially if the contents are cards, photographs, and the like.

We have also used cork by inserting it in the cylinder of the cancelor. This performed successful, and cancellation is now performed in this way. I am confident no office in the country performs cancellation more perfectly. The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interests of the department would be subserved by securing its general use.

1102 We are now testing the stamp and cancelor on Norton's plan made of boxwood. It promises well, and can be made at a very trifling expense. I am fearful, however, its liability to yield to the wear to which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obedient servant,
(Signed) ABRAM WAKEMAN,
Postmaster.

Per Secretary.

1103 *Complainant's Exhibit No. 4.—Post-Office Department.—J. G. Pomerene, special examiner, June* 1, 1878.

POST-OFFICE DEPARTMENT,
Washington, March 1st, 1865.

HON. J. COLLAMER,
Chairman Com. Post-Offices and Roads, U. S. Senate:

SIR: I have the honor to return herewith the papers submitted to me, with your letter of the 24th ultimo, in relation to the claim of the assignees of the patent granted to Marcus P. Norton for a combined postmarking and canceling stamp now in use by this department.

In reply to your inquiries on the subject, I have to state, that this stamp is an invention of importance and value to the postal service, particularly at our larger post-offices, where expedition in making up the dispatch of the mails is always an object of importance; and it is also an effectual instrument for canceling postage-stamps, and in that respect it is of value to the extent that it diminishes the chances of cleansing postage-stamps and using them a second time. While I have no hesitation in stating that the Norton stamp is a desirable and useful instrument, in the particulars above mentioned, and that the interests of the department would be promoted by a purchase of the patent at a moderate price, I am not prepared at present to express an opinion as
1104 to its worth, having no satisfactory data on which to base an estimate, even approximately, of its actual value to the postal service.

It is stated that the use of these stamps effects a saving of labor of seven clerks at the New York post-office, and of two clerks at each of the offices at Philadelphia and Washington; and it is probable that a saving of clerical labor, in like proportion, has been effected by its use in other large post-offices.

The extent to which this canceling stamp may have protected the postal revenues from losses, incidental to the cleansing of postage-stamps once used, and using them a second time, it is of course impossible to determine. But while stating these items, it is proper to observe, that they do not, in my judgment, form a satisfactory basis for estimating the amount which should be paid to the assignees of this patent for the use of the invention; there being other considerations which must necessarily be taken into account in such an estimate.

If your committee should not find time to examine the merits of this application, and conclude that it is advisable to postpone the subject to the next session of Congress, I will cause a more thorough inquiry to be made on the points submitted to me by the committee, and report at a future day.

(Signed) W. DENNISON,
Postmaster-General.

1105 *Complainant's Exhibit No. 5.—Post-Office Department.—J. G. Pomerene, special examiner, June* 1, 1878.

POST-OFFICE DEPARTMENT,
January 15, 1867.

SIR: I have examined the papers sent me in regard to Norton's canceling stamp, as suggested by your letter of the 20th of December.

It is difficult for me to determine the amount which ought to be allowed for the use of that invention. The department has already saved several hundred thousand dollars by its use, and I have no doubt will continue to save large sums by its future use. The question of value to the department has long been settled. The necessity to the department of its continuing in use is beyond question. It is also necessary that some settlement be immediately made with the owners of the patent for this canceling stamp.

About the 1st of February next, the department must again advertise for furnishing canceling stamps, and Norton's stamp is the one desired. It is the best there is. If no settlement is made by the government so that these stamps can be made and furnished to the department without interference or embarrassment from the owners of the patent, it is apprehended the department will be compelled to resort to a more ex-

Your post marking and canceling stamp, as originally presented, seems to be approved at New York and other large offices where it has been tested.

The improvement which you now speak of evidently makes the instrument still more effective, and, indeed, fully attains the end desired by this department, namely, the destruction of the postage-stamp.

The only doubt about it arises from the danger of cutting through the envelope and damaging letters and enclosures.

If you expect soon to visit Washington on other business, please call at this department. The Postmaster-General is now absent, but I think he will view your invention favorably, and while he might not be
1112 able to make you any allowance, he might possibly arrange with you to manufacture stamps for the larger post-offices.

Very respectfully,

(Signed) A. N. ZEVELY,
Third Assistant Postmaster-General.

MARCUS P. NORTON, Esq.,
Attorney at Law, Troy, N. Y.

POST OFFICE DEPARTMENT,
Washington, D. C., March 21, 1868.

I hereby certify that the foregoing is a true copy of a letter on file in this department.

In testimony whereof, I have hereunto set my hand and caused the seal of the Post Office Department to be affixed at the General Post Office, in the city of Washington, the day and year above written.

[SEAL.] ALEX. W. RANDALL,
Postmaster-General.

1113 *Complainant's Exhibit No.* 9.—*Post Office Department.—J. G. Pomerene, special examiner, June* 1, 1878.

POST OFFICE DEPARTMENT,
APPOINTMENT OFFICE,
Washington, July 25th, 1862.

SIR: Your letter of the 23d instant was received, and will be referred to the postmaster of New York, for a full report as to whether the experience of his office shows that your canceling stamp so effectually destroys the postage-stamp as to prevent its being cleansed and used a second time.

In regard to the use heretofore made of your stamp in offices, the department can only be held responsible (if at all) in cases where it has authorized its use. Other parties using it without the approval of the department, or the consent of the patentee, have done so on their own responsibility, and with these cases the department can have nothing to do.

Propositions for a canceling stamp, distinct from the post-marking stamp, which will (it is claimed) so effectually destroy the postage-stamp without injury to the letter enclosed as to preclude the possibility of its being used a second time, are now under consideration in the department.

I am, respectfully, etc.,

JOHN A. KASSON,
First Assistant Postmaster-General.

MARCUS P. NORTON, Esq.,
Troy, N. Y.

1114 POST OFFICE DEPARTMENT,
Washington, D. C., March 12, 1868.

I hereby certify that the foregoing is a true copy of a letter on file in this department.

In testimony whereof, I have hereto set my hand and caused the seal of the Post Office Department to be affixed, at the General Post Office in the city of Washington, the day and year above written.

[SEAL.] ALEX. W. RANDALL,
Postmaster-General.

1115 *Complainant's Exhibit No.* 10.—*Post Office Department.—J. G. Pomerene, special examiner, June* 1, 1878.

POST OFFICE DEPARTMENT,
APPOINTMENT OFFICE,
Washington, April 29, 1862.

SIR: Your letter of the 26th instant is received. The contract for furnishing marking and rating stamps will expire on the 31st of March, 1863, and an advertisement for new proposals will be issued in the early part of that year.

Very respectfully,

JOHN A. KASSON,
First Assistant Postmaster-General.

MARCUS P. NORTON, Esq.,
Troy, N. Y.

POST OFFICE DEPARTMENT,
Washington, D. C., March 23, 1868.

I hereby certify that the foregoing is a true copy of a letter on file in this department.

In testimony whereof I have hereunto set my hand and caused the seal of the Post Office Department to be affixed at the General Post Office, in the city of Washington, the day and year above written.

[SEAL.] ALEX. W. RANDALL,
Postmaster-General.

1116 *Complainant's Exhibit J. D. Green.—Norton's caveat.—J. G. Pomerene, special examiner, June* 7, 1878.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this eleventh day of September, A. D. 1871, before me, the undersigned, personally came Jeremiah D. Green, who being duly sworn deposes and says: My name is Jeremiah D. Green, I reside in Troy, N. Y. I know Marcus P. Norton, of Troy, N. Y., and have known him for about sixteen years. I know S. H. Sweatland, patent agent of the city of Washington, and have known him for about eighteen years. During the hearing before the Postmaster General, under a joint resolution of Congress, approved July 14, 1870, I appeared as attorney for Frederick G. Ransford, Peter Low, and others, against Marcus P. Norton, claiming for them certain interests in the patent granted April 14, 1863, to said Norton, founding such claim upon and under letters patent granted upon said Norton's application, dated August 9, 1859, and for improvements in post marking hand stamps. The said Sweatland appeared upon that occasion for Peter Low, Frederick G. Ransford and others, as

their attorney with me. During that trial, the said Sweatland produced a certified copy of a caveat dated October 20th, 1853, with an additional paper therein, dated Tinmouth, Vermont, August 7th, 1854, this was Marcus P. Norton's caveat of those dates, for a machine for mailing and folding letters, which certified copy is here produced, and marked
1117 Exhibit A Norton. This exhibit and caveat copy I obtained of the said S. H. Sweatland during last winter. I understood from Mr. Sweatland that he obtained such copy from the U. S. Patent Office. It is marked in pencil "Sweatland and Co'py," on the certificate thereon. I furnished the annexed copy to Mr. Norton, at his request, he having learned that such copy was in my possession.

J. D. GREEN.

Subscribed and sworn to before me, this eleventh day of September, A. D. 1871.

[SEAL.] CHAS. CONS. CALLAN,
Notary Public.

1118 *Complainant's exhibit.—U. S. Patent Office.—J. G. Pomerene, special examiner, June 7,* 1878.

(Endorsed:) Exhibit A Norton, Sept'r 11, 1871. Chas. Cons. Callan, notary public. [Seal.]

The U. S. Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the files of this office.

[Sweatland & Co., in pencil.]

In testimony whereof, I, Sam'l A. Duncan, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

[SEAL.] SAMUEL A. DUNCAN,
Acting Commissioner.

To the Commissioner of Patents:

The petition of Marcus P. Norton, of Troy Conference Academy,
1119 West Poultney, and county of Rutland, and State of Vermont, respectfully represents:

That he has invented a certain machine for mailing and folding letters in the outside wrapper with their way bills, and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to his applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat, in the confidential archives of the Patent Office, agreeably to the provisions of the act of Congress in that case made and provided; he having paid twenty dollars into the Treasury of the United States, and otherwise complied with the requirements of said act.

MARCUS P. NORTON.

TROY CONFERENCE ACADEMY,
West Poultney, Vt., Oct 13th, 1853.

SUBJOINED DESCRIPTION.

My post-office stamp and way bill folding machine is so constructed as to print the name of the town, State, month, and day thereof, also the name of the postmaster, paid 3 cts. and unpaid 5 cts., upon the letter, and to fold the same together with its way bill in an outside envelope. Said envelope and way bill are made together, and in the form and manner as shown by a plan which I send enclosed.

That part of the machine which stamps the letter consists of a shaft, upon which is placed two arms, crossing each other at right angles, which contain the type in the form as shown upon the way bill. Upon the same shaft are two cams, one at or near each end of the same, which are used to move the continuous or sliding platform (upon which the letter is moved under the type) down so as to let it receive an impression from the type. The platform upon which the letter passes
1120 under the type is continuous, or to slide under and back as I may deem best upon experimenting. The platform belt is to be moved with the same speed of the type cylinder by means of a band or its equivalent. The platform plays up and down by means of spiral springs around the guides of said platform, which are four in number. The belt or band is tightened at pleasure by means of movable boxes and screws. The types are to be inked by means of ink rollers, two in number, placed in such a manner by means of movable boxes and screws, so as to roll over the face of the type as they pass around. In order to change the motion of the platform belt or slide, two small gears are used, one on the cam and type shaft, the other on the crank shaft. The frame for the entire work is to be made in any form to suit the eye of the mechanic. A pulley is fastened to one of the cams for the purpose of moving the continuous belt or slide and the ink rollers.

That part for folding the letter with its way-bill in the outside envelope consists of a small table placed at one end of the stamping part upon legs. A hole is made through the centre of this table large enough to receive any size letter; around this is made a box containing four folders, which turn upon hinges by means of levers, two of which move at a time only, which fold one-half of the envelope; after which the other two move and fold the remaining half; then the bottom of the aforesaid box opens and lets the letter drop out, folded in its way-bill envelope, ready for transportation. The folders are worked by means of levers fastened to them, at the end of which a cord is fastened, which passes up through the table over pulleys down through the table, and are fastened to pedals. At the other end of the levers are fastened cords for the purpose of opening the folders when closed. Those cords for opening the folders are worked by means of weights or springs. Having thus described my machine, I will now state its object, etc.

1121 Its object is—

1st. To facilitate mailing and wrapping up letters with their way-bills, etc.

2nd. To save the expense of paper for wrapping purposes, lessening the cost about one-half, and saving all the paper as now required for way-bills.

3rd. To lessen the number of laborers as now required in large post-offices.

Rec'd 2 oath, written for Oct. 20, 1853.

S. T. S.

To the Commissioner of Patents:

SIR: I wish the following to be added to my subjoined description for mailing and folding letters for which I have a caveat in your office.

In the mailing of letters, I have provided means for postmarking of letters, newspapers, and the like, and for the cancellation of the postage-stamps thereon at one and the same blow or operation of the instrument or machine by which the postmark is had or made upon the letter, envelope, or wrapper, or package, in a plain and intelligible manner, and thereby always retaining the same, while the postage stamp or stamps are more effectually and permanently cancelled, so as to prevent frauds upon the revenue derived from the sale and use of such stamps.

The said device is arranged upon the type cylinder contained in first paper filed in my said caveat, between the way-bill form of type,
1122 and it gives the impression in ink upon the letter, envelope, or packet by means of the revolving cylinder, and at the same time and operation it also gives a heavy impression in ink upon the postage-stamp, when or where used upon the said letter or envelope, and the postage stamp becomes thoroughly impregnated with ink by the means herein provided, and therefore it cannot be cleansed by chemical washing or by other means, so as to allow of the same being used a second time, and thus frauds are prevented.

If there should be no stamp used for payment of postage on letters, packets, etc., this device would do no sort of harm to the letter, envelope, etc., for it would only postmark the same with the name of the town and date, such as month, day of the month, and year, and upon one side thereof, at same time, give a heavy impression in ink, which would appear was only intended for cancellation of the postage-stamp, as aforesaid stated.

This would make a plain and more intelligible postmark than by the old method now in use, while it would at same time, blow, and operation of the instrument, cancel in ink the postage stamp or stamps when such are used as aforesaid in a most thorough, perfect, and permanent manner, so that the same could not be cleansed for the purpose of being used a second time.

This part of my invention I construct of the ordinary form of type now used in the post-offices for the postmarking of letters, with the name of the town, month, day of the month, and the year, etc., and I combine therewith, in some good, practical, and suitable manner, a device which I denominate a postage-stamp canceling type, to be used in or with any kind of ink suitable for that purpose; and by such combined instruments one device is formed which will give the name of post-office, month, day of the month, and year, and at same time and blow cancel and thus destroy the postage-stamp, thereby greatly econ-
1123 omizing in the time now required in the making up of the mail; in fact, saving one-half of the labor required for postmarking and for canceling of postage-stamp when it is desirable to give the impression of name of the town and date upon the envelope, letter, or packet, in order to preserve the same for any purpose of proofs or other thing.

I now think that the best way to make this part of my invention is to use a cross-bar or a cross-piece upon the periphery of the cylinder set forth in other papers in my caveat, and fasten in some suitable manner the postmarking stamp upon one end thereof, and the postage canceling type or device upon the other end of said bar or cross-piece, which would, of course, give dating stamp at one end and canceling stamp at the other end thereof.

This bar, thus constructed, with said type arranged thereon as aforesaid, is securely fastened to the periphery of said cylinder in some suitable manner. The canceling type or stamp may be made of iron, steel, wood, rubber, cork, or of any other suitable material, and the same may be combined with said cross-bar by the drilling of a suitable hole therein, or by a tube to receive the same, and said tube being suitably fastened to said cross-bar; or the same may be fastened directly upon and to the said cross-bar at any required distance from said dating part or dating type. A screw may pass through said cross-bar into the material used for the canceling type, and thus hold it firmly thereto, or a suitable tube may first be fastened to said cross-bar, and then the canceling material or part used for the canceling type may be inserted therein and thereon, and thereby held until worn out by use, when the same may be replaced.

Rubber or cork, I think, will make the best and most suitable canceling type or device, while soft wood, used endwise, will make a most excellent canceling type.

1124 If it should be found impracticable to use the said cylinder and other parts of said machine as contemplated in the caveat papers now on file, then the said cross-piece or bar may be removed from the said type cylinder by means of loosening the screws by which it is fastened thereto, and a suitable handle affixed thereto in place of such cylinder, and the same then used as a hand stamping device for postmarking and canceling postage stamps.

The said cross-bar may be removed from said cylinder in order to reset the type for the date to be given, or for the purpose of removing and replacing the said canceling type or stamp, and then the same may be replaced upon said cylinder as aforesaid.

By means of this device I get a good and more perfect impression upon the letter, envelope, or packet, of the name of the town, day of the month, month, etc., and at the same time and operation, cancel the postage stamp or stamps in ink in a most complete, thorough, and perfect manner. When cork is used, it contains a greater quantity of the ink used, and being somewhat elastic and somewhat rough upon the face containing the ink, it will, to a considerable extent, break the enameled surface of the postage-stamp, formed as such by means of the indelible ink used in the manufacture of such stamp, so as to form a hard surface, in order that the stamp might not become defaced by transportation to places of sale, while on sale, or while being carried in a person's pocket ready for use; and, having broken somewhat such surface of such postage-stamp by the blow of the cork upon the same, the ink impregnates in a most thorough manner the whole postage-stamp, and of course it cannot be removed without destroying the printed surface of such postage-stamp and so defacing it that such efforts at reuse of it would be at once detected.

Soft wood used endwise will have nearly the same effect; so therefore some soft and porous material will be the most suitable to use in the construction of said canceling type or device used for the cancellation of all postage-stamps.

1125 The cam-frame which draws the letters under said type cylinder for postmarking of letters, packets, etc., and for the cancellation of postage-stamps thereon, will give the blow against the said postmarking and postage canceling device, which is done at one operation and at the same time; and when thrown out of gear, then the way-bill printing part may be worked and then print the way-bills as I have described in former papers on file in my said caveat. I would prefer the

use of an indelible ink with my said device or instrument or machine, if the same could be had by all the postmasters who use the said machine, etc.

This part of said machine may easily and readily be converted into a hand-stamp when and where no other part of said machine would be used, save and except the postmarking containing the name of the town where used, the month and day of the month and year, etc., and the postage-stamp cancelor or canceling device attached to and combined with the said cross-bar or cross-piece substantially as aforesaid, with a suitable handle at the centre of said cross-bar or piece, or at some suitable place between the two stamping devices aforesaid; which handle is used for the giving of the blow or impression of the two devices attached to said cross-bar as aforesaid, and of course it would then be a simple device of postmarking stamp, of cross-bar, and cork, rubber, or wood (or other suitable material) postage-stamp canceling device combined thus into one instrument, and operated by the handle with one blow, and to be used in or with any kind of ink desired. One blow of the instrument in the hand of the operator will do the printing of the name of the town, of the month, of the day of the month upon the letter or envelope, and the cancellation of the postage stamp in a most complete and effectual manner, substantially as aforesaid, thereby saving great labor and the rehandling over of the letters in order to
1126 postmark them, and afterwards to cancel the postage-stamps when it is desired to have an intelligible postmark preserved on the letter or envelope, and to have the postage-stamp thoroughly canceled, so as to prevent frauds by the reuse of the same, as is often now the case.

This instrument will therefore prevent such frauds and very much simplify and economize in the time for the making up of the mails for transportation. This will be the effect and result if no other part of said machine be used save the said parts converted into a simple hand stamp as aforesaid, to wit: The postmarking part, the postage-stamp canceling part, all attached to the said cross-bar and combined therewith as and in the manner aforesaid. If the entire machine set forth in all the caveat papers be used, there will be great saving of labor and time in mailing of letters, and a large quantity of paper, twine, and sealing wax, etc., by the use set forth in all the papers of this caveat. There would be also great labor saved as aforesaid, by the use of such hand-stamp combined as aforesaid.

I am having a full-size machine made according to my caveat papers, which, when done, I shall apply for a patent, or at least as soon thereafter as I may be able to get the Post-Office Department to consider and adopt for use in the various post-offices my said improvements or some parts thereof, preferring to submit the same to the judgement of that department before applying for my patent upon the invention herein contained.

I desire you to file this with my other papers in my said caveat. I intend to renew my caveat if such be at all necessary in order to protect my rights while engaged in efforts with the Post Office Department for the general use of my invention, and especially that part which relates to the hand-stamp form of postmarking and postage-stamp canceling combined with and upon a cross-bar or piece containing a suitable handle substantially as aforesaid, so as to give both impressions

1127 at one blow and operation of the instrument as aforesaid, thereby saving great labor and preventing frauds, etc.

MARCUS P. NORTON.

TINMOUTH, VT., August 7, 1854.
Ex'd. V. E. L.

Applied March 21, 1857.

CAVEAT.

No.
Marcus P. Norton,
Of West Poultney,
County of Rutland,
State of Vermont.

Mach. for mailing and folding letters.

Rec'd Oct. 20, 1853.
Petition, " "
Affidavit, Oct. 27, 1853.
Specification, Oct. 20, 1853.
Drawing.
Model.
Cert. dep.
1 cash, $20, Oct. 20, 1853.
2 examined.
Issue.
3 patented , 185 .
Recorded, vol. , page .

S. H. HODGES, *Attorney.*

Paper within.
Ex'd. R. W.

1128 (Endorsed:) Complainant's Exhibit J. D. Green, Norton's caveat. J. G. Pomerene, special examiner, June 7, 1878; also Complainant's Exhibit U. S. Patent Office, J. G. Pomerene, special examiner. June 7, 1878.

1129 *Complainant's Exhibit B. B., C. E. Wheeler.—J. G. Pomerene, special examiner, Feb.* 23, 1878.

[Extract.]

For identification.

POST-OFFICE, CLEVELAND, O.,
Nov. 28, 1863.

HON. A. N. ZEVELY:

DEAR SIR: * * * * You will probably recollect, when you were in Cleveland, having a conversat on with Mr. Cowles and myself about that combination dating and rating stamp, of which I was the inventor. Mr. Cowles promised, when he went to Washington, to bring the matter before the Postmaster-General, and endeavored to have my salary increased, as an acknowledgment of its value and utility to the service. My object in addressing you is to secure, if possible, your co-operation

in the matter; and, as you may have forgotten the circumstance, allow me to state that about the first of July, 1861, the department issued an order discontinuing the canceling of stamps with the dating stamp, and requiring that thereafter the regular canceling stamp should be used for that purpose. We followed instructions one day after receipt of the order with two separate stamps. It was about all one man could
1130 do before to stamp our letters, circulars, and newspapers, and by the change it would require twice the labor. The idea struck me that by a combination all might be done as required by one operation, and I immediately took the stamps to a locksmith and had them soldered together. The order and receipt you will find among your records. The smith's name is Jacob Schwartzenburg.

Ours was the first office that used the combined stamp, and very soon we were in receipt of inquiries as to how it was done. The uniformity of the impressions were noticed. We soon found it adopted in nearly every large office, and many smaller ones, and now it has become almost universal. The saving in large offices, where clerks are paid by government, is, you will perceive, quite a large sum annually. In our own office it saves the services of one man, in larger offices more. Some one should be rewarded for the improvement. True another person has the patent for it, but in a test case I can prove priority without doubt. And in this connection I will state that a short time after you were here, in a conversation with a friend on the subject, he advised me to apply for a patent, and he would advance the funds necessary. My own circumstances prevented me doing so before. I accepted his generous offer and made my application, which of course was rejected. I have called for an interference case, which has not as yet been set down, but will be, I hope, in a few days. * * *

Yours, respectfully,
(Signed) C. E. WHEELER.

1131 *Complainant's Exhibit A. A, C. E. Wheeler.—J. G. Pomerene, special examiner, Feb. 22d, 1878.*

(For identification.)

CLEVELAND POST-OFFICE,
Cleveland, O., May 7, 1864.

HON. M. BLAIR:

DEAR SIR: I understand that certain parties have presented a claim for $35,000 against the government, and that it is now pending before the House Committee on Claims, for the use of the combined dating and canceling stamp by the Post-Office Department, the invention of which is claimed by said parties.

I have every reason to believe that the original inventor of that stamp is a clerk in this office. He invented it immediately upon the receipt of the order issued by Postmaster-General Holt, several years ago, requiring a separate stamp to be used in canceling the stamps on letters. Consequently the claim of the parties alluded to above cannot have legal foundation.

Should you require testimony, the name of the clerk is Charles E. Wheeler.

I am, very respectfully, yours very truly,

E. COWLES, *P. M.*

1132 (Endorsed:) Respectfully referred to the Committee on Post-Offices and Post-Roads of the House of Representatives. M. Blair, Postmaster-General. May 10th, 1864.

1133 *Complainant's Exhibit Norton No.* 10.—*J. A. S., ex'r, June* 29, 1878.

DISTICT OF COLUMBIA,
City and County of Washington, ss:

Chas. Cons. Callan, being by me duly sworn, doth depose and say: I am a notary public in and for the said city of Washington and District. I know Marcus P. Norton, of the city of Troy, State of New York, and have known him personally for some years past. On the morning of the 22d day of August, 1871, at or near nine o'clock in the morning of that day, I was called by said Marcus P. Norton from my office to his room, No. 113, National Hotel, in said city, to administer to him the usual oath to a deposition or an affidavit. I attended at his said room, and there, at or near the time aforesaid, I duly administered to him, the said Marcus P. Norton, a most solemn oath, in the manner and form as by law required, after said Norton had signed his name to the affidavit for which I had been called to administer such oath. The affidavit then and there signed by said Marcus P. Norton, and for and upon which I administered to him said oath, is hereto attached, and the same is marked Exhibit O, Norton. The same is duly signed by me in my official capacity, and it was duly made and sworn to by said Norton on the morning of August 22d, 1871, at about nine o'clock in the morning of that day. The said Marcus P. Norton at that time informed me that he desired to use such affidavit in the Patent Office on that day. That he had thus sent for me to come to his room to administer said oath
1134 because he needed all his time to prepare other papers for use in Patent Office on that day, as he desired to facilitate his business in the Patent Office.

Deponent further says, that not having his official seal with him at the room of said Norton, he remarked to said Norton that he, deponent, would take to his office said affidavit so made and hereto annexed, and would then attach deponent's official seal, to which said Norton replied, "Very well; do so, and on my way to the Patent Office this morning I will call at your office for the same." That this deponent did so take and seal the said affidavit, and said Norton called at deponent's said office for it at or near ten o'clock in the morning of August 22d, 1871, and taking the said affidavit, left my office in the direction of the said Patent Office, and at the same time had a bundle of legal papers with him, the contents of which deponent knew not. The said affidavit, hereto annexed and marked as aforesaid, was made by said Marcus P. Norton in due form before me as a notary public, between nine and ten o'clock on the morning of the 22d day of August, 1871, and delivered by me to said Norton when on his way to the U. S. Patent Office same morning as before stated and set forth.

CHAS. CONS. CALLAN.

Subscribed and sworn to before me this 14th day of September, 1871.
[SEAL.] H. CLAY JOHNSON,
Notary Public.

J. Q. S.

1135 *Complainant's Exhibit Norton, No. 12.—J. A. S., ex'r, June 29, 1878.*

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Marcus P. Norton, being by me duly sworn, doth depose and say: My name is Marcus P. Norton. In the year 1859 I resided at the city of Troy, in the State of New York. I then and now personally know Frederick G. Ransford and Peter Low, then residing at said city of Troy. During that year I made an agreement with them to procure a patent for me upon certain improvements in "hand stamps," and according to the terms thereof I made the application for letters patent. That application was divided into two applications after examination and rejection of some of the claims thereof. And before the second application was made the said agreement was modified so that a patent should issue for a term of fourteen years, four years of which should be held and owned by said Ransford and Low, while deponent should be at liberty to make the second or new application for a patent upon the improvements for which the several claims had been rejected in the old application. I accordingly made the second application, and a patent was duly granted to me, bearing date the 14th day of January, 1862, and which I have now caused to be surrendered for a reissue, and which has been held by the examiner in charge to be a part of the application of 1859. Deponent says that the patent of January 14, 1862, was issued in pursuance of the said modified agreement, a true and correct copy of which is hereto annexed and forming a part hereof, which deponent has first caused to be recorded in the Patent Office for reasons that will herein appear. Deponent further says that the original agreement,
1136 whereof the annexed is a true, correct, and faithful copy, was by him put on file in the U. S. Patent Office, either in the file from which the patent of January 14, 1862, issued, or else in the file from which the patent of August 9, 1859, issued to said Ransford and Low. That said original agreement, of which the annexed copy is a true and correct one as above stated, can not now be found in either of said files, to wit, of 1859 and 1861-'2. And deponent further says that the said original agreement so put on file has either been mislaid and lost or else some one unknown to deponent has abstracted or taken the same from such filing. And deponent further says that he never made and executed such an assignment as that which now appears upon the U. S. Patent Office records as being dated May 2d, 1859, and recorded May 6th, 1859, under and by which the patent of August 9th, 1859, issued to said Ransford and Low, and I now refer to a former affidavit made and sworn to by me and filed in said application for reissue of said patent of January 14th, 1862, but did make an agreement as above stated which gave that device to them for a term of four years from the date of the patent. The said agreement hereto annexed was executed and delivered to me for the reasons stated therein, and it was originally prepared by deponent, while the copy hereto annexed has been prepared from an old and wornout copy not suitable to be put into the record file for said reissue of patent of January 14th, 1862, but which is a correct copy as hereinbefore stated.

MARCUS P. NORTON.

Subscribed and sworn to on this 22d day of August, 1871.
[SEAL.] CHAS. CONS. CALLAN,
Notary Public.

J. Q. S.

(Endorsed:) Exhibit O, Norton.

1137 *Complainant's Exhibit Norton No.* 14.—*J. A. S., ex'r, June* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., August 23d, 1871.

HON. COMMISSIONER OF PATENTS:

SIR: In the matter of my application for reissue of my letters patent, dated January 14, 1862, for and upon improvements in "Post-office hand stamps," and now pending upon a letter of rejection, by which said case is rejected upon letters patent granted upon my petition, and dated August 9. 1859, for "Improvement in post-office marking hand stamps," I herewith present for permanent file in said pending reissue file, a copy of an original agreement between "Peter Low" and "Frederick G. Ransford," of Troy, N. Y., of and concerning my invention for "type wheel dating and printing stamp." This copy I have first caused to be put upon record so that in case of "another loss," there will be something to indicate that there was and had been such an agreement in the patented files, and that said letters patent and the "reissues" thereof had been duly, properly, and regularly granted to me upon my application.

I also enclose my affidavit of explanation and of verification of said enclosed copy agreement, which I desire to be filed in said reissue application of said patent of January 14th, 1862, with said "copy agreement," it having been first put upon record as the certificate thereof thereon will more fully appear. Upon a case thus made up, to wit: 1st, the application for reissue of the patent of January 14, 1862; and, 2d, of said recorded copy of agreement of Ransford & Low on one
1138 part, and Norton upon the other; and 3d, my personal affidavit, explaining and verifying the said copy agreement so recorded, I desire, and I now request and demand an "interference case" to be made and had by and between said application for reissue and the letters patent granted to "T. J. W. Robertson," on the 22d day of September, 1857, and a certain patent granted upon Marcus P. Norton's application for a patent, which is dated August 9th, 1859. I claim not only to be the lawful inventor of the invention and improvements contained in each and every of these patents, but I also claim to be the lawful owner of the invention and patent dated August 9th, 1859. I desire, therefore, that you give each party ample time wherein to get ready for the questions and the points at issue, and that each person, to wit, "F. G. Ransford" and "Peter Low" be duly notified of the same, and of the contents of this letter, that each may fully understand what points are at issue in such "interference case," and thereby be better prepared to go on with the same. I would prefer that only 20 days be given to each party to file the preliminary statement required by the rule, and that after that you give 60 days for the taking of testimony. By pursuing the course above indicated, the rights and interests of each one concerned would be more fairly reached.

Such an interference would involve questions of priority of invention as well as questions of title thereto.

The affidavit of verification more fully explains the record of copy agreement, as well as other matters connected with the same. I would wish to have entered upon the file paper the name of the aforesaid named paper, including the date of said recorded paper and said affidavit. I desire immediate action, as I desire to return to my family at once.

Respectfully, etc.,

MARCUS P. NORTON.

J. Q. S.

1139 *Complainant's Exhibit Norton No.* 18.—*J. A. S., ex'r, June* 29, 1878.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this fourteenth day of September, A. D. 1871, before me personally came Marcus P. Norton, who, being duly sworn according to law, deposes and says that the within letter was by him prepared on the day of the date thereof, and on that day he took the same to the Patent Office with him, together with the affidavit subscribed and sworn to on the 22d day of August, 1871, by him, and marked Exhibit O, and attached to the affidavit of Chas. Cons. Callan, expecting there to receive the copy agreement which he had offered for record on the previous day as a copy, and immediately thereafter he intended to file this letter, the said affidavit, and recorded copy agreement between himself and F. G. Ransford and Peter Low, in his pending application for reissue, and thereupon ask an interference as stated within.

MARCUS P. NORTON.

Subscribed and sworn to before me this fourteenth day of September, A. D. 1871.

[SEAL.] CHAS. CONS. CALLAN,
Notary Public.

1140 *Complainant's Exhibit Norton No.* 16.—*J. A. S., ex'r, June* 29, 1878.

DEPARTMENT OF THE INTERIOR, PATENT OFFICE,
Washington, D. C., August 23*d*, 1871.

Until further orders Marcus P. Norton will not be permitted to examine any papers, look into any files, or transact any business in the Patent Office, except by and through some respectable and accredited attorney.

M. D. LEGGETT,
Commissioner Patents.

1141 *Complainant's Exhibit Norton No.* 20.—*J. A. S., ex'r, June* 29, 1878.

UNITED STATES PATENT OFFICE,
Washington, D. C., Oct. 22*d*, 1872.

SIR: In your letter of the 5th inst., calling for copies, you request among others "duplicates of M. P. Norton's affidavits filed in explanation and defense of charges preferred against him by the Commissioner of Patents," etc. In reply, have to say that no such papers were filed by him, his defense being verbal.

The other copies called for have been sent.

Respectfully,

M. D. LEGGETT, *Com'r.*

W. W. SECOMBE, Esq.,
No. 7 Park Place, New York City, N. Y.

1142 *Complainant's Exhibit Norton No. 22.—J. A. S., ex'r, June 29, 1878.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents and drawings in the matter of the application of Marcus P. Norton and C. A. Haskins, filed Oct. 15th, for "hand-printing stamp."

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this nineteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[SEAL.] J. M. THACHER.
Acting Commissioner.

NEW YORK, *Oct. 13th*, 1857.

Hon. COM'R OF PATENTS:

SIR: Enclosed I send a withdrawal and receipt of $20.00 in the application for a patent for R. R. chairs; also the treasurer's receipt for $10.00, which will complete the fee in the application for a patent for "hand-printing stamp" by myself and C. A. Haskins forwarded this day per express.

In the matter of the R. R. chair we have concluded to make
1143 another application under some alterations from the present form, as the office have already hinted, previous to the examination, that it would be rejected.

Your obedient servant,

MARCUS P. NORTON.
Troy, N. Y.

P. S.—Since writing the above I have endeavored to exchange Troy money for gold, but in vain. I will send $10.00 in gold upon my return from here to Troy to-morrow.

MARCUS P. NORTON.

(Endorsed:) Received and filed October 15, 1857. R. S. G.

To the Hon. COMMISSIONER OF PATENTS:

The petition of Marcus P. Norton, of Troy, N. Y., and C. A. Haskins, of New York, in the county of New York, and State of N. Y., respectfully represents:

That your petitioners have invented a new and improved hand-printing stamp, with self inking reservoir and date-changing apparatus, which they verily believe has not been known or used prior to the invention thereof by your petitioners. They therefore pray that letters patent of the United States may be granted them therefor, vesting in them and their legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, they having paid ($30.00) thirty dollars into the Treasury, and complied with the other provisions of the said act.

And your petitioners do hereby appoint Marcus P. Norton, of
1145 Troy, Rensselaer County, State of New York, their attorney, and authorize him to alter or modify the within specification and claim as he may deem expedient and receive their patent, and also to

receive back any moneys which they may be entitled to withdraw, and to receipt for the same.

MARCUS P. NORTON.
C. A. HASKINS.

STATE OF NEW YORK,
County of New York, ss:

On this thirteenth day of October, A. D. 1857, before me, the subscriber, a commissioner of deeds, personally appeared the within named Marcus P. Norton and C. A. Haskins, and made solemn oath, according to law, that they verily believe themselves to be the original and first inventors of the within described new and improved hand stamp, and that they do not know or believe the same was ever before known or used, and that they are citizens of the United States.

EDWARD A. FRASER.
Commissioner of Deeds, New York.

(Here follows diagram, marked page 1144.)

SPECIFICATION.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of Troy, N. Y., and C. A. Haskins, of New York, in the county of New York, and State of New York, have invented a new and improved hand printing stamp, with self-inking reservoir and date-changing apparatus, and we do hereby declare that the following is a full and exact description of the nature, construction and operation thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon. We describe our invention in the following manner, to wit:

1st. The nature,
1146 2d. The construction,
3d. The operation, and
4th. The claim,

which we draw out of and base upon the said nature, construction, and operation.

NATURE OF THE INVENTION.

The nature of our invention consists in making a hand stamp with a reservoir and self-inking roller, the reservoir being upon the inside of said roller, and contains ink for from six months to one or more years. It also consists in a chase, hereafter to be described, which will admit of different forms of type to the same machine without alteration in it. It also consists in the passing of the roller over the type by the downward motion of the same, and the restoration of said roller to its proper place by means of a spring and frame hereafter to be described. It also consists in a set of wheels governed by an index pointer for changing the month and day of the month, also the manner of attaching to form so as to give the month and day of the month required without taking away the form or resetting of the type. It also consists in constructing a wheel with type thereon for the use of banks, so that by the same wheel or die banks may stamp upon notes, checks, bills of exchange, etc., any endorsement required, all of which is done by one machine, and at one transaction, if required. It also consists in arranging the machine so that postmasters may print way-bills upon the outside of envelopes or otherwise, a form of which may be seen in the drawings.

CONSTRUCTION.

We construct our invention in the following manner, to wit: Fig. 1 is a perspective view; fig. 2 is a side view of the type wheels for the month and day of the month; fig. 3 is a sectional view of the
1147 type wheels, also of the index for each; fig. 4 is a reverse view of the form for way-bills, and showing the month and day of the month in the same, ready to use for an impression; it also shows a part of the said type wheels; fig. 5 shows the reservoir inking-roller, with the cloth upon one part, while at the other may be seen a representation of ink, also the passages of the ink from said reservoir to the outside covering of cloth or other substance which will distribute the ink upon the type. At fig. 1 (*m*) shows a recess in the bottom of the plate upon which the impression is made. (*n n*) also shows a recess for the purpose of receiving some kind of elastic substance to prevent an injury to the type when the impression is given. (*m''*) shows the stem of the frame (*l*) which holds upon the arm (*f f*) the roller frame. (*e e* and *n'*) is a thumb-screw. (*q*) is a flat spring fastened in the arm (*f f*). (*m'*) shows the head of the impression-rod (*a*), which part of the rod is made larger than at (*h*), which is for the purpose of holding the coiled spring at dotted lines (*o o o*) in the tube (*g'*). (*d*) is a guide-pin passing in the groove (*b*) and stops the rod (*a*) at (*c*). (*l*) is the stem of the frame holding the type wheels, and is secured in (*h*) by the thumb-screw (*j*). (A and B) represent the frame holding the type-wheels. (*k*) is the index pointer which moves the day of the month wheel, which wheel is held in its proper place (*k' k*) by the pin (*h*); said pointer is held upon the shaft (*s*) by the nut (*v*). (*c* and *f*), fig. 3, are the same as (*k* and *h*), fig. 1, only they are to move the month wheel. (*y*), fig. 1, shows the type form secured by the pins (*c' c'*) and the thumb screw (*c'*). (*r*) is the reservoir inking roller resting in the frame (*e e*) at (*a a*). (*w*) shows the place where the ink is received in the roller, and is also the stop The figures and initial for the month and day of the month are shown—figs. 1 and 3; (*c* and *c'*), fig. 2 shows the screws holding the chase to
1148 the index and frame for type-wheels (*c' c*). Fig. 1 is the head of the ink-roller, which contains its bearings (*a'*). Fig. 3 is the head or stop of the shaft (*a* and *s*). At fig. 6 (*w*) is the bearing screwed into the head (*b' b'*), which is for the purpose of securing the ink within the roller (*r*), and at which place the said ink is admitted into said roller. The passages are represented at the small dots in the part of the roller not shown with cloth upon it. The type wheels may be disconnected from (*h*), fig. 1, by means of the thumb-screw (*j*), which part is seen at fig. 3, and in its place may be put a chase, which shall be fastened by the same screw, and which may receive any form of type required. The upper part of the frame may swing from over the plate (*n n*) so as to stamp a large package of letters as they may be upon the desk or table. The self-inking roller, being made hollow, will hold ink sufficient for any length of time from one day to ten or more years, and will thereby always be ready for use. The type-wheels are of the same size each to each; one has twelve sides for the respective months, while the other has thirty-one for the respective days of each month. Said wheels move upon a shaft independent of each other, also of the form of type used. We also use a wheel for bank purposes, and which contains as many sides for type as may be used or required by the bank using the same. For banks we use as many different rollers as they require different kinds of ink, which rollers may be so arranged as to bring into use the kind of ink required. Each roller contains a different color of

ink. It also may be done by a variegated roller. The cylinder for the day of the month may be made in two wheels, which shall number from one to nine, and a blank which could then number ninety-nine, and any number less. The two wheels would be smaller and exactly alike. All the wheels would then be less in diameter, and might all be operated by one index. Type upon the said wheels are dovetailed in the pe-
1149 riphery of the same, or may be soldered upon the outmost part of them, or the wheels may be cast at one time with type complete, at the circular end of the form. Fig. 4 may operate a wheel which shall give the number of letters and their value in each respective envelope.

OPERATION.

By pressing upon the head (m''), the type or form is carried down to make an impression, and as it thus goes down the inking roller passes over it, distributing ink upon the type. The type or form is returned to its former place by the coiled spring (o o o), in the cylinder (g'), fig. 1. At the same time the inking reservoir is returned by the flat spring (g), upon the lower end of which rests the cross bar of the frame (e e and c). To change the month, the pointer (e' and f') is moved one space; so to change the day of the month, the pointer (k and h) is moved one space, as seen at (k). This operation brings the type for month and day thereof in their proper position for an impression, as seen at fig. 4. The form (y) may be removed and another take its place by the thumb-screw (c'), fig. 3, being loosened, etc. The reservoir inking roller, fig. 5, is covered with cloth or any other substance that will allow the ink to distribute through and upon it. One, two, or more thicknesses may be used, as the case may require. The ink is admitted to the reservoir by taking out the screw (w). When the chamber is full, then the said screw is returned to its proper place, and when so returned forms one of the bearings of said roller. The said roller may be taken out at pleasure, as seen at (o o), fig. 1. When the index for month and day of month are set to their right place, they are or may be strongly secured there by the screw (v) on the shaft (s). Each index operates separate and independent of each other. Any required form may be used, as herein-
before explained. The index (k' and c) may be made upon the re-
1150 spective wheels, and the frame (H B) lessened in size and weight.

CLAIM.

We do not claim the passing of the ink roller over the type (y) by the downward motion of the same. Nor do we claim printing words or figures by means of a wheel, or cylinder; but what we do claim and desire to secure by letters patent is,

First. The self-inking reservoir roller, as herein described.

Second. The arrangement of the month and day of month wheel upon one shaft, combined with and operated by the pointers and indexes, and the arrangement of the form (y) in the chase, independent of, and giving an impression with the initials and figures of the respective type-wheels, as herein substantially set forth.

MARCUS P. NORTON.
C. A. HASKINS.

Witnesses:
EDWARD A. FRASER.
WM. F. FRASER.

(Endorsed:) Received and filed Oct. 15, 1857. A. S. G.

18th.

U. S. PATENT OFFICE,
Nov. 18th, 1856.

GENTLEMEN: Your application for letters patent for a hand printing stamp has been considered and rejected.

The device presented under your first claim is found in E. E.
1151 Barrett's improvement in printing presses, patented July 21st, 1857. Its equivalent obtains also in L. Bailey's hand-stamp, patented March 3d, 1857. The contrivances embraced under your second claim have likewise been anticipated. See T. J. W. Robertson's improved hand stamp, patented September 22d, 1857, and Richard Walker's book-paging machine, for which a patent was refused December 12th, 1855.

Respectfully, etc.,

Messrs. M. P. NORTON and C. A. HASKINS, care of M. P Norton, esq., Troy, New York.

(Endorsed:) Brief letter V. M. P. Norton and C. A. Haskins. Hand-printing stamp. Nov. 18th, 1857.—Rhodes.

NEW YORK, *Nov.* 23, 1857.

To the COMMISSIONER OF PATENTS,
Washington, D. C.:

DEAR SIR: Will you be so kind as to inform me if Mr. Marcus P. Norton and Peter Low, of Troy, N. Y., have forwarded to your department the desired amount of money for the procuring of a letter patent of a reservoir, date-changing hand-stamp, which stamp and drawings were sent to your department on or about the 27th or 28th of October last. My agreements with those parties were that they were to furnish the money for the procuring of the patent of the same.

I cannot get the satisfaction from them that I desire. I therefore appeal to you for this information. They say that they have entered a caveat some time since, and paid the amount, $20.00, and have
1152 since sent the balance of money required for the procuring of the patent. If they have not sent the balance, or any part, you will confer a great favor by answering this by return of mail, if possible.

P. S.—Please to address me at 23 Scammel street, New York.

Yours, respectfully,

C. A. HASKINS.

(Endorsed:) C. A. Haskins. Answered and filed Nov. 27, '57.

PATENT OFFICE DEPARTMENT.

Business for Marcus P. Norton and C. A. Haskins, of Troy and New York.

Application for a patent for "hand-printing stamp." (Pending.)
Caveat enclosed. Dated , 185 .

To the Hon. COMMISSIONER OF PATENTS:

SIR: In accordance with a power of attorney given me by M. P. Norton, of Troy, and C. A. Haskins, of New York, county of New York, and State of New York, I do hereby withdraw their application for a patent for an improvement in hand-printing stamp, now in your office, and request that ($20.00) twenty dollars may be returned to my office

by mail, agreeable to the provision of the act of Congress authorizing such withdrawal.

MARCUS P. NORTON,
Attorney for Applicants.

Dated at Troy, N. Y., Nov. 23d, 1857.

1153 Nov. 23*d*, 1857.

Hon. COMMISSIONER OF PATENTS,
Washington, D. C.:

SIR: Enclosed you will please find withdrawal and receipt in the above entitled case.

Your obedient servant,

MARCUS P. NORTON.

(Endorsed:) With'al, etc. Filed Nov. 24, '57.

437 Peale. 73

No.
M. P. Norton and C. A. Haskins,
Of Troy, New York,
County of "
State of "
Hand Printing Stamp,
Received October 15, 1857.
Petition " " "
Affidavit " " "
Specification " " "
2 drawings " " "
Model " " "
Cert. dep. with'al to appt.
Cash $20, Oct'r 15, 1857.
Examined 10, Nov. 16, 1857.
2 issue, cash by mail to M. P. Norton, att'y, Nov. 25, 1857.
1154 3 patented.
Recorded vol. , page .
Duplicate drawing sent to M. P. Norton,
May 10th, 1858.
P.

M. P. NORTON,
Troy, N. Y.

(Endorsed:) Exd., L. P. H. Rej. Nov. 18th, 1857.

1155 *Complainant's Exhibit Shavor, Corse, and Eddy.—J. A. S., ex'r, June* 29, 1878.

DEPARTMENT OF THE INTERIOR.

United States Patent-Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in liber O^{22}, page 12, and that said annexed copy has been compared by me with the original, and that it is a correct transcript therefrom and of the whole of the original.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this seventeenth day of May, in the year of our Lord one thousand eight

hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL] W. H. DOOLITTLE,
Acting Commissioner.

Liber O[22], p. 12.

Whereas the letters patent of the United States of America were duly granted and issued to Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, upon certain improvements in post-office postmarking and canceling hand stamps, dated and num-
1156 bered as follows, to wit, January 14th, 1862, No. 34184; December 16th, 1862, No. 37175; April 14th, 1863, No. 38175; reissued August 23d, 1864, No. 1748. Also letters patent for internal revenue canceling stamp, dated August 15th, 1865, No. 49432. Also letters patent for improvement in postmarking and canceling hand-stamps, issued July 13th, 1869, and ante-dated to June 10th, 1869, No. 92688. And also letters patent for postmarking letters and canceling stamps by cutting the same, and dated August 9, 1859, No. 25036, and extended for seven years by the Commissioner of Patents. And whereas Charles Eddy, of the city of Troy, county of Rensselaer, and State of New York, has consented to accept the right, title, and ownership of each and every of said letters patent, in trust for the sole benefit of the owners thereof, in accordance with a memorandum in writing of even date herewith. And whereas it is desirable that but one person shall have the management and control of the said patents for the sole purpose of effecting settlements under the same with any and all infringers of the same, or any one or more thereof, or with whomsoever may use the inventions and improvements contained in the said letters patent or any of them; which settlement for the past or future use may be in any way the said Eddy may deem proper and expedient:

Now, therefore, for and in consideration of the sum of one dollar, and in the further and other valuable considerations which we now and hereby duly acknowledge the receipt of the same, we, Jacob Shavor and Albert C. Corse, of the said city of Troy, county and State aforesaid, have sold, assigned, and transferred, and do now and hereby sell, assign, and transfer unto the said Charles Eddy, in trust, in the manner so as aforesaid stated, all the right, title, and interest of every name and description which we now have in, to, or for the said letters patent, and the inventions and improvements there-
in named, described, and claimed as new and patentable, or in
1157 either of them. To have and to hold the same, and each and every thereof, in trust as aforesaid, with full power to enforce settlement and payment for the past or the future use of the said inventions and patents, or either of them. He, the said Charles Eddy, having full and absolute control of each and all of the said several patents hereinbefore named by date as well as by numbers, commencing with the date of each thereof, intending herein and hereby to sell, assign, and transfer unto him, the said Charles Eddy, in trust, all our right, title, and interest and ownership in any or all the said several letters patent, from the date of each of the same and until the expiration of the term for which they were respectively granted and issued unto the said Marcus P. Norton. And hereupon and hereby the said Charles Eddy is vested with full and absolute power over and control of any and all settlements, and to settle and receipt for, and to sign any and all nec-

essary papers concerning either the past or future use of the said inventions and patents, or either one or more thereof, in settlement and payment for such use by and with person or persons, corporations, government, or any body whomsoever.

In testimony whereof we have, on this 18th day of December, A. D. 1876, hereunto set our hands and seal in presence of two witnesses, namely:

C. H. McGRATH.
C. G. EDDY.

JACOB SHAVOR. [SEAL.]
ALBERT C. CORSE. [SEAL.]

Recorded January 11th, 1878.

1158 *Sherwood's affidavit, attached to Norton's caveat.*

United States circuit court, southern district of New York. In equity.

THOMAS J. W. ROBERTSON
vs.
THE SECOMBE MANUFACTURING COMPANY.

NORTHERN DISTRICT OF NEW YORK,
County of Rensselaer, ss:

Cyrus A. Sherwood, of the city of Troy, in said county, being by me duly sworn, doth depose and say: That on the 19th day of March, 1872, he made a deposition before John T. Lamport, a United States commissioner, in which, among other things, deponent stated that during the construction of a certain model therein described he was aided in the construction of the same by means of certain copies of a caveat then on file in the Patent Office as deponent was informed by Marcus P. Norton, and believes the same to be true, and for a more full statement of the same deponent refers to that deposition.

Deponent further says that he has carefully read the certified copy of caveat hereto annexed and marked Exhibit B., Norton, and dated June 21st, 1855, for railroad ticket printing press, and especially so the additional paper therein contained and dated Tinmouth, Vt., August 21st, 1855, and signed Marcus P. Norton; and deponent believes the
1159 same to be a true and faithful copy of the additional description paper from which deponent was aided in the construction of the model mentioned in two former depositions dated respectively "March 19th, and April 5th, 1872." The said additional description paper in the certified copy of the caveat hereto annexed, contains the same identical invention as is represented by the said model.

Deponent further says that the certified copy of the caveat above referred to was certified by M. D. Leggett, Commissioner of Patents, on the 22d day of August, 1871, as will appear by reference to the certificate thereof of said Commissioner of Patents.

CYRUS A. SHERWOOD.

Subscribed and sworn to before me this 5th day of April, 1872.
[SEAL.] A. D. LYON,
Notary Public, Troy, N. Y.

1160 *Complainant's Exhibit Norton's Caveat, dated June 21st, 1855.—J. A. S., Ex'r, June 29, 1878.*

The U. S. Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the caveat of M. P. Norton, filed June 21st, 1855, for "railroad ticket printing press."

In testimony whereof, I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this 22d day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

[SEAL.] M. D. LEGGETT,
Commissioner.

To the COMMISSIONER OF PATENTS:

The petition of Marcus P. Norton, of Tinmouth, in the county of Rutland, and State of Vermont, respectfully represents:

That he has made certain improvements in a machine for the purpose of printing railroad tickets, which is called the "railroad ticket printing press," and that he now is engaged in making experiments for the purpose of perfecting the same preparatory to his applying for
1161 letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office, agreeably to the provisions of the act of Congress in that case made and provided; he having paid into the Treasury of the United States twenty dollars, and otherwise complied with the requirements of said act.

MARCUS P. NORTON.

TINMOUTH, VT., *June 4th*, 1855.

SUBJOINED DESCRIPTION OF RAILROAD-TICKET PRINTING PRESS.

My invention consists of a machine for the purpose of printing and cutting railroad tickets, cards, etc. A frame is made of iron and in shape sufficient to contain the machinery for the above purpose. A semi-cylinder is made stationary at or near the bottom of the frame; on the surface of said cylinder passes the inking rollers, which are moved over its entire surface by the rotation of a crank hereafter described. A square bar passes up through said cylinder in its highest part. In the upper end of this bar the form of type is made fast by sliding into a dovetail groove, so as to admit of different forms of type for the purpose of printing tickets or cards for different stations on the line of railway. The form or forms thus secure, is moved up and down by means of a cam revolving in the semi cylinder or by a toggle-joint lever working in the aforesaid cylinder. It is moved up for the purpose of giving the impression, and down to ink the type. When the form is brought down by the cam or toggle-joint lever, it is on a line with the surface of the said cylinder, then the inking rollers pass over it and ink the type, then, by working the machine, it moves up and leaves the desired
1162 impression on the under side of the paper, which is under the impression plate. The cam in the cylinder is made fast to a shaft extending under the said cylinder. At one end the said shaft there is a cog-wheel, geared with a cog-wheel on the shaft, which holds the crank

moving the inking rollers; said cog-wheels are made of a size required, so as to let the ink rollers pass over the type when the form is at rest, and to let the form move up to give the impression when the inking rollers are brought to the extreme end of the semi-cylinder by the roller crank. In the cog-wheel upon the crank shaft there are cogs left out, for the purpose of letting the form of type remain at rest, when the inking rollers pass over to ink the type. At one end of the said roller crank shaft the driving power is applied. Over the semi-cylinder passes a part of the frame, through which passes the type in its upward and downward motions, and into which slides the required form, held fast by means of a dovetail groove. Said form is made of iron and steel. The upper part is made to conform to or with the impression plate, thus forming a shear-box for the purpose of cutting the ticket or card the required size. Over this shear-box is an impression plate, with an India rubber face, made the exact size of the shear-box blow. The said plate is made to rise and fall by means of a crank attached to a shaft below and connected by a crank-rod with said plate. The said plate moves up to let the sheet of paper pass under, which when done moves down into the shear box, cuts the ticket or card and remains at rest while the impression is given. The paper is fed to the machine in sheets, and is cut into the required size, one at a time, then printed. In the said shear-box there are two springs, extending the whole length of the said box, and on opposite sides; one is placed higher than the other, so as to take off the printed ticket or card as the form of type moves down to receive ink. Said springs give back so as to let the type pass
1163 up to give the impression. After the impression is given, the aforesaid impression plate moves back to its place. The said plate remains at rest while the impression is being given, by the omission of cogs in the proper place of the upper cog-wheel to correspond to the omission in the cog-wheel below governing the form of type. At the extreme line of the semi-cylinder, and upon each side, there is a reservoir for ink, under which are distributing rollers, if required, made to revolve by being attached to some part or parts of the machine. The form of ticket is made like the one hereafter annexed. The name of the road, the name of the town where the ticket was sold, the day of the month and year when sold, and name of town to which it is sold, are stereotype plates, made of an exact size to fit each place respectively, and held there by means of dovetail grooves. The word Clarendon, for example, is drawn out, and Rutland, of the same size, is inserted. The word Rutland, at one end of the ticket, is drawn out, and Clarendon, of the same size, is inserted; then you have a ticket from Clarendon to Rutland, the reverse of the present form. Then take out the day of month and put in the required date, change the month and year in the same manner, when required. In the same manner as above described, all the different towns are changed upon the line of the road. For printing coupon tickets, remove the shear-box and impression plates, and put in the coupon form and impression plate, which is done by drawing the said form out of the aforesaid dovetail groove, and sliding the coupon form into the same place. The coupon form is made of any of the other forms, as the case may require, all of which are put in dovetail grooves in a plate of the required length.

THE OBJECT OF THE PRESS.

1st. To save the trouble and expense for railroad companies of
1164 getting tickets printed at common printing offices, also to save so many forms as required now.

2nd. To print the ticket with the day of the month on which it is sold, and for which it is good.

3rd. To have the ticket clerk print the ticket or tickets when called for, and distribute them along the line of road the day previous to the sale, or

4th. To have a press in each ticket office along the road, and print the ticket or tickets when sold.

MARCUS P. NORTON.

RUTLAND.	Western Vermont Railroad.	July 4, 1855.
	CLARENDON.	
	Geo. R. Weed.	

RUTLAND COUNTY AND STATE OF VERMONT, *ss:*

On this 11th day of June, 1855, before me, the subscriber, a justice of the peace, personally appeared the within named Marcus P. Norton, and made solemn oath that he verily believes himself to be the original and first inventor of the manner herein described for printing and cutting railroad tickets, and that he does not know or believe the same was ever known or used, and that he is a citizen of the United States.

Dated at Tinmouth on this 11th day of June, 1855.

GEORGE CAPRON, JR.,
Justice of the Peace.

Examined.—M. A. O.

(Endorsed:) Rec'd and filed June 21, 1855. S. T. Shugert.

1165 AUGUST 10, 1870.

HON. COMMISSIONER OF PATENTS:

SIR: Please have made for me certified copy of file wrapper and contents thereof, of my caveat upon "R. R. ticket printing press," filed June 21st, 1855.

I want two copies of these papers, certified in two separate packets.

MARCUS P. NORTON.

Additional paper to railroad printing press.

TINMOUTH, VT., *August 21st*, 1855.

HON. COMMISSIONER OF PATENTS:

SIR: I wish to file this paper as an additional caveat description to my railroad printing press, now on file, under date of June 4th, 1855, and sworn to the 11th day of June, 1855.

I propose to make the form of type as I have described in my caveat, or make a cylinder of sufficient size to contain upon its surface or periphery the name (in stereotype) of *the name of* stations on the line of road in order as they are on said road; this I call the cylinder of towns to where tickets are sold; this cylinder is placed into the form and made to revolve at the will of the operator. There is another cylinder of the same form like unto the other and this is called cylinder from which the

tickets were sold. The name of the road and all other printed matter to be done may be done by cylinders constructed for that purpose, or stationary type may be used for all, excepting for the month, the day of the month and the year, which will be done by cylinders made for that purpose. At one end of each cylinder there is an index for each
1166 cylinder, and a pointer connected with the cylinder revolves the same to where it may be desired to use the same, where it is then held by the use of a pin and spring. The operator moves these cylinders to and fro from whatever name or date he wishes to sell and date tickets for use on the railroad. This press is chiefly designed to be used in the general ticket office by the general ticket master or his clerks, or it may be used in any office on the line of the road where printing and dating is desired. The said cylinders when moved to their respective places are held fast by a spring connected with the pointer and governed or regulated by the indexes, as will more fully appear herein. I now set forth a series of revolving type wheels or cylinders for printing certain matter on railroads, but I also intend such wheels to do all kinds of printing required in any office other than the printing the name of towns on railway line with the date of the selling of the tickets, all of which is done by means of suitable cylinders for that purpose. I now deem it best to give a more full description of the dating wheels, and it is substantially as follows: I make two wheels or more, if necessary, and on the circumference or periphery of which I have the required type arranged so as to print the several months in the year, and on another cylinder or wheel I have arranged the type to print the day of the month. There may also be a type for the years, so that several years may be printed when desired, from the type put on a wheel in same manner as for the month and day of the month. These wheels or cylinders containing such type as may be desired to print from, and put and arranged on a central shaft or other good bracing or turning point, and the printing surface is brought together on a line or in a suitable form when the month, the day of the month, and the year, with any other matter connected with the same as printed by a blow of the in-
1167 strument arranged to give the impression. It may be used as a hand printing or stamping device for dating anything desired to have the date printed or formed thereon. This would be very convenient, for then there would be no type to lose, for all the dates would be on the cylinders, from which the same may easily and readily be set or arranged to print the correct date.

The dating cylinders may be of any size that will answer the purpose required. The day of the month wheel may be made of such size as to require two wheels in order to give the correct dates and to reduce the size of the wheels or cylinders. In that case one wheel would have figures 1, 2, 3 on the periphery of the same, while on the wheel to correspond to the same there would be on the periphery the figures 1, 2, 3, 4, 5, 6, 7, 8, 9, and a (0) or cypher.

These when changed will give any date required. It will now be seen that the correct date is given from and by type wheels or revolving and changing cylinders or disks.

The letters or type may be cast on the periphery of such wheels, or formed in slips or pieces and soldered upon the periphery of the wheel desired, or they may be engraved on the same.

Or they may be swedged, formed, or pressed thereon out of the same circumference or periphery, or they may be so constructed as to be dovetailed therein. There are various other ways for forming or constructing on such wheels such letters or figures as may be required.

The wheels or cylinders may be made of malleable cast-iron, or of other cast metal, or made of brass or similar metal. Brass would be the better metal to use when the letters or figures are to be engraved, or swedged, or raised, or pressed, or formed thereon, because it would work more easy and make better work.

Stereotyped letters and figures can be made and then soldered on such circumference surface of such wheels. I think the best way will
1168 be to dovetail them in, because when worn out a new one can be put in its place, as it would require expensive machinery to cast a press form, or swedge the letters or figures on said circumference or periphery of such type and dating wheels or cylinder.

To ink the said wheels or type cylinders when arranged for printing and dating, I pass an ordinary inking roller over the face or surface of all the type to be printed from, and then it is returned to its proper place. This roller is passed over a suitable distributing surface, which is for the purpose of getting the ink on the type wheels more evenly, and thus make a better impression on the paper to be printed and dated.

These wheels are each operated in a suitable form or chase constructed for that purpose. To set them each in proper condition or order for the date, and as a matter of convenience, I use pointer or arm of any suitable construction, and secure the same to the shaft or the type wheel or the wheel itself, and then I have indexes on the frame or on the respective type wheel, so arranged as to enable the operator to put the right month, day of the month, or year, etc., into the printing line or surface, so that the same will print the date required. These indexes will be of any suitable construction, and engraved, stamped, or otherwise put upon the said type wheel frame-work, or upon each wheel as may be best, and in such manner that the operator may readily see the same, so as to know how to govern the setting of the wheels in order to print correctly the matter desired.

These wheels or cylinders are held in their fixed position by a small pin having a suitable spring attached, which may be in the arm or pointer, or in the said frame-work, and extending into the respective wheels, having a corresponding hole or opening for the spring to pass into to hold it.

The spring is to hold the pin in its place so that the wheel can
1169 not move when in its fixed position and in use. By moving any one of the type wheels or cylinders forward to change its use, either to change the month or the day of the month or the year, the pin will be forced into a corresponding opening by the spring, and thus held until another change is had; so the operation will continue. Words or figures may be used to index or represent the month, and may be on the side of the wheel or on the frame holding the type wheels on their shaft, and will of course always be so constructed as to be in sight the most convenient. This will apply to all the wheels or cylinders for printing the month, the day of the month, or the year. So, too, if any cylinder be used to print any other matter, the same may have an index to correspond to the matter to be printed.

The said dating-type wheels may be in a fixed frame and the impression taken from the top by any suitable device, to give the force or blow thereon, and the inking roller made to pass over the top in any good and convenient way, or the said type dating wheels and frame in which the same operate may be so arranged as to give a striking like blow by the hand, or put into a frame on a stem, and be forced down upon the paper and then brought back by a spring.

I am having a machine made with these improvements in, and hope

to apply for a patent within the caveat year, yet there are some other improvements I propose to make in this machine as a whole. The machine may be used for banks, railroad companies, business firms, and in post-offices.

Respectfully, your obedient servant,

MARCUS P. NORTON.

Ex'd.—V. E. L.

1170 TINMOUTH, VT., *August* 21*st*, 1855.

COMMISSIONER OF PATENTS:

Will you please send me the 2d part of your report of 1854?

Can I make application for a patent (on my caveat) for post-office waybill printing and folding machine at two different times? The caveat has expired. I wish to make application on the folding part first, as the whole machine will be subject to two patents or applications. If I can apply for one at a time, can the caveat fee be applied on that one application?

Respectfully, your obedient servant,

MARCUS P. NORTON.

(Endorsed:) Received and filed August 25th, 1855. S. T. Shugert.

AUGUST 5, 1871.

I hereby consent that Mr. Robertson have a duly certified copy of my caveat herein named.

MARCUS P. NORTON.

Please furnish a certified copy of the file and contents of caveat of Marcus P. Norton for railway ticket printing press, dated June 21, 1855.

T. J. W. ROBERTSON.

File and contents caveat, see Aug. 5.

Great haste.

1171 Applied Mar. 21, 1857.

Caveat.

No.
M. P. Norton,
Of Tinmouth,
County of Rutland,
State of Vermont.

R. R. ticket printing-press.

Rec'd June 21, 1855.
Petition, " "
Affidavit, " "
Specification, " "
Drawing,
Model,
Cert. dep.,
1 cash $20, June 21, 1855,
Examined,

Issue,
Patented, 185 ,
3 Recorded vol. page
Ex'd, R. W.

1172 *Complainant's Exhibit. File wrapper and contents of Norton's letters patent of January 14th, 1862.—J. A. S., Ex'r, June 29th,* 1878.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of letters patent granted Marcus P. Norton, assignor to self and Charles Eddy & Co., dated January 14th, 1862, No. 34184, for "hand stamps for post-office."

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this nineteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[SEAL.] J. M. THACHER,
Acting Commissioner.

To the Hon. COMMISSIONER OF PATENTS:

The petition of Marcus P. Norton, of city of Troy, in the county of Rensselaer, and State of New York, respectfully represents that
1173 your petitioner has invented new and useful improvements in post-office post-marking hand stamps, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress, and all amendments thereof, in that case made and provided, he having paid ($15) fifteen dollars into the Treasury of the United States, and complied with other provisions of the said act and the several amendments thereof.

And your petitioner does hereby constitute and appoint Marcus P. Norton, of Troy, county of Rensselaer, State of New York, his attorney, and fully authorize and empower him to alter or modify the within specification and claim as he may deem proper, expedient, and in conformity to law, and the decision or decisions of the Hon. Commissioner of Patents, hereby recognizing and confirming all that his said attorney may lawfully do or perform in relation thereto, and also to receive his letters patent when granted.

MARCUS P. NORTON.

Witness:
WARREN K. SOUTHWICK.

STATE OF NEW YORK,
City of Troy, County of Rensselaer, ss:

On this third day of August, A. D. 1861, before me, the subscriber, a commissioner of deeds, personally appeared the within-named Marcus P. Norton, and, being sworn according to law, says that he verily believes himself to be the original and first inventor of the within-

1174 described new and improved post-office postmarkin ghand stamp; that he does not know or believe the same was ever before known or used; that he is a citizen of the United States.

MARCUS P. NORTON.

Subscribed and sworn to before me on the day, month, and year first above written.

FRANK SCOTT,
Commissioner of Deeds, Troy, N. Y.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, have invented new and useful improvements in "post-office post-marking hand stamps," and I do hereby declare that the following is a full and exact description of the nature, construction, and operation thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, and making a part of this specification.

Fig. 1 is a perspective view. Fig. 2 shows a division of the entire hand stamp, vertically through the centre. Fig. 3 shows the face of the stationary form of type (D D), and each of the cylinder type as in a condition ready to give an impre-sion in print upon an envelope, railroad ticket, letter, package, or anything else desired. Fig. 4 shows the channel or groove for the cast type as shown in Fig. 5.

Like letters represent and refer to like parts.

The nature of my invention consists in constructing, combining, and arranging a hand stamp, hereinafter described, so as to contain a cylinder with initials of each and every month in the year, and two 1175 other cylinders with figures for the respective days of each and every month; also a cylinder with figures or characters to represent ten successive years, more or less, as the case may be, and which cylinders shall each and all revolve upon the same shaft, and within a stationary form of type, and thereby print the month, the day of the month, and the year, in connection with each, and each in connection with and at the same time of the printing of the subject-matter upon the aforesaid stationary form of type.

It also consists in constructing a ring or stationary type holder with a dove-tail channel or groove, so that the name of any town required may be set therein, together with the initials of any State required, and when thus arranged, are then and there firmly secured, ready for use.

It also further consists in firmly securing and fastening each and every of the aforesaid cylinders in their respective places, as and where adjusted, by the means hereinafter described. The respective parts are so arranged as to render them easily cleaned and readily adjusted to their proper and required places, also easily repaired or replaced when worn out. By arranging and combining each and every part required to postmark any letter or envelope, in the manner and form hereinafter described and set forth, there will be no liability or possibility of any part thereof being lost while being transmitted in the mails, or being lost at the post-office, or elsewhere where the same may be required or transmitted, unless the entire stamp be lost. This stamp is more convenient for postmasters and others using it on account of its being easily and readily adjusted to the month, day of the month, and to the year, and requiring not as much care to look after the various parts as now required by other stamps. It occupies much less room in the mail

bags while being transmitted to its place of destination. It takes less time, trouble, and expense to prepare it for such transmission.

1176 All the difficulties attending the efficient and successful use of the present hand stamps for postmarking letters as now used by the government are fully and completely overcome by the use of this stamp.

Each and every part containing letters or figures may be cast in a mould made expressly for that purpose, which parts, when in their respective places, are ready for use without any engraving thereon.

The letters or figures may be cast, chilled, or case-hardened, thereby making them cheaper than if made of wrought iron or steel, although they may be made of such or other material, and engraved if desired. This stamp may be used by railroad companies for the purpose of dating tickets, etc., etc., and may be also used by banks for any purpose there required. It may be used whenever and wherever desired, when and where it may be.

To enable others skilled in the art to make and to use my invention, I will now proceed to describe the construction and operation thereof.

I construct my post-office postmarking hand stamp as follows, to wit:

(A) Fig. 1 is the handle, and is also seen at Fig. 2, and is also made of wood; (B) is the frame to receive and hold type-wheels or cylinders (*a*, *b*, *c*, *d*), also the stationary form (D D). This frame is made of malleable cast-iron, and is cast in a mould to give the desired form or shape; (*a*) is the type cylinder containing initials for each and every month in the year, and is cast in a mould made expressly for the purpose of making such cylinder and letters thereon ready for use This mould is made in six, twelve, or more parts, so that it may be drawn from said cylinder when cast; (*b*) is a cylinder of the same diameter of (*a*), and contains the numerals 1, 2, 3, which are the only ones required upon the cylinder, to give in connection with the cylinder (*c*) the respect-

1177 ive days of each month as may be required.

This cylinder is made in the same way and manner as the cylinder (*a*); (C) is another type cylinder of the same diameter as (*a* and *b*), and contains the numerals 1, 2, 3, 4, 5, 6, 7, 8, 9, and a (0) or cipher. This cylinder, in connection with cylinder (*b*), will give any day in any month desired, and is made in the same way and manner as the cylinder (*a b*), and is placed in close proximity to the cylinder (*b*); (*d*) is another type cylinder of the same diameter as the cylinders (*a b c*), and contains figures, an abridgement for ten successive years, and is made in the same way and manner as each of the aforesaid cylinders.

These cylinders are each and all arranged upon the shaft (*c*), fig. 2, and are made fast in the required place of each by the screw (F) upon one end of the said shaft (C). This shaft (C) has a shoulder or stop upon the end opposite of the said screw, which shoulder bears directly against the cylinder (*a*), and the said cylinder (*a*) against the cylinder (*b*), and the cylinder (*b*) against the cylinder (*c*), and the cylinder (*c*) against the cylinder (*d*), and the cylinder (*d*) against that part of the frame (B) having therein the female part of the said screw (F). By moving the said shaft (C), each cylinder is drawn against the other next adjoining, as aforesaid, thereby holding each cylinder by the friction of the cylinder or cylinders next thereto. The shaft (C) has a bearing of greater diameter at one end thereof than at the other end. This is for the purpose as hereinbefore described.

The said stationary form (D D) may be made in a circle or any other shape desired, which shall contain the name of post office, where used, and the initials of the State where such post-office may be located, or

any other matter may be therein contained as the case may require. It is made of any required thickness, and has an inside and an out-
1178 side ring or circle around the said type, representing the name of the town or post office where used, etc., etc. It may be cast, chilled, case-hardened, or otherwise constructed, in the same manner as the aforesaid type-cylinders, but the cheapest, best, and most convenient way or manner to construct it is shown at fig. 4, where (*e*) represents or shows a channel or groove down and in the said ring (D D). This channel or groove is cut from one-fourth to three-eighths of an inch in depth, or more or less as may be found necessary.

It is cut square down with the inner ring, while the side next to the outer ring is cut "dove-tailing," thus making the said channel or groove wider at the bottom than at the top thereof. This is to hold any type set therein in the proper place for each, and in condition for printing, etc., as aforesaid. At (*f*) is an opening so as to receive the type as shown at fig. 5. This groove is also shown at fig. 2 in said form (D). When the type, as required for any name of any town or post-office are placed in the said channel or groove, through the said opening (*f*), then the remaining channel or groove is filled up with blocks or "spaces" of the same or other material than the said type, which prevent any type from coming out of the said channel or groove. When the said form, as shown at fig. 4, is placed within the frame (B), figs. 1 and 2, then the opening (*f*) is closed up by means thereof. When the type, as shown at fig. 6, are placed in the channel or groove (*e*) fig. 4, the face of said form and the face of the said type are upon a line with each, and thereby give an impression in print, even, and at the same time and operation. The said type are cast in a mould as required, to fit the said channel or groove. By this arrangement there will be no engraving required, nor any setting up of form for the purpose of casting from, for the respective post-offices, towns, States, railroad stations, names
1179 of railroads, etc., for such can be set from a font of such type made on purpose and kept at the "Post Office Department" or elsewhere, and set up in the said channel or grooves as aforesaid. The form (D D) figs. 1, 2, and 4, is fitted into the lower part of the frame (B), and there firmly fastened by means of the screws (E E), figs. 1 and 2.

There is a mortice or opening in and through the aforesaid form (D D), for the purpose of receiving the aforesaid cylinders (*a*, *b*, *c*, *d*), whereby the printing surface of the same are upon a direct and even line of and with the aforesaid stationary form of type (D D), so as to give an equal impression in print, each with each.

The aforesaid type or cylinders (*a*, *b*, *c*, *d*) revolve upon the shaft (C) within the said form of type (D D), and the printing surface of each are then and always upon a line with each other, whereby the desired impression in print and in ink is given. The frame (B) may be screwed or fastened to the handle (A), in any manner deemed best.

This stamp can be made at much less expense than any other kind of stamp or stamps for the same use and purpose, and is much more convenient, and is not as liable to get out of repair. No part of it can well be lost unless the entire stamp is lost, which is to be considered in the transmission of post marking stamps through the mails, for now there are so many separate and disconnected members or pieces, that they are liable to and in very many instances are lost in such transmissions and at post-offices where used, which are expensive and often inconvenient to replace.

It is more easily adjusted for use, and can be kept in repair at much less expense than any other stamp for the same use and purpose. Any

other matter required to be printed upon envelopes, letters, etc., etc., at any post-office, or at any railroad station, or any bank, etc., etc., may be done in the same way and maner, by preparing type expressly
1180 therefor upon one, two, or more cylinders, to revolve in such stationary form.

Having thus described the nature and the construction of my hand-stamp aforesaid, I will now proceed to describe its operation, which is simple and easy to be understood.

The cylinder (A) for the month revolves upon the shaft (C), and is brought into any required position on a line with the printing surface of the stationary type or form (D D) and there remains, and during the months for which it is set or fixed, which, when the month is ended, is then moved forward for the next month in succession, and so the operation is continued until the year is completed, when the same operation is again repeated. The cylinder (*b*) is moved forward one figure every ten days during any month or year. The cylinder (*c*) is moved forward one figure every day of the week, month, and year. The cylinder (*d*) is moved forward one figure every year during the term of ten years, when a new cylinder is put in its place to answer to the next ten successive years, and so on the operation continues without limitation. By the use of these cylinders as herein described, any year, month, and day of the month of any year may be given and printed, while at the same time the name of the town, post office, railroad station, bank, etc., etc., is given as aforesaid.

When each of the aforesaid cylinders is adjusted to its proper place as desired, it is there firmly held by turning the shaft (C), which, by means of the said screw thereon, will then bring each cylinder against the other next adjoining thereto, and the side of cylinder (*d*) against the frame (B), in the manner and form as hereinbefore described. The impression is made upon the envelope, letter, package, or whatever desired, by giving a downward and striking motion thereon. And so the operation continues for post-marking letters or anything else desired by the use of this stamp.

1181 This stamp may be made any size and strength desired. Any part thereof can easily be replaced, whenever for any purpose it may be required.

Having thus set forth and described my invention, what I claim and desire to secure by letters patent of the United States is the combination of four cylinders (*a*, *b*, *c* *d*) upon the shaft (C), with the stationary form of type (D D), whereby the day, month, and year are given together by one impression, substantially as herein described and set forth.

I also claim the combination of the shaft (C) with four cylinders (*a*, *b*, *c*, *d*) thereon arranged, with the frame (B), whereby the said cylinders are firmly held in their adjusted position, substantially as herein described and set forth.

In testimony whereof I have hereunto set my hand in presence of—

WARREN C. SOUTHWICK.
S. E. BLAKELY.

MARCUS P. NORTON.

TROY, N. Y., *August 3d*, 1861.

(Endorsed:) Specification, etc., post-office hand stamp. Recorded and filed August 8, 1861. P. E. W. Marcus P. Norton, Troy, N. Y.

PATENT OFFICE, *Aug.* 22, 1861.

SIR: Your application for letters patent for alleged improvements in hand stamps has been examined and the patent is refused.

The first or second sections of your claim have been anticipated by the patent granted to T. J. W. Robertson, Sept. 22, 1857. The
1182 last is met by an arrangement substantially equivalent in the patent of E. E. Barrett, granted July 21, 1857.

T. R. P.

MARCUS P. NORTON,
Troy, New York.

(Endorsed:) Off. Aug. 22, 1861.

OFFICE OF MARCUS P. NORTON,
ATTORNEY AND COUNSELOR AT LAW,
Troy, N. Y., August 28th, 1861.

Hon. COMMISSIONER OF PATENTS:

SIR: In reply to your letter of the 22d inst., rejecting my application for a patent upon "hand stamps," etc., I have to say that I claim to be the original and first inventor of the "Improvements in post-office post-marking hand stamps," as described in my specification, drawings, and model, in the application which you rejected on the 22d of August, 1861, and therefore and thereupon request your honor to declare an interference with the parties named in your letter of rejection, that I may have the opportunity to prove the priority of the invention, upon which you reject my application for a patent.

Yours respectfully,

MARCUS P. NORTON.

(Endorsed:) Rej. See Judge Merrick's decision. Appeal. Philip P. Justice, ass'r to Edw'd Young. June 13, 1859. M. P. Norton asks interference. Received and filed, Sept. 5, 1861. T. R. P.

1183 PATENT OFFICE, *Sept.* 6, 1861.

SIR: Your letter of the 28th ulto. is just received, and the request for an interference with certain patents referred on the 22d ulto. cannot be granted, both patents having been in existence more than two years, and it is presumed the articles patented have been on public sale.

See Judge Merrick's decision, June 13, 1859, on the appeal of Philip S. Justice, ass'r to Edw'd Young.

T. R. P.

MARCUS P. NORTON,
Troy, New York.

(Endorsed:) Off., Sept. 6, 1861.

OFFICE OF MARCUS P. NORTON,
ATTORNEY AND COUNSELOR AT LAW,
Troy, N. Y., September 9th, 1861.

Hon. COMMISSIONER OF PATENTS:

SIR: Your letter of the 6th inst. is at hand. In reply I have to say that I am morally and legally entitled to the interference asked for in the matter of my application for a patent upon improvements in "post-office hand stamps," so far as relates to that part of the invention said to interfere with the patent granted to "T. J. W. Robertson," Sept. 22,

1857. The opinion or rule establishing the doctrine that where a patent has been granted for more than two years prior to the application of another person claiming the same invention, an interference cannot be granted with any chance of success, is, I believe, the doctrine of the law. But my case does not come under such rule, or within that
1184 principle of the law. I cannot but believe that there has been an oversight in the examination which led to such a conclusion, "that the interference asked for cannot be granted, etc." I will state the case, which will most undoubtedly lead to a different conclusion, which is as follows, to wit:

1st. I have a caveat now on file in the Patent Office for the same invention for which Robertson obtained a patent, Sept. 22d, 1857, which caveat was filed in 1855.

2d. In September, 1857, I filed an application in connection with inking improvements, invented by C. A. Haskins, of New York, which were assigned to myself and Peter Low (by assignment) Nov. 16th, 1857, in liber P[4], page 67, of Transfer of Patents, in the Patent Office. My application was then rejected upon this same patent of Robertson. Since then the improvements have been separated and left as before the said application.

3d. In the month of May, 1859, I made a new application for a patent upon the same invention, with some additional improvements, and on the 27th day of June, 1859, this application was rejected upon the same patent granted to Robertson, Sept. 22d, 1857, and on the 16th of July following a re-examination was had, which led to a patent issuing to me, dated Aug. 9, 1859, under and by reason of an amendment dated July 20, 1859, and marked B, wherein was expressly reserved the right to make the application rejected Aug. 22d, 1861.

Here is a succession of applications, all within two years of each other, and covering the same invention, with new specifications, making three applications for a patent upon this invention since Robertson's patent was granted, Sept. 22, 1857. I am now within the rule of the Patent Office, and within the spirit and letter of the law. I have not forfeited my right to a patent upon this invention, but, on the other hand, have preserved it by a succession of applications within two years of
1185 each other, the last one being filed Aug. 7th, 1861. The decision of Judge Merrick of June 13, 1859, does not therefore apply to this case. I therefore ask that an interference be declared with the patent of Robertson, granted Sept. 22, 1857. The improvements said to interfere with the patent granted to Barrett, July 21, 1857, I hereby withdraw from said application.

Hoping that this statement will lead to different conclusions,

I remain, your obedient servant,

MARCUS P. NORTON.

(Endorsed:) M. P. Norton. Argument. Received and filed Sept. 14, 1861. T. R. P.

PATENT OFFICE, *Sept.* 14, 1861.

SIR: Your argument of the 9th inst., in relation to your rejected application for a hand stamp, has been received.

The decisions of the office are still believed to be correct, both in refusing the patent and also refusing the interference, for the following reasons:

1st. Caveats are ignored when suffered to expire by limitation. A caveat filed in 1855 should not have been consulted in 1857.

2d. Norton & Haskins' application, rejected Nov. 18, 1857, was withdrawn on the 24th of the same month, two-thirds of the office fee returned to the applicants, and the case thus abandoned without re-examination.

3d. The patent granted to you on the 9th of August, 1859, was then, as now, believed to cover all that was patentable in the device. Your reserving the right to apply for a patent on that which was
1186 then refused does not restore the novelty requisite for the issue of a patent.

T. R. P.

MARCUS P. NORTON,
Troy, New York.

(Endorsed:) Off., Sept. 14, 1861.

OFFICE OF MARCUS P. NORTON,
ATTORNEY AND COUNSELOR AT LAW,
Troy, N. Y., October 8th, 1861.

Hon. COMMISSIONER OF PATENTS:

SIR: In the matter of the application of Marcus P. Norton for letters patent upon "post-office hand stamps," rejected August 22, 1861, I have to request you to send me the specification and drawing.

Respectfully, etc.,

MARCUS P. NORTON.

(Endorsed:) Letter from applicant. Filed Oct. 10, 1861. D. S. S. Requesting specification and drawing.

UNITED STATES PATENT OFFICE.
Washington, Oct. 10, 1861.

SIR: Agreeably to your request of the 8th inst., the specification and drawing of your application for letters patent are herewith returned.

Yours respectfully,

Commissioner of Patents.

(Endorsed:) Office, Oct. 10, 1861. Returning specification and drawing.

1187 OFFICE OF MARCUS P. NORTON,
ATTORNEY-AT-LAW, COUNSEL AND
ADVOCATE IN PATENT CASES.
Troy, N. Y., November 6th, 1862.

Hon. COMMISSIONER OF PATENTS:

SIR: Herewith I enclose you specification with amendments and argument thereon, in my application for letters patent upon improvements in "post-marking and canceling stamps," also renewal oath in same case, and have to request that the same be taken up immediately upon reaching the files of the Patent Office, if you can consistently do so. My reason for this request is founded upon the fact that the government is desirous of an immediate introduction of these improvements into public or general use. I am not certain that a renewal oath is at all necessary at this stage of the case, but have enclosed it to save delay, in case you should require one. Hoping that my request is not unreasonable,

I remain, your obedient servant,

MARCUS P. NORTON.

(Endorsed:) M. P. Norton. Nov. 6, 1862. Sends paper. Received and filed Nov. 10, 1862. T. R. P.

Renewal oath.

STATE OF NEW YORK,
City of Troy, County of Rensselaer, ss:

On this fourteenth day of October, A. D. 1861, before me, the subscriber, a commissioner of deeds, personally appeared Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New
1188 York, and being duly sworn according to law, says that he verily believes himself to be the original and first inventor of the new and useful improvements in post-office post-marking hand stamp, described and set forth in his specification in his application for letters patent for and upon said improvements, filed in the U. S. Patent Office on the 8th day of August, 1861, and rejected by the Hon. Commissioner of Patents on the 28th day of August, 1861; that he does not know or believe the same to have been ever before known or used; that he is a citizen of the United States of America; that this is a second or renewal oath for and upon said improvements in said application, as by the specification and amendments thereof the same will more fully appear.

MARCUS P. NORTON.

Subscribed and sworn to before me, on the day and year first above written.

FRANK SCOTT,
Commissioner of Deeds, Troy, N. Y.

(Endorsed:) Renewal oath. Filed Oct. 23, 1861. D. S. C.

Amendment A.

Hon. COMMISSIONER OF PATENTS:

SIR: I hereby amend my specification in my application for letters patent upon improvements in "post-office post-marking hand stamps," rejected on the 28th day of August, 1861, by striking therefrom each and every claim thereof, and inserting in place and stead of the following claims, to wit:

1189 I do not claim the particular device patented to T. J. W. Robertson, on the 22d day of September, 1857, but what I do claim is the combination of four cylinders (*a*, *b*, *c*, *d*) upon the shaft (C) with the stationary form of type (D D), whereby the day, month, and year are given together by one impression, substantially as herein described and set forth.

I also claim the combination of the shaft (C) with four cylinders (*a*, *b*, *c*, *d*) thereon arranged, with the frame (B), whereby the said cylinders are firmly held in their adjusted position, substantially as herein described and set forth.

MARCUS P. NORTON.

(Endorsed:) No. 1. Amendment A. Filed Oct. 23, 1861. D. S. C. Patent, Jan. 14, 1862.

Hon. COMMISSIONER OF PATENTS:

SIR: I hereby amend Amendment (A) in my application for letters patent upon improvements in "post-office post-marking hand stamp," by inserting the following, to wit: "I do not claim the particular device

patented to T. J. W. Robertson, on the 22d day of September, 1857, but what I do claim is."

MARCUS P. NORTON.

WASHINGTON, D. C., *October* 26, 1861.

(Endorsed:) No. 2. Amendment B (of Amendment A). Filed Oct. 26, 1861.

1190 OFFICE OF MARCUS P. NORTON,
ATTORNEY-AT-LAW, COUNSEL AND ADVOCATE IN PATENT CASES.
Troy, N. Y., January 15, 1862.

Hon. COMMISSIONER OF PATENTS:

SIR: Some time last month the $20 fee was paid upon my application for a patent upon P. O. stamps, etc., ordered to issue in July last. I have not received my patent. Was it issued? If not, when will it issue?

Yours, respectfully,

MARCUS P. NORTON.

(Endorsed:) Filed Jan. 18, 1862. T. C. S. Patent sent to-day (18th).

No. 34184.

PEALE.

Marcus P. Norton, ass'or to himself and Charles Eddy & Co., of Troy.

County of Rensselaer, State of New York.

OATH RENEWED.

Hand stamp for post-offices.

Received August 8, 1861.
Petition, " " "
Affidavit, August 8, 1861.
1191 Specification, " " "
Drawings, " " "
Model, " " "
Cert. dep.,
1 cash $15, Aug. 8, 1861.
1 cash $20, Dec. 28, 1861.
Examined, Oct. 28, 1861. T. R. Peale.
2 issue, Oct. 28, 1861.
3 patented, Jan. 14, 1862.
Recorder vol. 136, page 554.
Cer., Oct. 29, 1861.
H^4, H^6, 325.
M. P. Norton, Troy, N. Y.
Misc. of printing.
Rej'd, August 22, 1861.
Refused interference, Sept. 6, 1861.
Refused interference, Sept. 14, 1861.
Specification and drawing returned, Oct. 10, 1861.

(Endorsed:) Hand stamps for post-offices.

1192 *Complainant's Exhibit, King, A B C.—I. B., Ex., May* 17, 1878.

POST-OFFICE DEPARTMENT,
OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., May 4, 1859.

POSTMASTER, *Troy, N. Y.:*

SIR: You are hereby authorized to use for post-marking letters at your office for the term of three months "Norton's improved circular marking stamp."

Very respectfully, etc.,
(Signed)
HORATIO KING,
First Assistant Postmaster General.

POST-OFFICE DEPARTMENT,
April 30th, 1878.

I hereby certify that the foregoing is a true copy of a letter now of record in this department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post-Office Department to be hereunto affixed, at Washington City, the thirtieth day of April, in the year of our Lord, 1878.

[SEAL.]
D. M. KEY,
Postmaster-General.

1193 *Complainant's Exhibit Wheeler, D E F.—I. B., Ex., May* 17, 1878.

POST-OFFICE DEPARTMENT,
Washington, D. C., April 27, 1878.

I hereby certify that the annexed is a true copy of the original now on file in this department.

In testimony whereof I have hereto subscribed my name, and caused the seal of the Post-Office Department to be affixed the day and year above written.

D. M. KEY,
Postmaster-General.

POST-OFFICE,
Cleveland, O., Nov. 28th, 1863.

HON. A. N. ZEVELY:

DEAR SIR: You will please pardon me for trespassing on your valuable time with a matter which does not directly concern you, but which is of much importance to me, however; but as we are all under the necessity of asking favors from time to time I throw myself upon your kindness and proceed.

You will probably recollect, when you were in Cleveland, having a conversation with Mr. Cowles and myself about that combination dating and rating stamp, of which I was the inventor. Mr. Cowles
1194 promised when he went to Washington to bring the matter before the Postmaster-General and endeavor to have my salary increased, as an acknowledgement of its value and utility to the service. My object in addressing you is to secure, if possible, your co-operation in the matter; and as you may have forgotten the circumstances, allow me to state that about the first of July, 1861, the department issued an order discontinuing the canceling of stamps with the dating-stamp, and requiring that thereafter the regular canceling-stamp should be used for

that purpose. We followed instructions one day after receipt of the order with two separate stamps. It was about all one man could do before to stamp our letters, circulars, and newspapers, and by the change it would require twice the labor. The idea struck me that by a combination all might be done as required by one operation, and immediately took the stamps to a locksmith and had them soldered together. The order and receipt you will find among your records. The smith's name is Jacob Schwartzenburgh.

Ours was the first office that used the combined stamp, and very soon we were in receipt of inquiries as to how it was done. The uniformity of the impressions were noticed.

We soon found it adopted in nearly every large office and many smaller ones, and now it has become almost universal. The saving in large offices where clerks are paid by government is, you will perceive, quite a large sum annually. In our own office it saves the services of one man. In larger offices, more. Some one should be rewarded for the improvement. True, another person has the patent for it, but in a test case I can prove priority without doubt, and in this connection I will state that a short time after you were here in a conversation with a friend on the subject he advised me to apply for a patent and he would advance the funds necessary. My own circumstances prevented my doing
1195 so before. I accepted his generous offer and made my application, which, of course, was rejected. I have called for an interference case, which has not, as yet, been set down, but will be, I hope, in a few days.

I have been connected with this office over fourteen years, ten of which have been spent in the distribution room, and for seven years I have been foreman. The duties are arduous and very confining, as you are aware. I have a large family (wife and four children), am getting along in years, and in these times my salary, which is $850, hardly suffices for the necessaries of life. There, the whole story is told and the object given. Now, if anything can be done, and you will please assist in accomplishing it, you will place me under lasting obligations. Favors are asked nearly every day of officials, and I wish to add my name—for the first time however—to the illustrious number.

Please let me hear from you either by letter or through Mr. Cowles, who will probably be in Washington next week, and very much oblige

Yours, respectfully,
(Signed) C. E. WHEELER.

1196 *Complainant's Exhibit Norton, A E O.—J. A. S., Exr., June 27th*, 1878.

Declaration of trust.

I, William W. Secombe, of the city of New York, county and State of New York, do hereby declare that in accepting an assignment from Helen M. Ingalls, formerly of the city of Troy, in said State of New York, of her right, title, and interest in certain letters patent therein named, and dated April 14th, 1863, and last reissued under date of October 4th, 1870, in "Division A," and for "postmarking and postage-stamp canceling" purposes, and which is charged with the following trusts, to wit:

I hereby consent and agree to manage all the interests attached to, or in any wise arising out of, said letters patent and the several reissues thereof, for the best interests and for the benefit and approval of all the

parties concerned and interested therein. The said inventor, Marcus P. Norton, shall do all in his power to do to facilitate, aid, and dispose of such matters as shall be calculated to bring about and to consummate a final settlement with the government of the United States for the past and future use of said device and letters patent in the postal service.

Out of any money coming into my hands I agree to pay all the necessary expenses from and after this date, and of the trust, for which I am to produce vouchers to said Helen M. Ingalls in settlement of
1197 the trust, including such attorney fees as may come under a certain contract heretofore made, and to which I am now a party with the said inventor, Marcus P. Norton, and his assignee, Helen M. Ingalls.

I am to retain two-fifths part of the whole sum of money agreed upon and paid for the past and future use of said machine and letters patent, and reissues thereof, by the Post-Office Department, government or Congress, as compensation for my personal services, expenses, and cash advances from time to time to said inventor, Marcus P. Norton, in and about the said machine, letters patent, and in efforts to obtain a fair and just compensation for the past and future use thereof in the postal service of the United States; and the remaining three fifths of the said whole sum I hereby agree and covenant to pay over to the persons hereinafter named, in the following sums or proportions, to wit:

To said Helen M. Ingalls one-fifth, and the remaining four-fifths thereof to Minnie D., wife of said Marcus P. Norton, for the use, benefit, and behoof of herself and the "daughters" or "children" of herself and of said Marcus P. Norton. Reference is now and hereby had to the assignment deed in trust and of even date hereof, as to invention, letters patent, or other matter herein set forth, which deed of assignment shall form a part hereof.

In testimony whereof I have, on this 4th day of March, A. D. 1871, hereunto set my hand and seal in presence of—

CHAS. P. BARNARD.
MARCUS P. NORTON.

W. W. SECOMBE. [SEAL.]

[5 cent stamp canceled.]

On this 4th day of March, 1871, it is hereby understood and agreed by and between the said inventor, Marcus P. Norton, and the said patentee, Helen M. Ingalls, and the assignee, Wm. W. Secombe,
1198 president of the Secombe Manufacturing Company, of New York, that all the expenses expended prior to the date hereof by said Marcus P. Norton, amounting to the sum of $35,000 (thirty-five thousand dollars), also the sum of ten thousand dollars expended by said Wm. W. Secombe in and about the business appertaining to said letters patent and matters of compensation, shall be charged against the aforesaid named patent, and paid out of any proceeds arising out of any sale of said letters patent to the government of the United States pro rata—that is to say, the entire patent proceeds shall pay to each the expenses so charged by each, as before stated. All attorney fees, or other fees or charges for aid or services rendered, or to be rendered, or expenses for settling and paying off any claim, pretended or otherwise, as agreed upon by said Secombe and Norton, shall be chargeable to and paid in same manner, so that each shall share his portion or part of all necessary expenses in the premises.

In testimony whereof we hereunto set our hands and seals on the day first above written.

(Sd) W. W. SECOMBE. [SEAL.
MARCUS P. NORTON. [SEAL.
HELEN M. INGALLS. [SEAL.

Witness:
(Sd) CHAS. P. BARNARD.

[5-cent stamp canceled.]

1199 M. P. Norton, to C. A. Sherwood.

1859.					
January	8.	To 3 hours	finish	printing	press.
	9.	" 2½	"	"	stamp.
	12.	" 3	"	"	"
	13.	" 2	"	"	"
	15.	" 2	"	"	" press.
		" 4	"	"	window fastenings.
	16.	" 1	"	"	stamp.
	17.	" 3	"	"	"
	20.	" 8	"	"	"
	21.	" 7½	"	"	"
	22.	" 8½	"	"	"
	23.	" 7	"	"	"
	24.	" 7	"	"	"
	26.	" 8	"	"	"
	29.	" 8	"	"	"
	30.	" 5½	"	"	"
	31.	" 4	"	"	"
February	2.	" 7	"	"	"
	5.	" 5	"	"	drag.
March	3.	" 1½	"	"	stamp.
	16.	" 4½	"	"	"
	26.	" 1	"	"	"
	27.	" 7	"	"	"
	28.	" 6	"	"	"
	30.	" 5	"	"	"
	31.	" 8	"	"	"
April	1.	" 5	"	"	"
	3.	" 3	"	"	"
	4.	" 4	"	"	"
May	3.	" 5	"	"	"
	4.	" 3	"	"	"
	5.	" 1	"	"	"
1200 1857.					
May	8.	To 3 hours	finish	tamp.	
	12.	" 3	"	"	"
	13.	" 4	"	"	"
	4.	" 2	"	"	"
1859.					
September	19.	To 1 hour	finish	stamp.	
	21.	" 4	"	"	"
	22.	" 6½	"	"	" lbs. bronze.
	23.	" 6	"	"	"
	24.	" 4	"	"	"
	26.	" 4½	"	"	"

	27.	To 6	hour	finish	stamp.	
	28.	" 4	"	"	"	
	29.	" 5½	"	"	"	¼ hrs. forgin'.
	30.	" 6½	"	"	"	
		" Making 2 stamp at $4.50 a piece.				
October	12.	" 1½	hours	finish	stamp.	
	13.	" 2	"	"	"	1 hour forgin'.
1860.						
November.	5.	To 5	hours	finish	stamp.	
	6.	" 9	"	"	"	
	7.	" 9½	"	"	"	
	8.	" 1	"	"	"	
	9.	" 8	"	"	"	
	10.	" 9	"	"	"	
	12.	" 9	"	"	"	
	13.	" 5	"	"	"	
	14.	" 9	"	"	"	
	15.	" 12	"	"	"	3 hours forgin'.
	16.	" 9	"	"	"	1½ lbs. steel.
	17.	" 5	"	"	"	
1201 November	19.	To 9	h'rs	finish	stamps.	
	20.	" 9	"	"	"	
	21.	" 9	"	"	"	
	22.	" 9	"	"	"	
	23.	" 9	"	"	"	
	24.	" 2	"	"	"	
	26.	" 8½	"	"	"	
	27.	" 8	"	"	"	
	28.	" 2	"	"	"	
	29.	" 4	"	"		¼ hour forge.
December	1.	" 1	"	"	"	
1862.						
March	5.	To 3	hours	finish	stamp.	
August	25.	" 1½	"	"	"	
	26.	" 1½	"	"	"	
	27.	" 2	"	"	"	
	29.	" 1½	"	"	"	
	30.	" 4½	"	"	"	
September.	2.	" 3	"	"	"	
	5.	" 1½	"	"	"	
	6.	" 7½	"	"	"	
	8.	" 10	"	"	"	
	9.	" 5	"	"	"	
	10.	" 10½	"	"	"	
	11.	" 17½	"	"	"	
	12.	" 18	"	"	"	
	13.	" 3	"	"	"	
	14.	" 13	"	"	"	
	16.	" 19½	"	"	"	
	17.	" 16	"	"	"	
	18.	" 13½	"	"	"	
	19.	" 17½	"	"	"	
	20.	" 4	"	"	"	

	24.	To	6	hours	finish	stamp.
	27.	"	½	"	"	"

1 2 1862.

October	10.	To	5½	hours	finish stamp, 1 hour forge.	
	11.	"	15	"	"	"
	12.	"	8	"	"	"
	16.	"	6	"	"	"
	17.	"	4	"	"	"
	18.	"	1½	"	"	"
	20.	"	2	"	"	"
	23.	"	1½	"	"	"
	25.	"	8	"	"	"
	27.	"	11	"	"	"
	28.	"	3	"	"	"
	29.	"	1	"	"	"
November	4.	"	7	"	"	" 1 hour forge.
	5.	"	3	"	"	"
	6.	"	4	"	"	"
	7.	"	9½	"	"	" 1½ h's forge.
	8.	"	10½	"	"	"
	10.	"	17½	"	"	"
	11.	"	14½	"	"	"
	12.	"	7½	"	"	"
	14.	"	2¼	"	"	"
	19.	"	4	"	"	"
	20.	"	5	"	"	" 4 h'rs forge.
	21.	"	9	"	"	"
	22.	"	9	"	"	"
	25.	"	6	"	"	" 1 h'r forge.
	26.	"	6	"	"	"
	29.	"	14½	"	"	"
December	1.	"	7	"	"	"
	2.	"	7½	"	"	"
	3.	"	9	"	"	"
	4.	"	10	"	"	"
	5.	"	10	"	"	"
	6.	"	9	"	"	"
	8.	"	9	"	"	"
	9.	"	5	"	"	"
	10.	"	17½	"	"	"

1203 1862.

December	20.	To	5½	hours	finish	stamp.
	23.	"	5	"	"	"
	24.	"	3½	"	"	"
	26.	"	8½	"	"	"

1863.

January	2.	To	1	hour	finish	stamp.
	9.	"	4	"	"	"
	15.	"	1	"	"	"
	16.	"	5½	"	"	"
February	3.	"	4	"	"	"
	4.	"	5	"	"	"

1864.

January	7. To	7	hours	"	stamp.
	22. "	4	"	"	"
	25. "	5	"	"	"
February	9. "	1	"	"	"
	10. "	10	"	"	"
	19. "	3	"	"	"
	29. "	12	"	"	"
March	1. "	8	"	"	"
	30. "	3	"	"	"
April	11. "	10	"	"	"
	13. "	4	"	"	"
	14. "	13	"	"	"
	15. "	14	"	"	"
	16. "	10	"	"	"
	18. "	12	"	"	"
	20. "	4	"	"	"
	22. "	5	"	"	"
	23. "	7	"	"	"
November	11. "	8	"	"	"
December	1. "	1½	"	"	"
	5. "	7	"	"	"

1204

1864.

December	6. To	8	hours	finish	stamp.
	7. "	8	"	"	"
	12. "	5	"	"	"
	13. "	8½	"	"	"
	14. "	8	"	"	"
	15. "	9	"	"	"
	16. "	2	"	"	"
	17. "	5	"	"	"
	19. "	7	"	"	"
	20. "	7	"	"	"
	21. "	5	"	"	"
	22. "	9	"	"	"
	23. "	9	"	"	"
	24. "	9	"	"	"
	26. "	9	"	"	"
	27. "	10	"	"	"

1865.

January 11. To 5 " rep. stamp.

1205

(Indorsed:) Sherwood, J. K. L., I. B., ex. May 17, 1878.

1206 *Complainant's Exhibit Secombe, G H I.—I. B. Ex., May* 17, 1878.

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment recorded in Liber T[14], p. 434.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twentieth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] ELLIS SPEAR,
Commissioner.

Liber T[11], p. 434.

Whereas Charles Eddy, Jacob Shavor, and Albert C. Corse (formerly comprising the firm of Charles Eddy & Co., of the city of Troy, N. Y.), and William W. Secombe, of the city of New York, are together interested in the prosecution of a certain claim against the government of the United States, to recover certain moneys for the use of an improved patented canceling stamp, known as the Norton's Post-Office Canceling Stamp, invented and patented by Marcus P. Norton;

And whereas the said William W. Secombe is also trustee for other parties interested in the prosecution of said claims to the amount of one-half of said claim;

1207 Now it is understood and agreed by and between the said Charles Eddy, Jacob Shavor, and Albert C. Corse, parties of the first part, and William W. Secombe, trustee as aforesaid, party of the second part, that the said parties of the first part will accept and receive in full payment and satisfaction of their claim and demand the sum of thirty thousand dollars. It is further agreed that the said sum of thirty thousand dollars shall be paid by the party of the second part out of the moneys so received by said party of the second part, as trustee aforesaid, provided his said trust fund amounts to the sum of sixty-two thousand dollars. And in case said trust fund does not amount to said sum of sixty-two thousand dollars, then the parties of the first part agree to take and receive in full satisfaction and payment of their said claim the pro-rata sum or amount of such sum as shall be received by the party of the second part, as trustee as aforesaid, in connection, Holloway & Mason, of the city of Washington, D. C., whose interest in said claim against the government is twenty thousand dollars, and William W. Secombe, whose personal claim therein is twelve thousand dollars, it being understood that each of the parties shall accept the said pro rata amount in full satisfaction of their several claims.

In witness whereof the parties have hereunto set their hands this seventh day of October, 1871.

CHARLES EDDY.
JACOB SHAVOR.
ALBERT C. CORSE.
W. W. SECOMBE.

In presence of—
FRANCIS RISING, as to Shavor, Corse, & Secombe.
G. H. MCGRATH, witness for Charles Eddy.

Recorded, January 29, 1872.
Ex'd, F. C. T.
[5 cent stamp canceled.]

1208 *Complainant's Exhibit, Bishop Letter, No. 1.—I. B., Ex'r.*

TROY, *April 30th*, 1872.

DEAR SIR: I called on Alexander to-day, and find his books show $1,600 in his hands due Miss Aynesworth. He gave McClellan a cer-

tificate at the time he received the $2,600. On the 23d inst. he had a notice served on him, claiming this money was a gift from McClellan to Miss Aynesworth, and revoking the gift. He will not pay the money in that suit, and to-morrow I shall sue him. That will prevent him from paying any one else on the certificate he issued.

I would like to know if Miss Aynesworth ever had the certificate Alexander gave you in her actual possession. I think we will get the $1,600 easy enough, if not more. I have not learned yet anything definite about McClellan's affairs, except that Alexander says he was dissipated and worthless.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 2.—I. B., Ex'r.

TROY, *May 1st*, 1872.

DEAR SIR: Yours and Mrs. Browning's letter came to hand this morning. I have been to West Troy again to-day, and served papers on Alexander. I have spent considerable time in trying to find out about McClellan. I learn he sold out his shop for $600 cash,
1209 with which he cleared out. He had no real estate. I will push the suit against Alexander as fast as I can. I have sued him for the whole $2,600. Will keep you posted as the case progresses.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 3.—I. B., Ex'r.

TROY, *May* 16, 1872.

DEAR SIR: Your wife's letter, with Alexander's certificate enclosed, came to hand this afternoon. I am glad you sent it. I have the suit pending against him, and his time to appear will expire the 21st inst. I presume he will fight it, but I don't see how he can escape for the whole amount. I will keep you posted in the matter.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 4.—I. B., Ex'r.

TROY, *May 21st*, 1872.

DEAR SIR: I received a letter from Alexander this afternoon, complaining about my claiming to recover the whole $2,600, and intimating that I made the claim from personal motives. He says in his letter that your wife admitted that the payments were correct. I would like to know about it, and know what was said between her and Alexander upon that subject.

Truly yours,

P. W. BISHOP.

1210 *Bishop Letter No. 5.—I. B., Ex'r.*

TROY, N. Y., *June 8th*, 1872.

DEAR SIR: Yours came to hand this morning. I think Alexander has found out satisfactorily that the money belonged to your wife, and would be glad to get out of the suit by paying the $1,600 and interest.

That is, if you would allow him the endorsements made on the contract. I have not informed him that I had the original contract, for I did not think it prudent to do so. He has put in his answer, and says in reference to the payments endorsed:

"And in further answering, said defendant avers that on said 9th day of January, 1871, one Alexander McClellan was, and for a long time prior thereto had been, the agent and confidential friend and adviser of said plaintiff, and continued to be such until near or about the time of the commencement of this action."

This he sets up to show that McClellan was your wife's agent. He then sets up the payment of moneys as a set-off—the money paid McClellan.

I have not yet replied to his answer. I want to know what your wife has to say about McClellan's being her agent. I supposed he was only a special agent to take the money to Alexander. The only question in the case is one of agency. Your wife is sure of the $1,600 anyway, and I hope to get it all.

Truly yours,

P. W. BISHOP.

1211 *Bishop Letter, No. 6.—I. B., Ex'r.*

TROY, *June 13th*, 1872.

MRS. B.: Your letter came to hand this morning. I have put in a reply to his answer, and have denied McClellan's agency. The case will be at issue in twenty days, unless he should amend his answer. If he does I will write you. I will hurry up as fast as the rules of the court will permit, yet you are safe. There is no danger of your not getting any judgmet you can obtain against Alexander. I am satisfied he is worth $100,000.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 7.—I. B., Ex'r.

TROY, N. Y., *July 2d*, 1872.

DEAR SIR: E. T. Stetson, the actor, whom I presume you know very well, has applied to me for the loan of $1,500 for one year, and is willing to pay fifteen per cent. for the use of it. I have lent him money often, and found him square and honorable. I have the money, and can lend it to him for a short time, but I want to use it in the fall. He has profitable engagements at Denver, Salt Lake City, and San Francisco, and after that in New York—a long engagement. He will secure it by his note payable to my order, and get his life insured in $10,000, and assign that as collateral. By the time I should want to use the money I will have your wife's suit tried and disposed of. If she
1212 would take the note from me, I will guarantee its payment and assign her the policy. Then she will be sure of her money at fifteen per cent., and if anything should happen, she would get $10,000 on his policy of insurance provided Stetson dies. I look upon it as a safe investment for her, and it may be by that means she can make up what she has lost by McClellan. Please answer at once, so I can let Stetson know. If she concludes to do it I will see that the papers are made out properly, and the policy of insurance assigned and transmitted to her.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 8.—I. B., Ex'r.

TROY, *Aug.* 3, 1872.

MRS. B.: I went to Albany to-day, and examined the records carefully and thoroughly. There is no mortgage there to you or McClellan. I am satisfied he lied about it. I did not have time to go to the hospital. I want to see Richardson and find out more about Butterfield, and then if I think there is any show for him I will try it.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 9.—I. B., Ex'r.

TROY, *Aug.* 10, 1872.

MRS. B.: Yours came to hand this morning. I will write to
1213 Flushing. I think within a month I can let you have some money. We came near having plenty of money. Our friend Stetson was on the Central Pacific when three cars were telescoped through. Six persons were killed, and he escaped by about eighteen inches only.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 10.—I. B., Ex'r.

TROY, *Aug. 20th*, 1872.

MRS. B.: I wrote to the postmaster at Flushing, but have yet had no answer. Since then I saw Seymour Scott, and he informs me that he believes he is there. I then wrote directly to McClellan, inquiring about the mortgage, etc. I have not had an answer. I think it would be well for me to go down and see him, and will do so if you desire it. If I go I will get judgment against him on his note you sent me. Mr. Rising told me you had referred to me on purchase of some goods. I have told him you were good—perfectly so. It has been so very hot here that I have not yet been to the hospital to see Butterfield, but will soon. I suppose Mr. B. has got his tools by this time.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 11.—I. B., Ex'r.

TROY, *Aug. 20th*, 1872.

MRS. B.: After writing you to-day I went to Albany and saw Mr. Butterfield. He is at the hospital at an expense of one dollar a
1214 day. He is nearly blind and infirm. He claims he has made a provision for the child if he has anything left. He also says you have no claim against him for keeping her—that you wanted him to give the child to you and he did. I took the papers along to serve on him, but after hearing his story concluded not to serve them until I heard from you. It seems Richardson is his confidant, and that he is acting under his advice. I have no doubt that he would defend a suit if you brought it, and perhaps he would outswear you, although he told me he had no witnesses about the affair. If you can prove enough to win, I will bring suit if you desire it.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 12.—I. B., Ex'r.

TROY, *Aug. 24th*, 1872.

MRS. B.: Yours came to hand this morning. I send you check for $150 as you wished. You may endorse that amount on Stetson's note, and I will collect it from him as soon as I can. You can get the money at any bank in your place, I presume. If, however, you cannot, return me the check, and I will send you the money by express. I think I will go and see McClellan within a week or ten days, and lea.n what I can about his affairs, and also whether he is to be a witness for Alexander or not. You can send me the enclosed receipt after endorsing the money on Stetson's note.

Truly yours,

P. W. BISHOP.

1215 *Bishop Letter, No. 13.—I. B., Ex'r.*

TROY, *Sept.* 18, 1872.

MRS. B.: Yours came to hand this morning. I am sorry you have agreed to pay any money the first of next month, for I do not know how I shall stand at that time for funds. I expected to have disposed of your suit this month, but the referee cannot attend to it. He has had a severe accident in his family—one of his daughters almost or quite fatally injured by a runaway. He is attending her constantly. However, we will hope it will all come out right.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 14.—I. B., Ex'r.

TROY, *Sept.* 28, 1872.

DEAR SIR: Yours came to hand this afternoon. I am sorry your wife worries so about her money matters. I will have to contrive some way to help her out. I think by the tenth of next month I shall be in funds. A man has just promised me $4,000 by that time. I have at present not more than $100 on hand in bank. Let your wife hold on as long as possible, and by the tenth I have no doubt I shall have plenty of funds. There is no time set for the trial of her case. She may have to come here as a witness, but I will try and get along without it unless absolutely necessary.

Truly yours,

P. W. BISHOP.

1216 *Bishop Letter, No. 15.—I. B., Ex'r.*

TROY, *Oct. 7th*, 1872.

DEAR SIR: Yours came to hand this morning. I am very sorry your wife made calculations to use money just now, for I am short as blazes, and the man who was to pay me $4,000 has disappointed me. Still something will turn up soon and place me in funds. I went this morning, after getting your letter, and saw Mr. Kellogg, the referee who is to try the case against Alexander, and he cannot attend to it before the 25th inst. I will try and get along without your wife's coming, if possible. I met Rising in the street last week, and he informed me that his letter sent to your wife in answer to hers was returned unopened to him,

consequently she did not receive it. I told him she was good for all she wanted. I enclose her check for $100, which will help her a little.

Truly yours,

P. W. BISHOP.

Let her sign the receipt, and return.

Bishop Letter, No. 16.—I. B., Ex'r.

TROY, *Nov.* 6, 1872.

DEAR SIR: Yours came to hand this afternoon. I am sorry to say I have not yet been able to get your wife's cause tried. The election and other matters have prevented. Tell her not to worry. Her money is sure. I shall go to Flushing and see McClellan in a few days, and shall try and collect something for her; besides, I want to subpœna
1217 him as a witness in the Alexander case. I hope to collect some money in a few days, and if I do, will send it to your wife. Tell her to be easy, it will all come out right.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 17.—I. B., Ex'r.

TROY, *Nov.* 16, 1872.

DEAR SIR: Yours came to hand this morning. I enclose check for $100, which is all I can spare at present. I am scrimping myself, for I have to go away next week with my family, and my expenses will be considerable. I enclose receipt for her to sign and return to me.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 18.—I. B., Ex'r.

NEW YORK, *Nov.* 27, 1872.

MRS. B.: I have been to find McClellan. I was not able to see him. I will have to come again next week, and then will be sure, I hope, to find him. I want to see how he is fixed about paying that note, and must have him for a witness in your suit against Alexander. I presume you received my check for $100, and have sent me the receipt. I have been away from home some time.

Truly yours,

P. W. BISHOP.

1218 *Bishop Letter, No. 19.—I. B., Ex'r.*

TROY, *Dec. 5th*, 1872.

DEAR SIR: Yours came to hand this ning. I do not know as I shall use McClellan as a witness. I can tell better after seeing him. Besides, I want to serve the papers on him for the collection of that note. The trial is for the 23d inst. I hope then to be able to dispose of the case. Although it is liable to be postponed if either party is not ready.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 20.—I. B., Ex'r.

TROY, N. Y., *Dec.* 26, 1872.

MRS. B.: Yours came to hand containing the notice served on me. I hope to be able to get along without putting you to the trouble and expense of coming here. At any rate, I shall not do so unless absolutely compelled to do it. We have unavoidably had to submit to a further delay in your cause. J. G. Bacon, of this city, died, and Mr. Kellogg, the referee, was one of the bearers. The funeral was the same day your cause was to be tried, consequently the reference fell through. I have seen Kellogg this morning, and he has set the trial down for the 21st of next month, which was the earliest day he could attend to it. So you will see you have to be patient for a while longer.

Truly yours,

P. W. BISHOP.

1219 *Bishop Letter, No. 21.—I. B., Ex'r.*

TROY, *Jan.* 21, 1873.

MRS. B.: We have been at work all day trying your suit against Alexander. We did not finish it, and have adjourned to the 28th February next. The testimony given by Alexander himself and his clerk looks rather hard against you. Alexander swears, amongst other things, that you called upon him some time last April, after you had been to New York with McClellan, and expressed yourself satisfied with him because he had not paid McClellan any more on that certificate, and that what there was left in his hands was all there was out of about $5,000 which you had entrusted to McClellan.

His clerk testified that he took that letter (a copy of which I sent you) and handed it to you personally, and that you read it, and that McClellan was present at the time, and that he waited for an answer, and that you told him to tell Alexander it was all right. If that was so, it hurts your case as to the money paid to McClellan. I wish you would write me how that was.

The way it looks now you will stand some chance to lose that part of your claim.

Tell Mr. B. I have bought out Shaffer, and I enclose my card.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 22.—I. B., Ex'r.

TROY, *Jan. 27th*, 1873.

MRS. B.: Your letter came to hand this morning. I wish you
1220 to write me where I can see your sister, that I may learn what she will say about what occurred at the time the letter was sent you by Alexander. I shall most likely take a commission to take your testimony at Columbus. Therefore I want you to give me the name of some lawyer there to take your testimony. Please answer immediately.

Truly, yours,

P. W. BISHOP.

Bishop Letter, No. 23.—I. B., Ex'r.

TROY, *Jan.* 27, 1873.

DEAR SIR: Yours came to hand since I received your wife's letter. I begin to have some hopes of success. I hope to hear from her soon as to what I wrote her. I think her testimony had better be taken there by commission rather than here. I can shape it better. I can write out what she can testify to from what she has written me, and it will save her a cross-examination to a very great extent. I want to hear where her sister is, and what she knows about that letter. Shaffer is here doing nothing.

Truly, yours,

P. W. BISHOP.

Bishop Letter, No. 24.—I. B., Ex'r.

TROY, *February* 13, 1873.

MRS. B.: Upon consultation with counsel, we have come to the conclusion to cross-examine Alexander before taking a commission to
1221 examine you. We shall do that on the 28th inst., and immediately thereafter shall send a commission to take your testimony. In the meantime I hope to see McClellan.

Truly, yours,

P. W. BISHOP.

It has been so cold, I have not yet been to see your sister.

Bishop Letter No. 25.—I. B., Ex'r.

TROY, *March* 11, 1873.

MRS. B.: We met again in your Alexander suit to-day, and adjourned to take your testimony. It has to be taken by commission. I think you sent me the name of a lawyer who would act as commissioner and take the testimony, but I have mislaid the letter. Please send me his name at once, so as not to delay the trial any longer than is absolutely necessary.

Truly, yours,

P. W. BISHOP.

Bishop Letter, No. 26.—I. B., Ex'r.

TROY, *April* 1, 1873.

MRS. B.: We have not yet got our interrogatories settled for that commission. It has dragged on account of the prior engagements of counsel, but cannot much longer. Be patient; it will all come out right, I think.

In haste,

P. W. BISHOP.

1222 *Bishop Letter, No. 27.—I. B., Ex'r.*

TROY, *April* 2, 1873.

MRS. B.: Your letter came to hand this morning. I wrote you yesterday the reason of the delay.

I am short of ready money now, but before the first of next month will be in funds without doubt, and shall be glad to do as requested.

In haste,

P. W. BISHOP.

Bishop Letter, No. 28.—I. B., Ex'r.

TROY, *April* 21, 1873.

MRS. B.: The cashier of the Central Bank informs me that you sent my note to him to be discounted. I did not expect you to do that. I supposed you might pay it in your business. If the bank was discounting I could have got it discounted as well as you could. Money is tight here, commanding from twelve to twenty per cent.

If you use the note it will be paid when due. If you cannot use it, you can return it.

Truly, yours,

P. W. BISHOP.

Bishop Letler, No. 29.—I. B., Ex'r.

TROY, *April* 29, 1873.

DEAR SIR: Yours came to hand this afternoon. I do not blame
1223 your wife for being out of patience. It has taken longer than usual in getting the interrogatories settled, but I suppose it has been done to-day. It will be there now very soon. I should be pleased to have your wife present at the trial, but, as I have written her, I thought her testimony would be more effectual taken by commission. This case shall be hurried. I may be present at the execution of the commission.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 30.—I. B., Ex'r.

TROY, *May 5th*, 1873.

MRS. B.: I enclose to you what I suppose will be your answers to the interrogatories in your suit with Alexander. They are drawn up as I understand the facts from you. If I am wrong you can correct them, and answer as the facts are. You want to keep them, and not show them to the commissioner (Wallace), for he might impugn my motives in writing out your answers. After you have been examined you will return them to me. If you are not examined until next week I shall try and be present.

Yours, P. W. B.

Will mail him the commission to-day.

1224 *Bishop Letter, No. 31.—I. B., Ex'r.*

TROY, *May 14th*, 1873.

MRS. B.: Your letter and papers came to hand last evening. As soon as the testimony is received by the referee I will immediately give Mr. Alexander the necessary notice of hearing.

Yours,

P. W. BISHOP.

Bishop Letter, No. 32.—I. B., Ex'r.

TROY, *May 17th*, 1873.

DEAR SIR: Yours came to hand this morning. I will let you know as requested. I do not believe he dare call him as a witness. If he does, we will make it hot for him.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 33.—I. B., Ex'r.

TROY, *June 7th*, 1873.

MRS. B.: We met again to day in your case. Our circuit court being in session the referee announced that he could not proceed to-day. Alexander then wanted to put it off until July. We insisted on an early day, and it is put down for next Wednesday. I hope then to be able to inform you that it is concluded satisfactorily.

Truly yours,

P. W. BISHOP.

1225 *Bishop Letter, No. 34.—I. B., Ex'r.*

TROY, *June 11th*, 1873.

MRS. B.: We have finished your case to-day. I think we have the inside track. I believe we will surely succeed. The only question in the case is one of agency. Both parties are to prepare written points for the referee, which are to be presented on or before the 2 inst. We shall have ours ready by the 15th. I think you can calculate surely that we shall win; still you can't always tell.

In haste,

P. W. BISHOP.

Bishop Letter, No. 35.—I. B., Ex'r.

TROY, *June 19th*, 1873.

DEAR SIR: Yours came to hand this morning. All the delay there will be in the suit is the necessary one of substituting his executor as defendant. That can be done as soon as he qualifies. Stetson is now in the West, traveling with some theatrical company. I am expecting him here next month. In the mean time hold on.

Yours, etc.,

P. W. BISHOP.

1226 *Bishop Letter, No. 36.—I. B., Ex'r.*

TROY, *June 24th*, 1873.

DEAR SIR: Your letter came to hand this afternoon. I am sorry you are dissatisfied with the progress made in that suit. I have urged and crowded it in season and out of season, as all know who have had anything to do with the case. You need not send the Stetson note here unless you wish to. He is not here, and I am afraid will not be in time. I hereby waive notice of protest to save any expense.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 37.—I. B., Ex'r.

TROY, *June 14th*, 1873.

MRS. B.: I presume before you get this you will learn from the newspapers of the death of Andrew Alexander by drowning, which occurred last night. This will tie up your case until letters of administration are taken out, which I will see is done as soon as can be. I have no fear of the final result in your favor.

Truly yours,

P. W. BISHOP.

1227 *Bishop Letter, No. 38.—I. B., Ex'r.*

TROY, *April 16th*, 1873.

MRS. B.: Your letter came to hand yesterday. We do not know the day your cause will be tried. After the commission is returned it has to be noticed for trial over again. It was thought best to have your testimony taken by the commission rather than to have you come personally for examination. In case of personal examination you would be subjected to a cross-examination in which you might say something having a tendency to weaken your cause, which would be avoided if your testimony was taken by commission. I have been in hopes I should be able to be present at your examination to aid you, but if I am not, shall write you out the necessary answers as you have informed me the facts are. Unless absolutely necessary, you had better delay coming until your testimony is taken.

Respectfully yours,

P. W. BISHOP.

Bishop Letter, No. 39.—I. B., Ex'r.

TROY, *July 4th*, 1873.

MRS. B.: Yours came to hand this morning. I supposed I had given you an "insight" into your matters heretofore. I have endeavoredt o keep you posted. If you have any questions to ask me about your matters, do so, and I will answer them all fully.

In haste,

P. W. BISHOP.

1228 *Bishop Letter, No. 40.—I. B., Ex'r.*

TROY, *July 11th*, 1873.

MRS. B.: Yours of the 9th inst. came to hand this morning. There has nothing further been done with your case since the 20th of June. Mr. Ball, who is assisting, has made an arrangement to have Mrs. Alexander substituted as defendant, and save the expense and trouble of an application to the court. It will be attended to at once. There are often a good many things to retard a suit. Sometimes the lawyers are not ready, and sometimes the witnesses are absent. I have not been to McClellan's since I wrote you, but I expect to go again, and find him, if possible, next week. I should be pleased to see you here, but your presence can not expedite a settlement of your matters. After the executrix of Mr. Alexander is substituted, then the case is with the referee for his decision. He may decide it within a week, and he may not in two or more. He can if he likes take time. I will use my personal

influence with him to have an early decision, but do not wish to have him do so as to endanger the final result. I have no doubt of a final recovery of your whole claim.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 41.—I. B., Ex'r.

TROY, *July 24th*, 1873.

MRS. B.: I have delayed answering your letter to see if I could not in any way expedite your cause. Messrs. Smith, Cowen & Furs-
1229 man are the attorneys for Mrs. Alexander, who, as executrix, is to be substituted as defendant. I find that Kellogg, the referee, and defendant's attorneys are out of the city, and that nothing can be done this month or next. The truth is the lawyers here—most of them who have any practice—will not work during the hot weather. If you do not understand how it is, ask your lawyer who took your testimony and he will explain it to you. I will crowd the case the very earliest minute I can.

Yours, etc.,

B.

Bishop Letter, No. 42.—I. B., Ex'r.

TROY, *July* 26, 1873.

MRS. B.: Yours came to hand this morning. I will get through with the case as soon as possible. Still I want to win it if possible, if it takes longer.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No 43.—I. B., Ex'r.

TROY, *July 30th*, 1873.

DEAR SIR: Your letter came to hand. There have been some delays in your wife's suit, but there are many recorded cases of even greater delays. There is the case of Jarndyce agt. Jarndyce, the Tichborne claimant, and several others I might name. However, I took the pains to go and see Mr. Kellogg, the referee, to-day, and he refuses to
1230 stir in the matter before September. There is no power in the courts to compel him to, and besides, the attorneys on the other side will not do anything this hot weather. Mr. Smith, one of the attorneys, is laid up, having been accidentally shot, at Ballston Spa, a few days ago. However, if your wife comes on, I will make her as comfortable as I can, and she is welcome to make my house her home as long as she stays.

The opinion of your lawyer in Columbus was given under a misapprehension of all the facts concerning delays, I presume.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 44.—I. B., Ex'r.

TROY, *Feb'y 17th*, 1873.

MRS. B.: Mr. Alexander has applied for a postponement of the cause, and it has on that account been adjourned to the 11th day of March.

The more I think of your cause the greater is my confidence that we shall succeed.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 45.—I. B., Ex'r.

TROY, N. Y., *June 3d*, 1873.

MRS. B.: Your case came on this morning before the referee, Mr. Ball, associate counsel with me. Mr. Alexander applied for a postponement. He wanted it put off for some considerable time, but
1231 we opposed it. The referee finally adjourned to this week on Saturday, on which day we hope to make a finish of it.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 46.—I. B., Ex'r.

TROY, 12*th July*, 1873.

To M. S. BROWNING:

Take notice that a promissory note made by E. T. Stetson, dated Troy, N. Y., 10th July, 1873, due this day, for 1,500 dollars and interest, endorsed by you, is protested for non-payment; and that the holders look to you for the payment thereof, payment having been demanded and refused.

J. S. GAMSEY,
Notary Public.

Bishop Letter, No. 47.—I. B., Ex'r.

TROY, *Aug. 24th*, 1873.

MRS. B.: I saw Mr. Kellogg, the referee, last Friday. He said he should remain away with his family until next month, and that as soon as he returned he would finish up your case.

If you would like hotel keeping, I would trade up a half interest in the International for your claim. I sold on the 17th of July a half interest to Mr. E. B. Carpenter for $2,600. Since then we have
1232 made improvements and put in furniture, etc., to the amount of about eight hundred dollars.

If you wish to deal for a half interest I will give you a good trade.

Truly yours,

P. W. BISHOP.

Bishop Letter, No. 48.—I. B., Ex'r.

TROY, *Oct. 19th*, 1873.

MRS. B.: The referee has appointed the 30th inst., at 11 a. m., for the hearing of your case, and I have noticed it. I hope then to be able to report progress.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 49.—I. B., Ex'r.

TROY, *Jan.* 13, 1874.

DEAR SIR: Your letter came to hand this evening. Your case is still undecided by the referee. I can lead a horse to the water but I cannot make him drink. I have tried the cause, and the referee will take his own time to decide it. Mr. M. Ball was counsel with me in the case; he is now at 211 West 38th street, New York. If you like you can write him.

Yours, etc.,

P. W. B.

1233 *Bishop Letter, No. 50.—I. B., Ex'r.*

TROY, *Oct.* 15, 1874.

DEAR SIR: Yours came to hand this evening. I have been waiting as usual to have your case decided. The referee has not given his decision yet as I know of. He nor the opposite counsel have notified me in any way, and your letter that he has decided it is news to me.

Since you were here I have written Stetson, urging him to send money if possible, so as to help you.

Yours,

P. W. BISHOP.

Bishop Letter, No. 51.—I. B., Ex'r.

TROY, *Oct. 20th*, 1874.

DEAR SIR: Yours came to hand this evening. There has been no decision yet. It is not very important to have one against you unless you are to appeal.

I have this moment written to Stetson, urging him to send you money. I am really sorry you are so much in want of it, and if it was in my power at this time to help you I would.

Yours, etc.,

P. W. B.

1234 *Bishop Letter, No. 52.—I. B., Ex'r.*

TROY, *Oct. 29th*, 1874.

DEAR SIR: Your note came to hand this morning. I received a letter from Stetson yesterday, saying he would in a short time send at least $100.

When I came back here yesterday I found there had been left in my office a bill of costs in your case to be taxed to-day. It amounts to over $400. There has been no report served on me yet.

I am afraid they may send the bill of costs out to Columbus to try and collect of your wife. You ought at once to go to your lawyer and have things fixed up so nothing could be collected.

In haste,

P. W. BISHOP.

Bishop Letter, No. 53.—I. B., Ex'r.

TROY, *Oct. 29th*, 1874.

DEAR SIR: Since I wrote you this morning I have seen Smith, and

he tells me that he has understood that your wife was not worth anything and he should not make any effort to collect the costs from her.

I think he will do so; still I should have her do as I wrote you today.

I found out from him another thing which has satisfied me how he came to beat us in our suit. The referee, he says, was largely indebted to the Alexander estate. I think that is what beat us.

Yours, etc.,

P. W. B.

1235 *Bishop Letter, No. 54.—I. B., Ex'r.*

TROY, *Nov. 11th*, 1874.

DEAR SIR: Your letter came to hand and contents noted. I also had a letter from Stetson yesterday, who is still in hard luck. You have said heretofore that you never expected a cent. I think eventually he will pay; at any rate I have two French carom billiard-tables, with the patent Delaney cushions, which cost $450 each, and are as good as new with the exception of some very little wear, at Red Hook, where I moved them from this city, which I will ship you at East Chatham for Columbus upon your sending me a receipt for $600 (six hundred) to be applied on his note. I think you could realize that amount on them. Here the town is full, and cannot sell without too much sacrifice. The two tables cost me $900 and are worth $800 to any one who wants them; they are the best in use, in style and workmanship.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 55.—I. B., Ex'r.

TROY, *Nov. 17th*, 1874.

DEAR SIR: Your letter came to hand to-day. It is true you ought to have money; I know it, but now I am several thousand dollars in debt and have nothing in my hands, but can control some things. You have professed to believe that you never would get one cent from Stetson. I thought if you believed that, it would be doing you a favor, under the circumstances of my poverty, to let you have two tables that cost me $900, for $600, on what you considered a bad debt. I will do better than I wrote you; I will pay the expenses on them to Col-
1236 umbus. I have a large oil painting of Aridnee, a naked female, that you often saw in Griswold Hall, that originally cost $500, for which I paid $205, that I will send you for $100. I do this because I have no money, and to put you in shape to realize something right off on your claim. The tables are all boxed and can be shipped any day.

I also have a patent right for Rensselaer, Albany, and Columbia counties for rods, which cost me $600, that you may have for $300. I enclose you one of the bills, with cut and the prices, showing the profits.

I do this to satisfy you that anything I can possibly do I will to make my endorsement good.

I hope Stetson will soon make some money himself. Please answer by return mail. I would advise you to take the tables to apply on his note. The note calls for a large interest, but it will be paid.

Yours, etc.,

P. W. BISHOP.

Bishop Letter, No. 56.—I. B., Ex'r.

TROY, *Nov. 27th*, 1874.

DEAR SIR: I have traded off one of those billiard tables. I have done so at such a lay as it will pay at least $500 of my debts. I think you had better let me send you the other before some creditor may want it. It is a bargain, and if you have no sale at present for it you can afford to store it at the price I named.

Yours, etc.,

P. W. BISHOP.

1237 *Bishop Letter, No. 57.—I. B., Ex'r.*

TROY, *March* 23, 1875.

MRS. B.: Your letter came to hand this morning. I have just returned from the country. Have been sick some time and unable to do but little. I have not heard from Stetson but once since Mr. B. saw him here. He should have sent some money to me, and I was to forward it. He has not sent any. Mr. B. knows how hard up I was when he was here, and through sickness I have not been able to get ahead any. My rent, due on the first day of this month, I have not been able to pay yet. The landlord is running after me for it when I am here; so he can. I wish it was in my power to help you, for I am under very strong obligations to do so; in fact, I should strain every nerve to do it, but it is simply impossible now. I hope and trust you will in some way get through your embarrassments, and as soon as it is possible I will do all that you or Mr. B. will say I can do.

Respectfully yours,

P. W. BISHOP.

Bishop Letter, No. 58.—I. B., Ex'r.

COLUMBUS, *Nov.* 1, 1874.

To Mr. G. B. KELLOGG:

DEAR SIR: If it is not any trouble to you, I should like to know how much money Mr. Bishop drew from Mr. Alexander at the time he received the order from the court.

Respectfully,

M. S. BROWNING.

1238 It was admitted on the trial that Alexander, under the order of the court, paid to your attorney, on the 7th June, 1872, $1,741.

Yours, etc.,

G. B. K.

TROY, *Nov.* 4, 1874.

STATE OF NEW YORK,
Rensselaer County, ss:

I, Irving Browne, special examiner in the suit of Christopher C. Campbell, complainant, against Thomas L. James, defendant, in the United States circuit court for the southern district of New York, do hereby certify that the foregoing are true and correct copies of the originals, and of the whole of the originals, of fifty-eight paper writings produced in evidence by the said complainant on the hearing of said suit

before me, and by me marked "Complainant's Exhibit—Bishop Letters," number one to number fifty-eight inclusive, with my initials.

IRVING BROWNE,
Special Examiner.

1239 *Complainant's Exhibit, decision of the board of appeal, U. S. Patent Office.—I. B., Ex'r., August* 22, 1878.

(65.)

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy taken from the files of this office of the decision of the examiners-in-chief in the matter of the application for the reissue of letters patent granted Marcus P. Norton, dated April 14, 1863, and reissued August 23, 1864, for improvement in post-marking letters and cancellation of postage-stamps thereon.

In testimony whereof, I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this thirteenth day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the Republic of the United States the one hundred and third.

[SEAL.] ELLIS SPEAR,
Commissioner.

1240 No. 3952.

U. S. PATENT OFFICE.

July 29, 1869.

Before the examiners-in-chief, on appeal.

Application of Marcus P. Norton for a reissue of his patent for post-marking letters and cancellation of postage stamps thereon, April 14, 1863. Reissued August 23, 1864.

The soul of the invention is the construction and use of a hand letter postmarking and postage canceling stamp, whereby the posting and canceling is provided for and accomplished by one motion.

The material used and construction is of but secondary importance, and anything equivalent to those specially mentioned in the specification, in producing the result aimed at, was covered by the original invention.

The inventor asks for nothing in this reissue not fairly embraced and covered by his original invention, and allowed in his patent of April 14, 1863, and reissued August 23d, 1864.

The ingenious examiner would hardly allow a patent for a new invention where the only feature different from that shown by the original application should be a metallic canceling device, especially when he considers that in his original specification the applicant says, "I construct the canceling stamp or device of any suitable material."

As the use of these words appears to furnish the only ground for the rejection by the examiner in charge of the first claim, we think the reason and argument fallacious.

The references cited do not show an anticipation of the invention presented in this application for reissue.

It is possible that these cumbersome and complicated machines may perform as they are designed to do, and effect similar results to those
1241 attained by this single, cheap, and easily managed hand instrument; but as the present invention is a self-evident improvement both in structure, effective working, and cheapness, and as applicant only asks his third and fourth claims for his process and method of stamping the postmark and canceling the postage stamp at one blow of his hand instrument, for wh ch the examiner concedes he is entitled to a patent, by allowing the second claim, we see no good grounds for rejecting those claims. The holding and the decision of the examiner in charge is hereby reversed, and a patent will be reissued as asked.

R. L. B. CLARKE,
SAMUEL C. FESSENDEN,
Examiners in-Chief.

Ex'd, E. E. McC.—F. F.

(Endorsed:) No. 3952. Decision of board of appeal. July 29, 1869. U. S. Patent Office. Application of Marcus P. Norton for a reissue of his patent granted April 14, 1863, and reissued August 23, 1864, for an improvement in postmarking letters and cancellation of postage stamps thereon. Reissue again allowed by the examiner-in-chief

1242 *Complainant's Exhibit C C. (E. S. Zevely).—(Signed) H. F., sp'l examiner, March* 6, 1878.

OFFICE OF THE UNITED STATES ATTORNEY FOR
THE SOUTHERN DISTRICT OF NEW YORK,
New York, February 2d, 1878.

E. S. ZEVELY, Esq.,
Cairo, Ritchie Co., W. Va.:

SIR: There is a suit in equity pending here against Mr. James, U. S. postmaster at this city, which is based on a patent granted to Marcus P. Norton in 1863, for an improvement in post-office stamps.

I am informed by Mr. J. H. Zevely, of Wheeling, W. Va., that prior to the year 1860 you made of boxwood a combined postmarking and postage-stamp cancelor, so constructed that the postmark would appear wholly on the envelope and apart from the postage stamp, and would be made by the same blow which put the cancellation mark on the postage stamp. Will you do me the great favor to examine the enclosed papers and write out your answers in the manner indicated and take them before a notary public and swear to them. I will see that the fees of the notary are paid.

I request this, as the facts as stated by Mr. J. H. Zevely seem to me to have a very important bearing upon the suit. I request, also, that you give as early attention to the matter as you conveniently can.

Very respectfully yours,
(Signed) STEWART L. WOODFORD,
U. S. Att'y.

J. D. J.

(Endorsed:) S. B. C., C. H. B.

1243 *Complainant's Exhibit D D. (E. S. Zevely).—(Signed) H. F., sp'l examiner, March* 6, 1878.

Will you oblige me by taking the affidavit in the following manner: Entitle the affidavit as follows:

United States circuit court, southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

STATE OF WEST VIRGINIA,
County of Ritchie, ss:

E. S. Zevely, being duly sworn, testifies as follows, to wit: I am, etc.

(Answer the questions contained in the annexed paper, in writing, in narrative form, repeating the substance of the question in the answer; go before a notary public, who will administer the oath and attach his official seal.)

1. Have you ever been employed in any post-office? If so, state in what office, and at what time, as accurately as you can.

2. Have you ever known of the use in any post-office of a hand instrument by which the letter was postmarked wholly on the envelope and apart from the postage stamp, and the postage-stamp was canceled at one blow? If so, state what office, when it was first used, who made it, and how it was constructed—specifying particularly the man-
1244 ner in which the postmarker and canceler were attached to each other, and to the handle, and the material of which they were each made.

3. Was the instrument referred to in question 2 used in the year 1860 or earlier? Speak to the best of your recollection.

4. Who invented or contrived the instrument above referred to? Did you ever know of the inventor using the same; if so, where and in what year?

5. Did you yourself ever make or partially make such an instrument? If so, state when and how it was constructed. Give the date according to the best of your recollection.

1245 *Complainant's Exhibit E E. (E. S. Zevely).—H. F., sp'l examiner, March* 6, 1878.

CAMPBELL
vs.
JAMES.

OFFICE OF THE UNITED STATES ATTORNEY FOR
THE SOUTHERN DISTRICT OF NEW YORK,
New York, February 11, 1878.

E. S. ZENELY, Esq.,
Cairo, W. Va.:

DEAR SIR: I have to acknowledge the receipt of your letter of the 9th inst. in reference to your familiarity with the facts of the above case, and to say in reply that your testimony will be of great service to Mr. James, the postmaster in this city, who is personally liable in this action. The affidavit which I ask for in my former letter

certainly cannot take a great deal of your time, and will be very gratefully received by me as the representative of Mr. James. I am not authorized to pay you for the testimony which is within your knowledge, but I will pay for the procuring of the same the necessary expenses; that is to say, I will agree to pay the amount which can reasonably be charged for drafting and swearing to the statement referred to in my last letter. I trust that you will reconsider the conclusion expressed in your letter and consent to give me the benefit of your knowledge.

Very respectfully,
(Signed) STEWART L. WOODFORD,
U. S. Att y.

J. D. J.

1246 *Defendant's Exhibit.—Marcus P. Norton, A. & B.—I. B., Ex., May* 18, 1878.

CANAAN FOUR CORNERS, N. Y.,
November 27, 1876.

JACOB SHAVOR, Esq.:

DEAR SIR: Your letter of the 25th instant came to me this morning and from Troy to-day. I am up again and getting better every day. I will be in Troy one week from to day and in the mean time will have papers you name prepared in good shape. I have twice written Mr. Secombe since I sent his last letter to me to Mr. Eddy and I am waiting his reply to each of them. I little care whether he signs the paper that I sent him or not, because he has utterly failed in his trust and the title reverts, at least all the title he ever had.

He took no absolute title but a title subject to a certain trust. Whenever the trust fails then fails the title. He failed in that trust more than four years ago, and when called on for money to carry out the trust then he refused, and has so refused three or four times, and I have it in writing, still I have thought it best to have him make a reassignment. If he will do so, very well; and if not, then just as well.

I have good letters from Attorney-General Williams, also from General Butler, about my 1863 letters patent, dated April 14th of that year, and all the subsequent reissues, and they fully concur in my views and opinions about the title, use by the government, its great value, and certainty of recovery under that patent for the past thirteen
1247 years' use of that invention. And they are strongly in favor of the court of claims' bill No. S. 571, which you have.

I have also a letter from "Mr. Senator Wadleigh," who reported bill 571, dated the 24th instant, which I will let you three see when in Troy. I come to Troy to take proofs in a patent case and will be there four days.

The 21st joint rule of the Senate and House will not admit of our bill coming up until after six days from the commencement of next session, which will be on next Monday. The "six days" will be up on the following Monday, to wit, December 11th, or two weeks from to-day.

Congress convenes on Monday, one week from to-day.

If you, Corse and Eddy, will now take hold and push the 1863 invention on in the line of S. bill 571, you will be pursuing the right course and that which will certainly succeed and bring money to your entire satisfaction. It must not be encumbered with the 1859 patent in any way of association or compromise, because such a course will bring

with it certain defeat, even of the 1863 patent. That patent must and will stand alone in the claim against the government for its use; and when put into Mr. Eddy, as trustee, it must be that in no way or manner shall it be coupled with the 1859 patent. I have very carefully examined the whole matter since I came from Washington last August, and my conclusions are stated in a few words just above. Messrs. Butler and Williams both agree with me in this. I have now the evidence which will satisfy you about it. If the 1859 men have any claim for the use of that patent let them put in a case on their own hook and then they can find out all about it. Congress, on the 14th day of July, 1870, expressly authorized the government, by the Postmaster-General, "to continue in use" the patent of April 14th, 1863, and its reissues, and that has been done and is being done to-day. Every report made
1248 in Congress, without an exception, has spoken of and confirmed the use of the April 14th, 1863, patent and of its reissues. This has been done by giving the dates of that patent and by describing the invention in the reports. The August 9th, 1859, patent is nowhere thus mentioned. There is much more on these points, but enough now. You will please let Messrs. Eddy and Corse see this letter.

Truly yours,

MARCUS P. NORTON.

1249 *Defendant's Exhibit, No.* 180.—*I. B., Ex'r, Troy, July* 16*th*, 1878.

TROY, N. Y., *Feb.* 6, 1864.

HON. ABRAM WAKEMAN,
Postmaster, New York:

SIR: Your letter of the 22d ult. is before me for answer, it having been referred to me for that purpose by Mr. Ransford, to whom it is addressed. Mr. Ransford is not, and does not claim to be, the inventor at all of the stamp to which you refer. The "double canceling stamp" now used by you in your post-office is my invention as far back as the year A. D. 1856, as I can most fully and satisfactorily prove. It was patented to me in the early part of the year 1863 upon an application made by me a long time before then. I had several such stamps made in 1858, as I can prove by the person who made them. In the year 1859, I conceived the plan of attaching a cutting device to a cylinder dating stamp, which combination of "cylinder dates" and "cutting device" was patented to me in August, 1859. This patent was by me assigned to "F. G. Ransford, Peter Low, and Chas. Eddy & Co.," some time during that year. This device was tested in the Washington City post-office in the year 1859, by order of Hon. Horatio King, First Assistant Postmaster-General. It was found not to operate well, and Mr. Tree, of the Washington post-office, reported against it. I then returned to the original invention which I found by test made in the New York office to be the best invention. The "cutting device"
1250 was also tested in your office, and found to cut too much into the letter; but at the same time making a more effectual cancellation of the stamp. I then made improvements upon the double canceling stamp (by cutting) which were also patented to me in the early part of 1862. In the year 1859 a patent was granted to me. In the year 1862 two patents were granted to me, and in the year 1863 one patent was granted to me, all of which were for improvements of a different character in post-office stamps. In the year 1856 I first submitted the double canceling stamp to the Post Office Department for consideration. This is the same stamp in principle and combination which you now

use, and have for about three years used in the New York post-office. During each year from 1856 to the year 1863 inclusive, I have urged upon the Post Office Department the use of said stamp. So I have the improvements covered by the patent of 1859–'62, and after having tested them all in the manner and the time (as well as place) selected and directed by the Post Office Department, the improvements of 1856 patented in 1863 were selected and adopted as the best and which at first I thought of the least value. The patents of 1862 and 1863 are now held by assignment by "Jacob Shavor and Albert C. Corse," of this city, as the Patent Office records will most fully show, and who also own one-third of the patent of the "cutting device" of 1859, and which was invented by me in that year. I first began with the Post Office Department for a change in the then existing unwieldy plan of postmarking and mailing of letters in the year 1854, and have letters, etc., to show that fact. The Post Office Department at Washington contains a large number of letters written by me in the years 1858, 1859, '60, '61, '62, and '63, upon the matter of postmarking letters and canceling stamps thereon, also in making up of the mails. I have the best of proof of this. More than that, the records fully show it to be true. These
1251 improvements I have also patented in Europe, and which are now meeting with great favor there. The Postmaster-General gave me an order in the fore part of 1859 to use for three months in the Troy post office my invention now used by you. I have the original order. Any other information you may desire, I will furnish you with if in my power to do so within the strict rule of right. You can address Messrs. "Shavor and Corse," aforesaid.

Your obedient servant,
(Signed) MARCUS P. NORTON.

POST OFFICE DEPARTMENT,
Washington, D. C., March 28, 1878.

I, David M. Key, Postmaster-General of the United States of America, certify this to be a true copy of the original now on file in this department.

In testimony whereof, I have hereto set my hand and caused the seal of the Post Office Department to be affixed at the city of Washington, the day and year above written.

[L. S.] D. M. KEY,
Postmaster-General.

1252 *Defendant's Exhibit, No.* 181.—*I. B., Ex'r, Troy, July* 16*th*, 1878.

WASHINGTON, D. C., *March* 14, 1866.

HON. WILLIAM DENNISON,
Postmaster-General;

SIR: In addition to the amount of money expended by Messrs. Shavor and Corse for me and on my account, as stated by them in their affidavit made on the 2d day of January, 1866, and to be found on page 6 of Ex. Doc. No. 30, 39th Congress, 1st session, I have expended full $5,000 (five thousand dollars), which was done before my assignment of the patents to them. This sum was expended in the perfecting of the invention described in the patents (there being two and one reissue) and in getting the same into use. This is for money actually and necessarily expended, nothing being charged for my services rendered as attorney in the suit brought to establish the validity of the patent, nor was there

anything charged for counsel who tried the cause before the court on part of the plaintiffs. I may further say that this invention has been in use by the department in the New York office since the fall of the year 1860 at a saving in that office of six thousand dollars per year in the item of clerk hire alone. It is now in extensive use by the department. I have never received from the department or government, in any manner whatever, a single dollar for the use of this invention, nor have my said assignees. In order to successfully defend my right to this
1253 invention as the original and first inventor, it became necessary to part with the title by deed of assignment to Shavor and Corse, as at that time parties to suits in the United States courts could not be witnesses in their own behalf. Since then Congress has changed the law in that respect. But for this I would to-day have been the owner of the entire invention. So it is, and all I now ask or expect is a fair, just, and liberal compensation in an equitable proportion to the real and actual value of the invention for the term or life of the patient, to wit: 17 (seventeen) years from the date thereof.

Very respectfully, your ob'd't servant,

(Signed) MARCUS P. NORTON.

POST-OFFICE DEPARTMENT,
Washington, D. C., March 28, 1878.

I, David M. Key, Postmaster-General of the United States of America, certify this to be a true copy of the original now on file in this department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[L. S.] D. M. KEY,
Postmaster-General.

(Here follows diagram marked page 1254.)

1255 *Complainants Exhibit Hand-stamp, patented August* 23, 1870.—*I. B., Ex'r, August* 22, 1878.

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office, of the canceled letters patent granted Helen M. Ingalls, dated August 23, 1870, No. 106716, for improvement in hand stamps.

In testimony whereof, I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this thirteenth day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

[SEAL.] ELLIS SPEAR,
Commissioner.

I hereby certify that the foregoing is a true copy of the certificate of the Commissioner of Patents prefixed to Complainant's Exhibit "Hand stamp, patented August 23, 1870," filed with me on the 22d of August, 1878, in the cause of Christopher C. Campbell against Thomas L.

1256 James, in the United States circuit court for the southern district of New York.

IRVING BROWNE,
Special Examiner.

No. 106716.

The United States of America to all to whom these letters patent shall come:

Whereas, Marcus P. Norton, of Troy, New York, hasalleged that he has invented a new and useful improvement in hand stamps (he having assigned his right, title, and interest in said improvement to Helen M. Ingalls, of same place), and has made oath that he is a citizen of the United States, that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same has not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor. These are therefore to grant to the said Helen M. Ingalls, her executors, administrators, or assigns, for the term of seventeen years from the twenty-third day of August, one thousand eight hundred and seventy, the full and exclusive right and liberty of making using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed. Given
1257 under my hand, at the city of Washington, this twenty-third day of August, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

SAML. L. DUNCAN,
Acting Commissioner of Patents.

U. S. PATENT OFFICE,
October 4, 1870.

This patent and reissued letters patent No. 3586, granted to Marcus P. Norton August 3, 1869, for improvement in post-office postmarking and canceling hand stamps, were jointly surrendered for cancellation, and in lieu therof reissued letters patent Nos. 4143 and 4144 were granted, bearing date October 4, 1870.

These letters patent No. 106716 are therefore, at the request of the patentee, annulled and canceled.

SAML. S. FISHER,
Commissioner of Patents.

(Here follows diagram, marked page 1258.)

1259 UNITED STATES PATENT OFFICE.

Marcus P. Norton, of Troy, New York, assignor to Helen M. Ingalls, of same place. Improvement in hand stamps.

Specifications forming part of letters patent No. 106716, dated August 23, 1870.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer, and State of New York, have heretofore invented certain new and useful improvements in a device or instrument for printing, dating, and canceling internal revenue or other stamps of value, by cutting or puncturing the same in the manner and by the means substantially as herein described; and I do hereby declare that the following is a full, clear, and exact description of the nature, construction, and operation of the said invention.

Like letters represent and refer to like or corresponding parts upon the accompanying drawing, made in one sheet.

Fig. 1 is a vertical section on a line through the centre of my canceling device or instrument. Fig. 2 is a perspective view of same device or instrument. Fig. 3 is a face view, showing the printing and cutting or puncturing devices arranged and combined for printing any name and the date, and for cancellation purposes. Fig. 4 is a modification representing the invention attached to an ordinary stationary
1260 frame to receive and contain such printing, dating, and cutting or puncturing devices. Fig. 5 represents an enlarged view or plan of cancellation, and printing and dating an internal revenue stamp, represented by said figure. Fig. 6 represents an internal revenue stamp canceled by being cut in several places, together with the month, day of month, and the year; also the name and residence of the person printed or impressed upon the surface of such revenue stamp who performs the operation of cancellation.

The nature of my invention and improvements consists in the employment of cutters or knives between the type for the month, the day of the month, and the year.

A, Figs. 1, 2, and 3, shows a device or instrument for printing or impressing the name of any bank, corporation, company, or person, and the month, the day of the month, and the year, upon the government revenue stamp, and at the same time and operation of the instrument cancel such stamp and the check, note, draft, receipt, or other paper on which said stamp may have been secured or affixed in the usual manner, by cutting or puncturing the said revenue stamp, and also cutting through both the stamp and paper or document on which the same shall have been used or affixed, by means of the cutting devices *a*, or knives, constructed in any suitable and desirable form or shape, and arranged and combined for that purpose, as herein stated.

The said knives or cutters, *a*, are placed between and alternate with the type for the month, the day of the month, and year, as shown both between and outside of the said type for the date, and they are each properly adjusted to the face of the dating type or printing surface of the device or instrument in which they are placed, arranged, combined, and firmly held or secured therein by means of a suitable screw-bolt, *c*, or by other suitable and convenient means.

1261 At Figs. 1 and 3 *d* is the type for the month, *e* is the type for the day of the month, and *f* is the type for the year.

The cutters or knives may be seen at *a*, same figures, which may each have upon the cutting or puncturing edge any form, shape, or configuration in or with which it is desirable to cancel the revenue stamp.

The said cutting and puncturing canceling device should be made detachable, for the purpose of repairs or supplying new ones when needed.

When the revenue stamp shall have been canceled by the use of my said invention and device, it will be cut or punctured, and the date thereof printed or impressed thereon, substantially as shown in accompanying drawing, cutting through the stamp and the paper to which it is affixed in the usual manner. Such cancellation is permanent, and will prevent a second or re-use of the revenue stamp.

The blow is given by the instrument or device upon the exposed surface of the revenue stamp, and the date is thereby given thereon, and at the same time the revenue stamp is cut or punctured in such form and in as many places as desirable.

Having thus described the nature, construction, and operation of my said instrument or device, what I claim and desire to secure by the letters patent of the United States of America, is—

The arrangement of the knives or cutting devices *a*, when used alternately with the type for forming or printing the month, the day of the month, and the year, in the manner and for the purposes substantially as herein described and set forth.

In testimony whereof I have, on this 12th day of June, 1870, hereto set my hand in the presence of two witnesses.

MARCUS P. NORTON.

To wit:
CHARLES P. BARNARD,
FREDERICK KOONS.

Ex'd. E. E. McC—F. F.

1262 *Complainant's Exhibit William E. Hagan and Smith Groom. (October* 30, 1863.)—*I. B., Ex'r, August* 23, 1878.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-eighth.

[SEAL.] D. P. HOLLOWAY.

U. S. PATENT OFFICE, *Oct.* 30, 1863.

Interference between the application of Wm. E. Hagan, for a method of burning fuel for generating heat, and the patent granted to Smith Groom, June 10th, 1862, for improvement in stoves.

On appeal to the examiners-in-chief.

The invention in controversy consists essentially in injecting
1263 superheated steam into the fire of a stove or furnace in small jets, by which means the steam is decomposed, and the hydrogen gas, thus set free, is subjected to combustion, and aids in generating heat.

Both parties claim to produce this result in substantially the same way. A boiler for generating steam is located in the upper part of the stove, from which the steam is conducted through pipes or suitable passage-ways to an annular chamber (or chambers) surrounding the fire box, with small apertures in its inner wall through which the steam, highly heated, is injected immediately into the fire. This general description is equally applicable to the apparatus and process of both parties. The claim of Groom is in these words:

"What I claim," etc., "is the introduction of highly-heated steam into the fire-chambers by means of annular chambers or pipes surrounding the said fire-chamber, on the inside thereof, and having therein apertures through which such steam or hydrogen is admitted into the fire around the outside thereof, whereby combustion is greatly aided and fuel economized, substantially as herein described and set forth."

Hagan makes three claims, two of which only have been adjudged to interfere with Groom's patent, and are as follows:

"1. What I claim as my discovery, or invention, in the management of combustion in fire-chambers, is the application, substantially as herein described, of superheated steam in jets, so as to impinge without admixture with atmospheric air, directly against the incandescent coals in addition to, or in combination with, the supply separately of atmospheric air either by draught or blast, in the usual manner as set forth and for the purpose specified.

"2. I also claim, in the construction of fire-chambers for the combustion of fuel, and provided with apertures at or near the bottom for the admission of atmospheric air, combining therewith a steam chamber or chambers having numerous small apertures next to the fuel for the escape of the superheated steam to impinge without admixture of atmospheric air against the incandescent coals, substantially as and for the purpose specified."

1264

There is one material difference between the processes described by the parties respectively, which does not become apparent, however, on reading their claims independently of the specifications.

It will be observed that Hagan, in both his claims above quoted makes it an essential element that the superheated steam shall be used as described, in combination with a supply of atmospheric air from below the fire. Groom, on the contrary, specially sets out in the body of his specification that "no air is admitted to the fire, or any part thereof. The entire structure is constructed air-tight, so that air is only admitted to start the fire and generation of steam, which, when done, is then shut off." His model is evidently constructed in accordance with this theory.

The testimony of an eminent chemist in the case is, that without a supply of atmospheric air to the fire "it would not be possible to maintain combustion for any great length of time," and it appears manifest to us that such would be the case. If this be so, then Hagan has at least made a valuable improvement on Groom's invention, even conceding that Groom is the prior inventor of all that he describes and claims, and that what he describes and claims constitutes a patentable invention. In this view of the case, it is questionable whether Hagan is not entitled to his patent at all events, leaving the question to be decided by the courts whether it shall be held subordinate to the prior patent of Groom or not.

But inasmuch as the parties have gone fully and elaborately into the evidence touching the priority of invention of that part of the process which consists in introducing superheated steam directly to the fire from an annular chamber surrounding the fire-box, or, in

1265

the language of Hagan's claim, "so as to impinge, without admixture with atmospheric air, directly against the incandescent coals,' we shall not shrink from an examination of that evidence, or from giving an opinion as to the side upon which it preponderates.

Hagan filed a caveat, accompanied by elaborate drawings, on the 3d of February, 1862, very clearly describing and illustrating the invention which he now claims.

Groom filed his application by petition only, on the 13th day of February, 1862, but did not file his specification and drawings until the 21st day of that month.

"Hagan's caveat was either overlooked or misunderstood by the examiner-in-charge, and so no notice was given to him (Hagan) to complete his case in order to a delaration of interference." But for this inadvertence the contest would have been between two applicants for patents, instead of being as it now is between an applicant and a patentee.

So far as the record evidence is concerned, it proves the priority of invention on the part of Hagan. Both parties, however, have introduced evidence tending to prove invention at much earlier dates than their respective applications to the Patent Office.

By an agreement between the parties both Hagan and Groom were examined as witnesses.

The testimony is clear and undisputed that Hagan had the invention in practical operation in a stove at his store in Troy, New York (where both parties reside), in the month of January or about the first of February, 1862. It is proved also, by his own testimony, that he made a practical application of the same invention in a stove at the same place in the year 1858. He states, however, that the only person who had any knowledge of the experiments made by him at that time (one

1266 Kelley, who was then in his employ) is now dead, and so his testimony on that point stands wholly uncorroborated, except by one circumstance tending slightly to corroborate it, as testified to by another witness. Nevertheless it stands wholly uncontradicted, and as, by the agreement of the parties, Hagan was made a competent witness, we cannot reject his testimony as long as it remains unimpeached. We must, therefore, regard his testimony as establishing the fact that he discovered the invention which he now claims, and tested its practicability, in 1858.

There is no direct and positive evidence that Groom discovered the invention described in his patent as early as 1858, or in fact at any time previous to the winter of 1861–'2. Although he was put upon the stand, and examined for some time by his own counsel, he did not state when he made the invention described in his patent, nor was that question asked him. What he might have said if his examination had not been interrupted by his illness, it is impossible for us to know or surmise.

Smith Groom was not put upon the stand until late in the afternoon of Saturday preceding the Monday on which the testimony was to be closed. The counsel of Hagan and his assignees objected to his being called at that late hour "of the last day of taking proofs," on the ground that it would be "impossible to cross examine him within the remaining business hours of the day." The Commissioner, however, overruled the objection, on the ground that the time for taking testimony included the Monday following. The witness was then put upon the stand and testified that he made the model upon which his patent of June 10th, 1862, was issued in the fore part of the year 1856; that he made an application to Marcus P. Norton, esq., in 1857 to aid him in obtaining "a

patent upon that model," and that Norton objected to it, and told him that he was a fool or crazy. He then had the model with him,
1267 and explained to him (Norton) what it was for, that is, the burning of steam in connection with fuel. There were two other men present, one of whom took sides with Norton, and ridiculed him (witness) as being a fool or crazy, while the other (a Mr. Hardman) took sides with the witness, and argued that he was right in his views. He testified that the words "Smith Groom, Troy, N. Y.," engraved on the model were engraved by James Hagerman about a year after the model was made. In answer to a question by his counsel as to certain alterations which appeared to have been made in the model, and by whom and when they were made, he stated that the alterations were made by himself shortly before the model was sent to the Patent Office (February, 1862). The questions of his counsel on this point only referred to two alterations in the model—one "in the upper part of its construction," and one in the hearth-piece, consisting in stopping up three openings which appeared to have originally been therein. The answers of the witness were strictly responsive to the questions in stating by whom and when said specified alterations were made. But neither did the nterrogations call for nor the answers give any light upon the important question whether these were the only alterations made in the model shortly before it was sent to the Patent Office. There is nothing in his testimony from which it can fairly be implied that the alterations mentioned were the only alterations so made.

When the witness had answered the question touching these two alterations, it being 7½ o'clock in the evening, the further examination was adjourned until Monday morning. On Monday morning the witness was taken suddenly ill, so that his examination could not be proceeded with that day, on which the testimony was closed, thus terminating the testimony of the witness at the very unsatisfactory point above indicated.

The counsel of Groom and his assignees offered to consent to an
1268 extension of the time of taking the testimony, to give counsel on the other side an opportunity of cross-examining the witness (Groom), but to this the counsel on the other side did not assent.

If the two alterations referred to by Groom in his testimony were in fact the only alterations made in the model after the model was made in 1856, it is more unfortunate for his side than for the others that his examination should have been interrupted at the point at which his testimony terminated. As it is, his testimony falls very far short of proving that said model, in a form to embody and illustrate the invention now in controversy, had any existence prior to his application for the patent, or a short time previous thereto. The model was undoubtedly made prior to 1858; there is abundant evidence of that fact. But whether it embodied the invention now in controversy depends upon the fact whether certain apertures in the interior, not apparent on the outside, were then in it or not. We refer to the apertures from the annular chamber leading into the fire-box. Without these apertures the model would afford no evidence of the existence of the invention now in controversy. They could have been made subsequently to the making of the model more easily than the alterations which Groom testifies that he did make shortly before sending the model to the Patent Office, and would have changed the appearance of the model much less. It is quite probable that Smith Groom is the only man in the world who knows whether these perforations were made in the model originally or at some subsequent time; and if at a subsequent time, when? If there is any other man who

knows that fact, his evidence on that important point has not been produced in this case.

In view of the fact that it is proved that the model has been altered quite recently, by stopping up some holes and opening others, evidence that it was made in 1856 is not sufficient to establish the
1269 fact that the perforations in the annular chamber were then made.

The utmost that has been proved is that it had the same general appearance in 1856, or prior to 1858, that it has now. But the addition of said perforations in the annular chamber would not have changed its outward appearance at all, or its appearance internally, except to a very critical observer.

It is important to be borne in mind that it is an essential element of the invention now in controversy that the superheated steam shall be injected immediately into the fire. To introduce it above or below the fire would not involve this invention, nor would it effect the object in view. In a stove constructed according to Groom's model, without the perforations in the inner wall of the annular chamber, it would be impossible to cause the steam to be injected into the fire, as is required to be done in applying the invention now in controversy. With said perforations a stove so constructed would be adapted to carrying the invention into practical operation. Whether the existence of the model at any given time, therefore, tends to prove that the invention now in controversy had then been discovered depends upon the fact whether it then contained said perforations.

The only witness besides Smith Groom who testifies to having seen the model prior to 1859 is James Hageman, who testifies that he engraved on the model in 1856 the words "Smith Groom, Troy, N. Y.," which now appear upon it. He does not pretend, however, to recollect anything more about the model at that time than its general appearance. He cannot say whether it has been altered since that time or not. In fact, his testimony wholly fails to prove that the model, as he saw it in 1856, was adapted to the invention now in controversy or not. He does not even state that he was then aware, or that Groom informed
1270 him, what was the object of the model, or what was the nature of the invention it was intended to represent.

There are two other witnesses who testify to having seen the model in 1859 and in the winter of 1859–'60; both of whom have attempted to described it as they saw it. These witnesses are Peter P. Groom, son of Smith Groom, and Marcus P. Norton, his attorney.

Peter P. Groom says he first saw the model in January, 1859. He says his father then explained to him its object and its operation, so that he understood it that "he was a going to use water to save fuel." He describes the model as having two annular pipes or tubular wings around the fire-pot, one at the bottom, resting on the grate, and one at the top of the fire-pot, both being perforated and both being connected by pipes with the reservior above. The counsel (Mr. Norton) did not appear satisfied with this description representing the lower annular chamber as consisting of a round pipe, and strove hard, apparently, to lead the witness to change his testimony on that point, but only succeeded in getting him to contradict himself in such a manner as to utterly destroy his testimony.

Norton himself testified to having seen a model in the possession of Smith Groom in the winter of 1859–'60 which resembled the model in question, but could not swear it was the same. In form and shape it was like it to appearance in all its parts. He saw no round pipe encircling the model at or near the lower part of the fire-box (as testified to

by Peter P. Groom), and no such pipe, "except the one at the top of the fire chamber;" "but did see an annular chamber opening into the fire-chamber, near the bottom, by means of small apertures."

Both Peter P. Groom and Norton represent the model seen by them as having two annular chambers round the fire box, one at the
1271 top and the other at or near the bottom. They differ only as to the form of the lower chamber, Groom representing both as being in the form of round pipes, and Norton insisting that the upper one only was in that form.

But when, at a later stage in the case, Smith Groom himself was put upon the stand, he showed that both of said witnesses were mistaken as to the condition of the model or the time of which they speak, and that said upper annular chamber or circular pipe was not then in the model at all. For when his attention was called by Norton (Q. 12) to certain alterations which appeared to have been made in the upper part of the model, and asked when and by whom they were made, he answered: "The alterations were made by myself shortly before I sent it to the Patent Office," and then in answer to question 13, as to when the alterations were made in the hearth-piece, he answered, "They were made by myself at the same time I put the ring in above, in 1861."

This "ring" which Smith Groom swears he put in himself in 1861 (and the latter part of that year) Peter Groom and Norton both swear to having seen in the model previously, the former in January, 1859, and the latter in the winter of 1859–'60. When it is shown that these witnesses were so much mistaken in regard to the said upper ring, how can we place the least reliance upon the accuracy of their recollections as to the more obscure device of the perforation in the "lower ring" or annular chamber?

There is another witness, Albert C. Corse, who testifies to having seen a model in the possession of Smith Groom, similar in appearance to the model in question, in February, 1860, and which Groom said was for "burning steam." He, however, either did not examine it sufficiently, or did not recollect its construction well enough, to be able to say whether it then contained the features essential to adapt it to
1272 the invention now in controversy or not. He recollects the annular chamber around the lower part of the fire-pot, but has no recollection whether there were any perforations in it or not.

There can be no doubt, from the evidence, that Smith Groom had been experimenting with a view to "burning steam" for a good many years previous to his application for the patent now in controversy. One witness speaks of experiments made by him in that line so early as 1852. There can be no doubt, either, that he made the model upon which that patent was granted, but not in its present condition, as early as 1856.

The only mode, however, in which it has been attemped to prove that he discovered the invention now in controversy at any time previous to filing his application, is that of showing the existence of the model at an earlier date, and that it was represented by him as a model of an invention for "burning steam." We have already shown that there is no evidence that the model ever existed in its present condition or in any condition embodying or illustrating the invention now in controversy, prior to the time when Hagan had made a practical test of the invention in 1858. We have also shown that there is no satisfactory evidence of its existence in such condition subsequently, until shortly before it was sent to the Patent Office.

It is not pretended that there is any evidence that Smith Groom ever reduced the invention now in controversy to practice, by introducing it

in a working stove or furnace, prior to his application for a patent. In fact, we think it is certain that he never had done so, or he would not have fallen in the fatal error of saying, as he does in his specification, that "no air is to be admitted to the fire, or any part thereof," during the process of combustion. All the evidence in the case proving that he ever made any experiments in "burning steam" or in attempting to do so shows that his plan was to introduce the steam under the
1273 grate. His son-in-law, Wadsworth, testifies to an experiment in 1852, which consisted in placing water in the ash pan of the stove, under the grate. He also testifies to another experiment of the same character "three or four years ago" (from January, 1863), at the store of Hicks, Wolfe & Co., in Troy, N. Y., when he, witness, made the box to be set under the grate to contain the water to be converted into steam.

Edward Hicks and G. G. Wolfe, of the said firm of Hicks, Wolfe & Co., stove merchants, of Troy, both testify to an experiment made at their store, to test Groom's invention, in the fall of 1859, or winter of 1859–'60, when a pan of water was placed under the grate. This was doubtless the experiment testified to by Wadsworth at the time he made the pan as above stated. These witnesses also state that a short time afterwards, on the invitation of Smith Groom, they visited his house to witness further experiments with his invention. He had there a cooking stove in operation, with pipes discharging jets of steam under the grate. They remained one or two hours examining what was represented as his invention, and both say they understood it, and that it consisted in introducing the steam under the grate as aforesaid. The object of Groom in inviting them to witness his experiments was to induce their firm to take an interest in his invention.

If it be true (as both parties claim) that the invention now in controversy of injecting the steam directly into the fire has proved eminently successful, it is very difficult to believe that Groom had discovered it previous to the time when he was trying to interest the firm of Hicks, Wolfe & Co. in the useless invention of introducing the steam under the grate. An inspection of Groom's model does not impress us with the probability that the perforations in the annular chamber, surrounding the lower part of the fire-box, was an original feature in it.
1274 Said annular chamber has a transverse partition across it, and it is evident that as the model was originally constructed it had one pipe for conducting the steam down from the boiler into the annular chamber, on one side of said partition, and another pipe rising from said chamber on the other side of the partition, for the escape of the steam after it had performed the circuit of said annular chamber. If the perforations for conducting the steam from said annular chamber directly into the fire-chamber then existed, we conceive of no reason why an escape-pipe from said chamber should have been provided.

But we have in evidence statements made by Smith Groom himself to Hagan, about the first of February, 1862, which are wholly inconsistent with the hypothesis that he (Groom) was then in possession of the invention now in controversy.

Hagan testifies that Smith Groom called upon him early in February, 1862, and requested "to see that wonderful stove he had heard so much about." There was no fire in the stove at that time, and so it was not shown to him. He then solicited the job of making Hagan's model. He told Hagan he had made experiments with a view to obtaining the same results that Hagan had obtained, and asked Hagan how he arranged his pipes. He said he understood that Hagan's steam-pipe came down

inside of the stove, while he brought his down on the outside, under the fire.

Alexis Wager, who was present at this interview between Hagan and Groom, fully corroborates the testimony of Hagan. He says that Groom asked Mr. Hagan in what way he used his steam; he asked him if he brought it down outside of the stove in pipes and carried it under the grate. Mr. Hagan answered that he did not use that method; that that had been tried before and failed. Mr. Groom remarked that he had tried it that way himself and failed, and had given it up. Groom
1275 then solicited the job of making Hagan's model. He remarked that he had made a number of models, and could make them as cheap as anybody. He again remarked to Mr. Hagan that he need not be afraid of him, as he had failed in his experiments, and had given it up.

Taking all the evidence together, it not only utterly fails to prove that Groom had discovered the invention now in controversy previous to the discovery thereof by Hagan in 1868, but goes to show that it is highly improbable that he had ever discovered it until after Hagan had notoriously made a practical application of it, in January, 1862.

It is insisted, however, by Groom's counsel, that if Hagan actually discovered the invention, and reduced it to practice in 1858, he has "forfeited all his rights to this invention to the public forever: 1st, by abandonment; 2d, by laches in not applying for a patent in a reasonable time after having thus made, completed, and perfected his said alleged invention; and 3d, by gross negligence in secreting and failing to patent his alleged invention for more than two years after its discovery by him in December, 1858."

It is sufficient for us to say that there is no law by virtue of which an inventor forfeits his right to a patent by failing to apply for one within two years from the discovery of his invention, or by failing to make the invention public within that time. The first inventor can only lose his right to a patent by an express abandonment to the public, or acts or omissions from which an intention to abandon the invention to the public can be fairly presumed; or by permitting it to go into public use or upon sale for the space of two years; or by reason of the same invention having been discovered and reduced to practice by another while he was not using due diligence in adapting and perfecting it. So far as the cited decisions of the judges of the late circuit court of the district on appeals from the Patent Office assert a different doctrine, they
1276 are in direct conflict with the whole current of judicial decisions on the subject, and are not regarded as authority. The decisions of the Supreme Court cited by counsel (Pennock vs. Dialogue, 2d Pet., 1; and Kendall vs. Windsor, 21 How., 328) utterly fail to sustain the positions they relied upon to establish.

It is also insisted that Hagan's testimony that he discovered the invention and reduced it to a practical test in 1858 is contradicted by his caveat filed in February, 1852, inasmuch as by his caveat he asks time to "mature and perfect" the invention. It is insisted that either in his testimony touching the discovery and practical test of the invention in 1858, or in his caveat, he "committed a falsehood." Nothing is more common, however, than for an inventor, after having discovered the principle of an invention, and tested its practicability in one way or more, to require further time to "mature and perfect it," and to devise the best means of developing its utility, before taking out a patent. It was for the very purpose of giving him such time to mature and perfect

his invention, and devise the best means of adapting it to practical use, that the law provided for provisional protection by a caveat.

There is one very voluminous branch of this case to which we have not yet adverted. We allude to the attempt to impeach the witness Norton on the part of Hagan, and to sustain him on the part of Groom and his assignees. Thirty-three witnesses were called to impeach his character for truth and veracity, and eighty-one to sustain it, and many of these witnesses on both sides were subjected to a very tedious examination. We have not deemed it incumbent upon us to wade through this immense volume of depositions for two reasons, viz, first, because the testimony of Norton, if true and accurate, does not prove the discovery of the invention now in controversy by Groom at as early a date as Hagan proves the discovery and practical test of it by him-
1277 self; second, because, however good Norton's character may be, and however honestly and sincerely his testimony may have been given, the testimony of Smith Groom shows that he was mistaken in a material point as to the condition of the model when he saw it in the winter of 1859–'60.

And as his (Norton's) testimony only tends to prove that Groom had at that time discovered the invention now in controversy, in so far as it shows that Groom then had a model embodying or illustrating the invention, this conclusive proof of the inaccuracy of his recollection as to the condition of the model would render his testimony on that point utterly worthless. It is wholly immaterial whether he misrepresented the condition of the model by mistake or design.

It has been argued on behalf of Mr. Norton that "it is due to him that this attack should receive a judicial reproof and rebuke 'at our hands,' or at least that it should be adjudged that his testimony is credited."

So far as the attempt to destroy his testimony by impeaching his character for truth is concerned, we have no hesitation in saying that in view of the large number of sustaining witnesses it must be regarded as an unsuccessful one. We cannot, however, credit the accuracy of his testimony, for the reasons already given; but, in saying this, we by no means intend to impute to him wilful perjury.

It is considered that there is no error in the decision of the examiner, and it is affirmed.

J. J. COOMBS,
S. H. HODGES,
T. C. THEAKER,
Examiners in Chief.

Ex'd.—J. J. S.

(Endorsed:) No. . Hagan vs. Groom. Decision of the examiner-in-chief.

1278 I hereby certify that the foregoing is a true copy of the "Complainant's Exhibit William E. Hagan and Smith Groom, October 30, 1863," filed with me on the 23d day of August, 1878, in the cause of Christopher C. Campbell against Thomas L. James, in the United States circuit court for the southern district of New York

IRVING BROWNE,
Special Examiner.

genuine and true paper or assignment for record, on said August 22, 1871; all of which he did in defiance of the rights of said assignors, viz, F. G. Ransford and P. Low; and the said Marcus P. Norton was, and is, guilty of gross misconduct as a patent attorney or agent, and is unworthy of the confidence or respect of the United States Patent Office.

M. D. LEGGETT,
Commissioner.

(Copies of the exhibits were served on Mr. Norton, but being voluminous, are omitted here.)

By the request of the attorney of said Marcus P. Norton, the hearing in the matter of the above charges was postponed until September 14, at 10 o'clock a. m. Understanding that Mr. Norton was fearful the Commissioner would not do him exact justice, he was informed that, if agreeable to his wishes, a commission of three gentlemen connected with the Patent Office would be appointed to hear and investigate the charges, and to report their findings to the Commissioner. He expressed his satisfaction with such arrangement, provided he might designate persons whom he did not want on the commission. He was granted such privilege, whereupon Examiners T. C. Connolly, Ellis Spear, and C. M. Parks were appointed such commission. At the time to which said case had been postponed, said Marcus P. Norton appeared before the commission, and was assisted in his defense by two able attorneys. He pleaded "not guilty" to all the charges. Over two days were occupied in the hearing. The report of the commission is as follows, to wit:

1284 UNITED STATES PATENT OFFICE,
September 18, 1871.

SIR: We, the undersigned, having been appointed a commission to investigate certain charges made against Marcus P. Norton, a practicing attorney before the United States Patent Office, by order dated September 14, 1871, have carefully investigated said charges, examined the papers and witnesses in the case, and heard the arguments of counsel on both sides, and respectfully submit the following report:

We find that the accused, Marcus P. Norton, is—

Of the first charge, guilty.

Of the second charge, guilty.

Of the third charge, not guilty.

Of the fourth charge, guilty, except of the words "purloining from said files," * * said papers, etc.

Of the fifth charge, guilty.

Of the sixth charge, guilty.

Of the seventh charge, guilty.

Of the eighth charge, guilty.

All of which is respectfully submitted.

T. C. CONNOLLY,
ELLIS SPEAR,
C. M. PARKS,
Commission.

Hon. M. D. LEGGETT,
Commissioner of Patents.

It is therefore adjudged—

I. That said Marcus P. Norton has been guilty of such "gross miscon-

duct" as to make it the duty of the Commissioner of Patents to
1285 refuse longer to recognize him as a patent agent; and it is accordingly ordered, by virtue of the authority conferred upon the Commissioner of Patents, under the 17th section of the act approved July 8, 1870, that the said Marcus P. Norton, or any firm of which he shall be a continued member, after said firm shall have been notified of this order, be hereafter excluded from practicing before the Patent Office, in any and all cases.

II. In view of the fact that said Marcus P. Norton is also an inventor, and frequently appears in his own behalf in prosecuting applications for patents, extensions, interferences, etc.; and whereas it having been clearly proven in this case that he is an unsuitable person to be trusted with the files in this office, it is further ordered that hereafter said Marcus P. Norton shall not be permitted to have personal access to any of the files, drawings, or models in the Patent Office for any purpose whatever. When necessary, in the transaction of business connected with his own personal interests, to know the contents of documents on file in the office, he must call for certified copies, or make examination by attorney.

III. The examiners and other employees of the Patent Office will take cognizance of and enforce the above orders.

M. D. LEGGETT,
Commissioner of Patents.

Approved:

C. DELANO,
Secretary of the Interior.

I hereby certify that the foregoing is a true copy of the Complainant's Exhibit "M. D. Leggett—Fraud No. 1," filed with me on the 30th of August, 1878, in the cause of Christopher C. Campbell against Thomas L. James, in the United States circuit court for the southern district of New York.

IRVING BROWNE,
Special Examiner.

1286 *Complainant's Exhibit M. D. Leggett, Fraud No. 2. (Exhibits C and D.)—August* 31, 1878, *I. B., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office, of additional papers found in the caveat file of Marcus P. Norton, filed October 20th, 1853, for machine for mailing and folding letters.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this thirteenth day of August, in the year of our Lord one thousand eight hundred and seventy-eight and of the Independence of the United States the one hundred and third.

[SEAL.]

ELLIS SPEAR,
Commissioner.

1287 EXHIBIT D.

Additional paper to railroad printing press.

TINMOUTH, VT., *Aug.* 21, 1855.

Hon. COMMISSIONER OF PATENTS:

SIR: I wish to file this paper as an additional caveat description to my railroad printing press now on file under date of June 4th, 1855, and sworn to the 11th day of June, 1855.

I propose to make the form of type as I have described in my caveat, or make a cylinder of sufficient size to contain upon its surface or periphery the name (in stereotype) of the name of stations on the line of railroad in order as they are on said road. This I call the cylinder of towns to where tickets are sold. This cylinder is placed into the form and made to revolve at the will of the operator. There is another cylinder, of the same form, like unto the others, and this is called cylinder from which the tickets were sold. The name of the road, and all other printed matter to be done, may be done by cylinders constructed for that purpose; or stationary type may be used for all, excepting for the month, the day of the month, and the year, which will be done by cylinders made for that purpose. At one end of each cylinder there is an index for each cylinder, and a pointer connected with the cylinder, revolves the same to where it may be desired to use the same, where it is then held by the use of a pin and spring. The operator moves these cylinders to and from whatever name or date he wishes to sell and date tickets for use on the railroad. This press is chiefly designed to be used in the general ticket office by the general ticket master or his clerk; or it may be used in any office on the line of the road
1288 where printing and dating is desired. The said cylinders, when moved to their respective places, are held fast by a spring connected with the pointer, and governed or regulated by the indexes, as will more fully appear herein. I have set forth a series of revolving type-wheels or cylinders for printing certain matter on railroads; but I also intend such wheels to do all kinds of printing required in any office other than the printing the name of towns on a railway line, with the date of the selling of the tickets, all of which is done by means of suitable cylinders for that purpose. I have deemed it best to give a more full description of the dating wheels, and it is substantially as follows: I make two wheels, or more if necessary, and on the circumference or periphery of which I have the required type arranged so as to print the several months in the year; and on another cylinder or wheel I have arranged the type to print the day of the month. There may also be a type for the years, so that several years may be printed, when desired, from the type, put on a wheel in same manner as for the month and day of the month. These wheels, or cylinders, containing such type as may be desired to print from, are put and arranged on a central shaft, or other good bearing and turning points, and the printing surface is brought together on a line, or in a suitable form, when the month, the day of the month, and the year, with any other matter connected with the same, are printed by a blow of the instrument, arranged to give the impression. It may be used as a hand-printing or stamping device for dating anything desired to have the date printed or formed thereon. This would be very convenient, for then there would be no type to lose; for all the dates would be on the cylinder, from which the same may easily and readily be set or arranged to print the correct dates. The

dating cylinders may be of any size that will answer the purpose required. The day of the month wheel may be made of such size
1289 as to require two wheels, in order to give the correct dates and to reduce the size of the wheels or cylinders. In that case one wheel would have figures 1, 2, 3 on the periphery of the same, while on the wheel to correspond to the same there would be on the periphery the figures 1, 2, 3, 4, 5, 6, 7, 8, 9, and a 0, or cipher. These when changed will give any date required. It will now be seen that the correct date is given from and by type-wheels, or revolving and changing cylinders or disks. The letters or type may be cast on the periphery of such wheels, or formed in slips or pieces and soldered upon the periphery of the wheel desired; or they may be engraved on the same; or they may be swedged, formed or pressed thereon out of the same circumference or periphery; or they may be so constructed as to be dovetailed therein. There are various other ways for forming or constructing on such wheels, such letters or figures as may be required. The wheels, or cylinders, may be made of malleable cast iron, or of other cast metal, or made of brass or similar metal. Brass would be the better metal to use when the letters or figures are to be arranged, or swedged, or raised, or pressed or formed thereon, because it would work more easy and make better work. Stereotyped letters and figures can be made and then soldered on such circumference surface of such wheels. I think the best way will be to dovetail them in, because when worn out a new one can be put in its place, and it would require expensive machinery to cast or press, form or swedge the letters or figures on said circumference or periphery of such type and dating wheels or cylinders. To ink the said wheels or type cylinders, when arranged for printing and dating, I pass an ordinary inking roller over the face or surface of all the type to be printed from, and then it is returned to its proper place. This roller is passed over a suitable distributing surface, which is for the purpose of getting the ink on the type wheels more evenly, and thus make a better impression on the paper to be printed and dated.

1290 These wheels are each operated in a suitable form or chase constructed for that purpose. To set them each in proper condition or order for the date, and as a matter of convenience, I use pointer or arm of any suitable construction, and secure the same to the shaft of the type wheel, or to the wheel itself; and then I have indexes on the frame, or on the respective type wheels, so arranged as to enable the operator to put the right month, day of the month, or year, etc., into the printing line or surface, so that the same will print the date required. These indexes will be of any suitable construction, and engraved, stamped, or otherwise put upon the said type wheel, framework, or upon each wheel, as may be best, and in such manner that the operator may readily see the same, so as to know how to govern the setting of the wheels, in order to print correctly the matter desired. These wheels, or cylinders, are held in their fixed position by a small pin having a suitable spring attached, which may be in the arm or pointer, or in the said framework, and extending into the respective wheels, having a corresponding hole or opening for the spring to pass into to hold it. The spring is to hold the pin in its place, so that the wheel cannot move when in its fixed position and in use. By moving any one of the type wheels or cylinders forward to change its use, either to change the month, or the day of the month, or the year, the pin will be forced into a corresponding opening by the spring, and there h ld until another change is had, and so the operation will continue. Words or figures

may be used to index or represent the month, and may be on the side of the wheel (or on the frame holding the type wheels on their shaft), and will of course always be so constructed as to be in sight the most convenient. This will apply to all the wheels or cylinders for printing the month, the day of the month, and year; so, too, if any cylinder be used to print any other matter, the same may have an index to
1291 correspond to the matter to be printed. The said dating type wheels may be in a fixed frame, and the impression taken from the top by any suitable device to give the force or blow thereon, and the inking roller made to pass over the top in any good and convenient way; or the said type-dating wheels, and frame in which the same operate, may be so arranged as to give a striking like blow by the hand; or put into a frame on a stem and be forced down upon the paper, and then brought back by a spring.

I am having a machine made with these improvements in, and hope to apply for a patent within the caveat year; yet there are some other improvements I propose to make in this machine as a whole. The machine may be used for banks, railroad companies, business firms, and in post offices.

Respectfully, your obedient servant,

MARCUS P. NORTON.

(Endorsed:) Complainant's Exhibit M. D. Leggett, Fraud No. 2, August 31, 1878. I. B., ex'r.

This paper, marked Exhibit D, after due notice to M. P. Norton, and trial had before a commission appointed by the Commissioner of Patents, was by the said commission adjudged to be fraudulent, and to have been surreptitiously introduced into the caveat file of M. P. Norton for a railroad ticket printing press, filed June 21st, 1855.

In the order of the Commissioner of Patents dated September 18th, 1871, and approved by the Secretary of the Interior, in the case of the trial of M. P. Norton for gross misconduct, see the finding of the
1292 commission as to charge 4. This paper does not, therefore, form a valid portion of the above-named caveat.

M. D. LEGGETT,
Commissioner of Patents.

EXHIBIT C.

TINMOUTH, VT., *Aug.* 21, 1855.

COMMISSIONER OF PATENTS:

Will you please send me the second part of your report of 1854? Can I make application for a patent (on my caveat) for post office way-bill printing and folding machine at two different times?

The caveat has expired. I wish to make application on the folding part first, as the whole machine will be subject to two patents or applications. If I can apply for one at the time, can the caveat fee be applied on that one application?

Respectfully, your obedient servant,

MARCUS P. NORTON.

Ex'd. S. P. P.—M. McK.

(Endorsed:) Complainant's Exhibit M. D. Leggett, Fraud No. 2, August 31, 1878. I. B., ex'r. Received and filed August 25, 1855. S. T. Shugert, Exhibit C.

This paper (marked Exhibit C, and to which the paper marked Exhibit D is attached) does not pertain to the caveat file of M. P. Norton for a railroad ticket printing press, filed June 21st, 1855, but does pertain to the caveat file of M P. Norton for a machine for mailing and folding letters, filed October 20th and 27th, 1853. See the endorsement upon the back of Exhibit D, hereunto attached.

M. D. LEGGETT,
Commissioner of Patents.

1293 I hereby certify that the foregoing is a true copy of the Complainant's Exhibit "M. D. Leggett. Fraud No. 2," filed with me on the 31st of August, 1878, in the cause of Christopher C. Campbell against Thomas L. James, in the United States circuit court for the southern district of New York.

IRVING BROWNE,
Special Examiner.

1294 *Complainant's Exhibit M. D. Leggett, Fraud No. 3.—August* 31, 1878, *I. B., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of additional papers found in the caveat file of Marcus P. Norton, filed October 20th, 1853, for machine for mailing and folding letters.

In testimony whereof I, Ellis Spear, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this thirteenth day of August, in the year of our Lord one thousand eight hundred and seventy-eight and of the Independence of the United States the one hundred and third.

[SEAL.]

ELLIS SPEAR,
Commissioner.

EXHIBIT B.

To the Commissioner of Patents:

1295 SIR: I wish the following to be added to my subjoined description for mailing and folding letters, for which I have a caveat in your office. In the mailing of letters I have provided means for postmarking of letters, newspapers, and the like, and for the cancellation of the postage-stamps thereon at one and the same blow or operation of the instrument or machine by which the postmark is had or made upon the letter, envelope, or wrapper, or package, in a plain and intelligible manner, and thereby always retaining the same, while the postage stamp or stamps are more effectually and permanently canceled, so as to prevent frauds upon the revenue derived from the sale and use of such stamps. The said device is arranged upon the type cylinder contained in first paper filed in my said caveat, between the way-bill form of type, and it gives the impression in ink upon the letter, envelope, or packet by means of the revolving cylinder, and at the same time and operation it also gives a heavy impression in ink upon the postage stamp when or where used upon the said letter or envelope, and the postage stamp becomes thoroughly impregnated with ink by the means herein provided, and therefore it cannot be cleansed by chemical washing, or by other means, so as

to allow of the same being used a second time, and thus frauds are prevented. If there should be no stamp used for payment of postage on letters, packets, etc., this device would do no sort of harm to the letter, envelope, etc., for it would only postmark the same with the name of the town and date, such as month, day of the month, and year, and upon one side thereof, at the same time give a heavy impression in ink, which would appear was only intended for cancellation of the postage stamp as aforesaid stated. This would make a plain and more intelligible postmark than by the old method now in use, while it would at the same time, blow, and operation of the instrument cancel in ink the postage stamp or stamps when such are used, as aforesaid, in a most
1296 thorough, perfect, and permanent manner, so that the same could not be cleansed for the purpose of being used a second time. This part of my invention I construct of the ordinary form of type now used in the post-office for the postmarking of letters with the name of the town, month, day of the month, and the year, etc., and I combine therewith, in some good, practical, and suitable manner, a device which I denominate a postage stamp canceling type, to be used in or with any kind of ink suitable for that purpose, and by such combined instruments one device is formed, which will give the name of post-office, month, day of the month, and year, and at the same time and blow cancel and thus destroy the postage stamps—thereby greatly economizing in the time now required in the making up of the mail; in fact, saving one half of the labor required for postmarking and for canceling of postage stamps—when it is desirable to give the impression of name of the town and date upon the envelope, letter, or packet, in order to preserve the same for any purpose of proofs or other thing. I now think that the best way to make this part of my invention is to use a cross-bar or cross-piece upon the periphery of the cylinder, set forth in other papers in my caveat, and fasten, in some suitable manner, the postmarking stamp upon one end thereof and the postage canceling type or device upon the other end of said bar or cross-piece, which would of course give dating stamp at one end and canceling stamp at the other and thereof; this bar thus constructed with said type arranged thereon, as aforesaid, is securely fastened to the periphery of said cylinder in some suitable manner. The canceling type or stamp may be made of iron, steel, wood, rubber, cork, or of any other suitable material, and the same may be combined with said cross-bar by the drilling of a suitable hole therein or by a tube to receive the same, and said tube being suitably fastened to said cross-bar, or the same may be fastened directly upon and to the said cross-bar at any required distance from said dating part or dating type. A screw may pass through said cross-bar into the material used for the canceling type, and thus hold it firmly thereto, or a suitable tube may first be fastened to said cross-bar, and then the canceling material or part used for the canceling type may be inserted therein and thereon, and thereby held until worn out by
1297 use, when the same may be replaced. Rubber or cork, I think, will make the best and most suitable canceling type or device, while soft wood, used endwise, will make a most excellent canceling type. If it should be found impracticable to use the said cylinder and other parts of said machine, as contemplated in the caveat papers now on file, then the said cross-piece or bar may be removed from the said type cylinder by means of loosening the screws by which it is fastened thereto, and a suitable handle affixed thereto in place of such cylinder, and the same then used as a hand-stamping device for postmarking and canceling postage-stamps. The said cross-bar may be removed from said cylinder in order to reset the type for the date to be given, or for

the purpose of removing and replacing the said canceling type or stamps, and then the same may be replaced upon said cylinder as aforesaid. By means of this device I get a good and more perfect impression upon the letter-envelope, or packet, of the name of the town, day of the month, month, etc., and at the same time and operation cancel the postage stamp or stamps in ink in a most complete, thorough, and perfect manner. When cork is used it contains a greater quantity of the ink used, and being somewhat elastic and somewhat rough upon the face containing the ink, it will, to a considerable extent, break the enameled surface of the postage stamp, formed as such by means of the indelible ink used in the manufacture of such stamp, so as to form a hard surface, in order that the stamp might not become defaced by transportation to places of sale, while on sale, or while being carried in a person's pocket ready for use; and having broken somewhat such surface of such postage-stamp by the blow of the cork upon the same, the ink impregnates in a most thorough manner the whole postage-stamp, and of course it cannot be removed without destroying the printed surface of such postage-stamp, and so defacing it
1298 that such efforts at reuse of it would be at once detected. Soft wood used endwise will have nearly the same effect; so, therefore, some soft and porous material will be the most suitable to use in the construction of said canceling type or device used for the cancellation of all postage-stamps.

The cam-frame which draws the letters under said type cylinder for postmarking of letters, packets, etc., and for the cancellation of postage-stamps thereon, will give the blow against the said postmarking and said postage canceling device, which is done at one operation and at the same time, and when thrown out of gear, then the way-bill printing part may be worked, and thus print the way-bills, as I have described in former papers on file in my said caveat. I would prefer the use of an indelible ink with my said device or instrument, or machine, if the same could be had by all the postmasters who use the said machine, etc. This part of said machine may easily and readily be converted into a hand-stamp when and where no other part of said machine would be used save and except the postmarking, containing the name of the town, when used, the month and day of the month, and year, etc., and the postage-stamp canceler or canceling device attached to and combined with the said cross-bar or cross-piece substantially as aforesaid, with a suitable handle at the centre of said cross-bar or piece, or at some suitable place between the two stamping devices aforesaid, which handle is used for the giving of the blow or impression of the two devices attached to said cross-bar as aforesid, and of course it would then be a simple device of postmarking stamp, of cross-bar, and cork, rubber, or wood (or other suitable material), and postage-stamp canceling device combined thus into one instrument, and operated by the handle with one blow, and to be used in or with any kind of ink desired. One blow of the instrument in the hand of the operator
1299 will do the printing of the name of the town, of the month, of the day of the month upon the letter or envelope, and the cancellation of the postage-stamp in a most complete and effectual manner, substantially as aforesaid, thereby saving great labor and the rehandling over of the letters in order to postmark them, and afterwards to cancel the postage stamps when it is desired to have an intelligible postmark preserved on the letter or envelope and to have the postage-stamp permanently canceled, so as to prevent frauds by the reuse of the same, as is often now the case. This instrument will therefore prevent such

frauds, and very much simplify and economize in the time for the making up of the mails for transportation. This will be the effect and result if no other part of said machine be used save the said parts converted into a simple hand-stamp as aforesai[1], to wit, the postmarking part, the postage-stamp canceling part, all attached to the said cross-bar and combined therewith, as and in the manner aforesaid.

If the entire machine set forth in all the caveat papers be used, there will be great saving of labor and time in mailing of letters, and a large quantity of papers, twine, and sealing wax, etc., by the use set forth in all the papers of this caveat. There would be also great labor saved as aforesaid by the use of such hand-stamp, combined as aforesaid. I am having a full-size machine made according to my caveat papers, which when done I shall apply for a patent, or at least as soon hereafter as I may be able to get the Post Office Department to consider and adopt, for use in the various post-offices, my said improvements, or some parts thereof, preferring to submit the same to the judgment of that department before applying for my patent upon the invention herein contained. I desire you to file this with my other papers in my said caveat. I intend to renew my caveat, if such be at all necessary, in order to protect my rights while engaged in efforts with the Post Office Depart-
1300 ment for the general use of my invention, and especially that part which relates to the hand-stamp form of postmarking and postage-stamp canceling combined with and upon a cross-bar or piece containing a suitable handle, substantially as aforesaid, so as to give both impressions at one blow and operation of the instrument, as aforesaid, thereby saving great labor and preventing frauds, etc.

MARCUS P. NORTON.

TINMOUTH, VT., *August 7th*, 1854.

Ex'd. E. E. McC.—F. F.

(Endorsed:) Complainant's Exhibit M. D. Leggett, Fraud No .3. August 31, 1878, I. B., Ex'r.

EXHIBIT B.

This paper, marked Exhibit B, after due notice to M. P. Norton, and trial had before a commission appointed by the Commissioner of Patents, was by the said commission adjudged to be fraudulent and to have been surreptitiously introduced into the caveat file of M. P. Norton for a machine for mailing and folding letters, filed Oct. 20th and 27th, 1853.

In the order of the Commissioner of Patents, dated Sept. 18th, 1871, and approved by the Secretary of the Interior, in the case of the trial of M. P. Norton for gross misconduct, see the finding of the commission as to charges 1 and 2.

This paper does not, therefore, form a valid portion of the above-named caveat.

M. D. LEGGETT,
Commissioner of Patents.

1301 I hereby certify that the foregoing is a true copy of the Complainant's Exhibit "M. D. Leggett, Fraud No. 3," filed with me on the 31st day of August, 1878, in the cause of Christopher C. Campbell against Thomas L. James, in the United States circuit court for the southern district of New York.

IRVING BROWNE,
Special Examiner.

1302 *Complainant's Exhibit Wyoming, Numbers one to twenty-eight, inclusive.—I. B., ex'r, September 2d, 1878.*

(Commencing at page 447 original.)

1303 Letters of commendation to General Ulysses S. Grant, President-elect of the United States of America, recommending the appointment of the Hon. Marcus P. Norton to the governorship of the Territory of Wyoming.

1304 STATE OF NEW YORK, IN ASSEMBLY,
Albany, Feb. 24th, 1869.

Hon. REUBEN E. FENTON,
Senator of the United States, Washington, D. C.:

DEAR SIR: The Hon. Marcus P. Norton, of Troy, N. Y., is, I learn, a candidate before the incoming administration for the position of governor of Wyoming Territory. Mr. Norton bears with him to Washington the cordial recommendation of a long array of eminent citizens, not only of this State, but likewise of Vermont, his native commonwealth. I commend him to you most sincerely as a citizen of distinguished eminence, in both public and private life, and one who will fully and ably vindicate General Grant's confidence in the event of his appointment to the position he asks at the hands of the administration about to assume power.

Mr. Norton is a leading lawyer at the bar of this State, and is a gentleman enjoying the full confidence of our friends here, having, I am glad to say, been active and outspoken in favor of your elevation to the Senatorship of the United States in place of the present incumbent. I most sincerely hope that you may find it to be entirely compatible with the public interest to cast the weight of your influence with General Grant in relation to this appointment in favor of Mr. Norton.

Respectfully,

T. G. YOUNGLOVE,
Speaker of the House.

1305 STATE OF NEW YORK, IN ASSEMBLY.
Albany, Feb. 26th, 1869.

To the Hon. REUBEN E. FENTON,
Senator of the United States, Washington, D. C.:

DEAR SIR: I have great pleasure in recommending to you, and in soliciting your earnest and active efforts in favor of, the Hon. Marcus P. Norton, of Rensselaer County, State of New York, to be governor of Wyoming Territory.

This gentleman holds a high position at the bar of the State of New York, and is well known to the Commissioner of Patents of the United States as a practitioner of undoubted merit and ability.

Mr. Norton would hold high the dignity of the position to which he hopes to be elevated, and his many friends in the county and State would feel that the incoming administration had done partial justice to the claims of the great State of New York in placing one of its favorite sons in a position which he is so well qualified by his intellectual powers to honor.

Whatever favor is done to Mr. Norton will be considered as personal to myself.

Respectfully,

GEO. M. GLEASON,
Member of Assembly, and Chairman of Cities.

OFFICE OF THE TROY WEEKLY PRESS,
Troy, N. Y., Feb. 27th, 1869.

General U. S. GRANT,
President-elect of the United States:

Learning that Marcus P. Norton, esq., of this city, will apply
1306 to you for appointment to the position of governor of the Territory of Wyoming, I beg leave to say that his designation to the place would give me the highest satisfaction, and I believe would meet the approbation of this entire community, in which Mr. Norton is well known as a gentleman of the most unsullied character and of first-class executive abilities.

Very respectfully,

A. S. PEASE,
Editor Troy Press.

TROY, *Jan. 25th*, 1869.

To the President-elect, General U. S. GRANT:

SIR: Marcus P. Norton, esq., of this city, who has been engaged in the practice of the law for the last fifteen years, intends to apply for an appointment under your administration. Mr. Norton is intelligent, industrious, and persevering, and possesses much more than ordinary executive ability. His friends will be gratified if his application is successful.

C. R. INGALLS,
Justice Supreme Court, State of New York.

NATIONAL STATE BANK OF TROY,
Troy, N. Y., Feb. 3d, 1869.

General U. S. GRANT,
President elect of the United States:

The undersigned, officers and directors of the National State Bank of Troy, N. Y., respectfully recommend the appointment of Hon.
1307 Marcus P. Norton, of Troy, for the position of governor of the new Territory of Wyoming. He is a lawyer of eminent abilities in the line of his profession, has executive abilities of a first-rate order, and possesses those qualities of character which would fit him to be a popular and creditable executive; and we believe his appointment would prove highly satisfactory to your friends in this State, and reflect credit on your administration; and as such we commend him to you.

Respectfully your obedient servants,

WILLARD GAY, *Cashier.*
ALFRED B. NASH, *V.-P't.*
JOHN HITCHINS,
GEORGE D. WOTKYNS,
Directors.

RUTLAND, *Jan. 14th*, 1869.

Friend NORTON:

I send you herewith the testimonials bearing upon the subject of your laudable ambition. I am happy to say to you that I can obtain any desired number of vouchers for you in this our native county.

Anticipating your honorable elevation under the sanction of our respected and confided-in President-elect,

I remain, as ever, your friend,

D. E. NICHOLSON.

1308 SCHAGHTICOKE, *Feb. 20th*, 1869.

To His Excellency U. S. GRANT,
President-elect of the United States:

Having been informed that Hon. Marcus P. Norton, of Troy, N. Y., proposes to solicit at your hands the nomination for Governor of Wyoming Territory, I take this way of expressing my earnest wish that his application may meet with official approval, and this because of his acknowledged ability as a lawyer; commanding executive talent as a man; generous, cheerful, and agreeable character as a friend; and of tried and undoubted loyalty as a citizen. Combining so many excellencies of character, I think that by and through his appointment the government would receive honor, and all his friends the consciousness of not having mistaken their man.

I am, very truly, yours,

R. M. HASBROUCK,
Delegate from the 15th Cong. Dist. to the Nat'l Convention at Chicago, in 1868.

STATE OF VERMONT, EXECUTIVE CHAMBER,
Rutland, Jan. 14th, 1869.

General U. S. GRANT:

DEAR SIR: Hon. Marcus P. Norton, now of Troy, N. Y., but formerly of this county, is a gentleman who would honorably fill an important position under the government, and I commend him to your honorable consideration.

I have the honor to be your obedient servant,

JOHN B. PAGE,
Governor of Vermont.

1309 TROY, N. Y., *Feb. 18th*, 1869.

YOUR EXCELLENCY:

I have the honor to recommend to your favorable consideration Marcus P. Norton, of this city, for the position of Governor of the Territory of Wyoming.

Mr. Norton has been, and is, one of our most influential and active members in the Republican ranks of this county; his appointment would be a great gratification, not only to the leaders, but to the rank and file.

His services to his country, his ability and integrity assure me that he would do honor to the office and to your selection.

I am, sir, very respectfully, your obedient servant,

ED. L. COLE,
Chairman Rep. Central Com.

To U. S. GRANT,
President-elect of the United States.

TROY, N. Y., *Jan. 30th*, 1869.

To General U. S. GRANT,
President elect of the United States:

SIR: The Hon. Marcus P. Norton is a parishioner of mine, whom I hold in high estimation. If you were to make him Governor of Wyoming, I have no doubt he would do credit to himself, and render much and valuable service to his country. For my own sake, I hope you will not give him this appointment, as I can poorly afford to lose him.

T. W. COIT,
Rector of St. Paul's Church.

1310 OFFICE OF TROY & BOSTON RAILROAD CO.,
Troy, N. Y., Feb. 10th, 1869.

To the PRESIDENT elect:

I understand the Hon. Marcus P. Norton is about to apply to the government for an appointment as governor of Wyoming Territory.

I regard Mr. Norton as a gentleman of broad and comprehensive views, and a lawyer of more than ordinary ability, and believe him eminently qualified to administer the office for which he will ask.

Respectfully,

C. W. MOSELEY,
Sup't T. & B. R. R.

STATE OF VERMONT,
Rutland, Jan. 1st, 1869.

To the President elect U. S. GRANT:

As a native fellow-townsman of Hon. Marcus P. Norton, of Troy, N. Y., allow me to endorse his application for our nation's great commission to the executive department of Wyoming Territory. While I cannot hope to be known beyond the limits of our own little vigorous Vermont, whose liberal and valued honors and services I have shared in town, county, district, and State commissions, I refer with pride and confidence to the worthy names with which my friend, the applicant, is endorsed to the executive confidence.

Submissively,

D. E. NICHOLSON,
State Senator, Vermont.

1311 WHIG PRINTING HOUSE,
Troy, N. Y., Feb. 26th, 1869.

To Hon. REUBEN E. FENTON:

DEAR SIR: Hon. Marcus P. Norton, of this city, is a candidate for the office of governor of the Territory of Wyoming. He is a man of energy and worth, and of excellent standing in this community. He is a lawyer of distinction, capable of filling such a position with ability and credit. He has always been a Democrat, but when the first gun was fired upon Sumpter he joined the Union party, and has ever since acted and voted with the Republicans. With myself and others in this city he supported you for United States Senator.

Very respectfully,

ALEX. KIRKPATRICK,
Editor and Prop'r Troy Whig.

RUTLAND, V'T, *Dec. 30th*, 1868.

To the President-elect General U. S. GRANT:

Permit me to commend to the President the name of Hon. Marcus P. Norton, now of Troy, N. Y., a native of my county, who has already, from his fitness for public service, acquired a character and standing that entitles him to the appointment to which he aspires.

J. PROUT,
Judge of the Supreme Court, State of Vermont.

I concur in the above.

WM. M. FIELD,
Sheriff of Rutland Co., Vermont.

1312 POST-OFFICE, *Troy, Feb.*. 1869.

General U. S. GRANT,
President-elect of the United States :

DEAR SIR: I take pleasure in commending to your favorable consideration the application of the Hon. Marcus P. Norton for an appointment as governor of Wyoming Territory. Mr. Norton has been long and successfully engaged in the legal profession in connection with the United States circuit and Supreme Courts, and with the State courts, and in this, as also in all his social relations, has evinced a degree of discipline in mind and heart that, in my judgment, eminently qualify him for the important responsibility which he desires to assume. Any confidence or trust that may be reposed in him, I believe will be fulfilled with strict fidelity.

Very respectfully,

ALONZO ALDEN,
Late Col. 169th Reg't N. Y. V.,
and Brevet Brig. Gen., and Postmaster at Troy.

BOARD OF EDUCATION,
Troy, N. Y., Feb. 11th, 1869.

General U. S. GRANT,
President-elect of the United States :

DEAR SIR: Having learned that Marcus P. Norton, esq., of this city, is an applicant for appointment as governor of the Territory of Wyoming, I take great pleasure in adding my testimony as to his entire fitness and capacity for the position.

1313 His great executive ability, combined with legal talents of the highest order, render him eminently qualified for such a trust, and, without question, would make his administration a successful one.

With great respect, I remain very truly yours,

WILLIAM KEMP,
President Board of Education, Troy, N. Y.

RENSSELAER COUNTY, TREASURER'S OFFICE,
Troy, N. Y., Jan. 25th, 1869.

To the President-elect, General U. S. GRANT:

Be pleased to allow me to bear testimony and to offer recommendations to the President of the United States in the matter of the application of the Hon. Marcus P. Norton, of this city, who, with an honorable and commendable ambition, desires to be appointed to the high and important office of governor of Wyoming Territory.

I have been well acquainted with Mr. Norton for the past thirteen years. He is a lawyer by profession, of profound learning, and of high standing at the bar of this county.

I take pleasure in recommending him for the above position.

Your obedient servant,

S. O. GLEASON,
Treasurer of Rensselaer Co., N. Y.

WASHINGTON, *Feb. 16th,* 1869.

To the PRESIDENT-ELECT OF THE UNITED STATES:

Mr. Marcus P. Norton informs me of his intention to apply for the governorship of Wyoming Territory. He is a gentleman in every
1314 way qualified for the position, a lawyer of education, and has

been thoroughly devoted to the cause of loyalty and his country's interests during the war. He would, I have no doubt, serve with benefit to the country and with credit to himself.

Very truly, etc.,

JOHN A. GRISWOLD,
Member of Congress, Troy, N. Y.

I assent fully to the statement of Hon. John A. Griswold, with reference to the qualifications and deservings of Mr. Marcus P. Norton, and cheerfully commend his application to the favorable consideration of Gen. Grant, President of the United States.

J. M. FRANCIS,
Editor Troy Daily Times.

I cheerfully concur in the foregoing recommendations, having been well acquainted with Mr. Norton many years.

MARTIN I. TOWNSEND.

TROY, N. Y., *March 1st*, 1869.

WELLS, VT., *23d Jan.*, 1869.

To his Excellency U. S. GRANT,
President elect of the United States:

From association with those who are personally acquainted with Hon. Marcus P. Norton, from the unanimous expression of his own
1315 townsmen, of faith and trust in his ability and integrity, and from personal acquaintance, under circumstances calculated to exhibit the qualities of head and heart, I gladly bear this testimony to his uniform good character as a man, undoubted loyalty as a citizen, and that he possesses those qualities which eminently fit him for the performance of any trust which, under the appointment of the government, he may receive.

MARCUS D. GROVER,
Member of Vermont Legislature.

STATE OF NEW YORK, IN ASSEMBLY,
Albany, Feb., 1869.

Hon. R. E. FENTON,
Senator-elect of the United States:

DEAR SIR: Major W. H. Merriam solicits from me a letter endorsing the recommendation of Hon. Marcus P. Norton for the office of governor of Wyoming Territory. Mr. Norton is in every way qualified to discharge the duties of said office; he is a lawyer of distinction, and a gentleman of high reputation; is a staunch Republican, and was a friend of yours in the senatorial contest.

I join with Maj. Merriam in cordially asking you to use your influence with the President in securing for him the position he asks.

Very truly,

S. E. MARVIN,
State Adj't-Gen. on Staff of Gov. Fenton.

1316 TROY, N. Y., *Feb*, 1869.

General U. S. GRANT,
President-elect of the United States:

The Hon. Marcus P. Norton, who applies to you for the governorship of Wyoming Territory, has long been familiarly known to me, and I

take pleasure in recommending him as every way qualified for the designated office. He was born and educated in Vermont, and at Union College, N. Y., and the integrity, fidelity, and loyalty of the "Green Mountain" State enter largely into the composition of his nature. He is a lawyer of experience, and has won eminent distinction in his profession. In administrative ability and in moral character I regard him worthy of your confidence, and equal to any person for the place desired.

Respectfully,

C. F. BURDICK,
Presiding Elder M. E. Church.

RUTLAND, VT., *Jan. 12th*, 1869.

To the President-elect, General U. S. GRANT:

As the senior member of the firm of G. A. Tuttle & Co., publishers and proprietors of the Rutland Herald, I venture to add my commendation to the name of Hon. Marcus P. Norton, now of Troy, N. Y., as a man worthy of the confidence of the government and of your administration.

Mr. Norton is a native of our county, who has, by personal effort, proven himself worthy of the marked confidence and trust which would be expressed and confirmed by your commission to the further service of the public.

Very respectfully,

GEO. A. TUTTLE,
Editor and Proprietor of Rutland Herald.

1317 ALBANY, *Feb.*, 1869.

To his Excellency Gen. U. S. GRANT,
President-elect of the United States:

Learning that the Hon. Marcus P. Norton, of Troy, N. Y., will be an applicant to you for the appointment as governor of the Territory of Wyoming, I desire to testify to his eminent fitness for that office, and to unite with others in soliciting in his behalf such appointment. My acquaintance with Mr. Norton extends back to our school-days, and I am not extravagant in asserting that his present eminence, as attorney and counselor in the highest courts of the government, is but the legitimate result of the ability and scholarship manifested in his earlier years. He is a gentleman of excellent moral and social standing in the community where he has long resided, and for many years has held a high rank among the most public-spirited and enterprising citizens of our State. I believe that his appointment would give great satisfaction to the Union Republican party of this section, and that the office of governor in his hands would be administered with great ability, thorough integrity, and to the entire acceptance of the people over whom he would preside. I hope you will find it for the best interests of the country to appoint Mr. Norton governor of the Territory of Wyoming.

With great respect, your obedient servant,

GEO. G. BATCHELLER,
Late Candidate for Elector 18th Cong. Dist. of N. Y.

I heartily endorse all that is above written.

I. V. BAKER,
Supt. Rensselaer and Saratoga Railroad.

1318 POULTNEY, VT., *Jan. 18th*, 1869.

General U. S. GRANT,
President-elect United States of America:

Learning that Hon. Marcus P. Norton, of Troy, N. Y., seeks the appointment of Governor of Wyoming Territory, I write to say that I have known him intimately for several years, first as student and latterly as a lawyer eminent in his profession. Besides being a man of talents and acquirements, he possesses, in my judgment, elements of character uncommonly well adapted to such a position in the West, and I commend him to your favorable regard.

Respectfully, yours,

JOHN NEWMAN,
President of Ripley Female College, Poultney, Vt.

1319 *Motion papers to make Charles Eddy a defendant in this cause.*

In the circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

Please take notice that on the 23d inst., at 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, at the court house of said court, in the city of New York, upon the pleadings and evidence in this case, and upon the paper, a copy of which is hereto attached, I shall move said court for an order making Charles Eddy, named in the answer of defendant, and who has signed said paper, a party to the above-entitled suit.

GEO. H. WILLIAMS,
Counsel for Complainant.

JULY 13TH, 1878.

To STEWART L. WOODFORD, Esq.,
U. S. District Attorney, of Counsel for Defendant.

1320 Copy of the above, with alleged copy of paper attached, received this 15th of July, 1878.

STEWART L. WOODFORD,
U. S. District Attorney, and of Counsel for Defendant.

(Endorsed:) U. S. circuit court. Filed September 13, 1878. John I. Davenport, clerk. In the circuit court of the United States for the southern district of New York. In equity. Campbell vs. James. Notice of motion. Acknowledgment of service.

In the circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

Whereas it is alleged in defendant's answer herein that Charles Eddy is interested in the subject-matter of this suit, in trust for himself,
1321 Albert C. Corse, and Jacob Shavor; and whereas said defendant

in his said answer prays that said Charles Eddy may be made a party to this suit; and whereas said complainant is willing that said prayer should be granted so far as it may be necessary to bring said Eddy before this court for the proper adjudication thereby of all his claims or interests in the subject-matter of this suit, now it is hereby stipulated and agreed by and between said complainant, Christopher C. Campbell, and said Charles Eddy, that said Eddy, by an order of this court, shall be made a party to this suit, as prayed for in said answer; and the filing of this stipulation in said court in the above entitled case shall be held and treated by the court as his voluntary appearance for that purpose, and for all the purposes of this suit, as fully in all respects as though he was an original party thereto. It is understood that said Eddy claims that his rights and interests in the subject-matter of this suit are fixed and determined by an assignment from Marcus P. Norton to him in trust of a one-third interest in the patent dated April 14, 1863, and its reissues referred to in the pleadings in this case, which said assignment is dated October 23, 1869, and a certified copy of which is now in evidence, and by a contract of even date with said assignment now in evidence, and that said complainant denies this, and claims that said Eddy's rights and interests are fixed and determined by an instrument in writing dated October 7, 1871, and executed by Charles Eddy, Jacob Shavor, Albert C. Corse, and W. W. Secombe, a certified copy of which is now in evidence. And it is further stipulated and agreed that upon the pleadings and evidence as they now stand, and without any further evidence or pleadings in the case, unless the court shall otherwise direct, said court shall decide as to what the rights and interests of said Eddy in the subject-matter of this suit are, and shall make such decree in respect thereto as equity and good conscience may require.

And it is further agreed that if there is recovery in said suit
1322 against said defendant James, the court shall determine the rights respectively thereto of complainant and said Eddy, as equity and good conscience may require. And said complainant further agrees that the said assignment of October 23, 1869, from Marcus P. Norton to Charles Eddy, in trust as aforesaid, was a valid assignment, not affected by any prior or cotemporaneous assignment by said Norton to Helen M. Ingalls, or other written agreement to which said Eddy is a party, excepting the one hereinbefore referred to and dated October 7, 1871. And it is further understood that all costs awarded against said complainant and counsel fees are first to be paid out of any recovery in said case, and that no costs are to be adjudged against said Eddy.

Witness our hands and seals this day of June, 1878.

CHARLES EDDY. [L. S.]
CHRISTOPHER C. CAMPBELL. [L. S.]

Witness as to Charles Eddy: J. A. CIPPERLY.

Witness as to Christopher C. Campbell: ALLEN C. SMITH, Canaan, N. Y.

GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

I hereby consent to and approve the within instrument.

HELEN M. INGALLS.

Witness:
H. GRACE NORTON.

1323 I hereby consent to and approve the within instrument.

MARCUS P. NORTON.

Witness:

IRVING BROWNE.

JULY 17, 1878.

Received for record July 19, 1878, and recorded in liber E^{23}, page 255, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

Ex'd, F. C. T. U. S. A. Patent Office, July 19, 1878.

UNITED STATES OF AMERICA,
Northern District of New York ss:

On this 11th day of September, A. D. 1878, before the undersigned, a United States commissioner in and for said district, came the above-named Charles Eddy, who is personally known to me to be the identical person who executed the foregoing agreement as Charles Eddy, and acknowledged to me that he had executed the same for the purposes therein named. Witness my hand and official seal at Troy, Rensselaer County, in said State, at the date above given.

[SEAL.] N. B. SYLVESTER,
United States Commissioner.

(Endorsed:) U. S. circuit court. Filed Sept. 13, 1878. John I. Davenport, clerk.

1324 *Motion to make Charles Eddy a defendant.*

In the circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

GEORGE H. WILLIAMS, being duly sworn, says that he is of counsel for complainant in the above-entitled case. That he has been informed by Charles Eddy, named in defendant's answer, and by Marcus P. Norton, esq., complainant's solicitor, and believes it to be true, that before the commencement of this suit the said Eddy declared to the said Norton that he would not pay one cent or incur any expense or liability whatever in the prosecution of the claim which is the subject matter of this suit, or for the prosecution of any claim under the patent for an infringement of which this suit is brought, and said Eddy has informed this affiant, since the commencement of this suit, and when affiant was soliciting him to become a party thereto, that he would not consent to place himself in any position in it in which he might incur any liability
1325 for costs or expenses. Said Eddy expressly refused to become a co-complainant with Campbell in the suit if in any event it would expose him to liability for costs or expenses. Affiant, under these circumstances, knows of no way of making said Eddy a party to this suit as prayed for in defendant's answer, except to make him a party defendant.

Affiant further says that it has been impossible to determine what, if any, interests or rights said Eddy had in the subject-matter of this suit before the testimony was substantially closed. That affiant declined to go on with this motion at the last motion day of the court, for the reason that it was then intimated to him that evidence might still be introduced affecting the question of Eddy's interest in this suit. That there has been written and oral evidence introduced by both parties touching this point. That while it seems to affiant that said Eddy has some interest in this matter of the patent upon which this suit is brought, or in the proceeds of such patent, the extent and nature of such interest depend upon the construction of written and oral evidence of doubtful import, some of which has been introduced at a very late period in the taking of the testimony in this case. Affiant further says that he assisted in preparing the amendments to the bill in this case, but was not advised of the alleged interest of said Eddy in the subject matter of this suit until the answer of defendant was filed, and that complainant's solicitor, Marcus P. Norton, esq., who prepared the original bill, then informed this affiant that said Eddy was not made a party thereto, because he, the said solicitor, was of the opinion that said Eddy had no such interest in the matter in litigation as to make him a necessary party to the suit. Affiant further says that as counsel for complainant he was unable to determine as to the correctness of this opinion until the evidence in the case was developed, and that this application was made as soon as practicable with a proper knowledge of the facts
1326 of the case. Affiant says that the object of this application is to provide, so that the long pending controversy as to the patent in suit may be finally determined, and all further litigation upon the subject prevented.

(Signed) GEO. H. WILLIAMS.

Subscribed and sworn to before me on this fifth day of September, A. D. 1878, at Washington, D. C.

[SEAL.] (Signed) JOS. T. K. PLANT,
United States Commissioner.

True and correct copies of the motion papers on file, and of the whole thereof.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

Exd., T.

(Endorsed:) In the circuit court of the United States for the southern district of New York. In equity. Christopher C. Campbell, complainant, vs. Thomas L. James, defendant. Motion to make Charles Eddy defendant. Affidavits. U. S. circuit court. Filed September 13, 1878. John I. Davenport, clerk.

1327 *Motion to make Charles Eddy a defendant.*

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

Order by the court.

Now comes the said complainant, by George H. Williams, his counsel,

and the defendant, by S. B. Clarke, assistant U. S. district attorney, his counsel, and the motion heretofore continued from the 23d of last July by consent of parties, came on to be heard upon a stipulation between said complainant and said Eddy, filed herein, and an affidavit by said counsel for complainant filed therewith, as well as upon the pleadings and evidence in this case, and after hearing said counsel for complainant in support of said motion, and said counsel for defendant in opposition thereto, and it appearing that said defendant in his answer had prayed that said Eddy be made a party to this suit, and the said Eddy in said stipulation claiming to have an interest in the subject-
1328 matter of this suit, agrees in said stipulation that the filing thereof in this cause shall be held and treated by the court as his voluntary appearance for all the purposes of this suit, as fully in all respects as though he was an original party thereto; it is considered upon the foregoing, and the pleadings and evidence in the case, that the said motion of complainant ought to be granted; and it further appearing that said Eddy cannot be made one of the complainants herein, it is ordered and adjudged that the said Eddy be, and he is hereby, made a defendant in this suit, for himself, as well as in trust for Jacob Shavor and Albert C. Corse, for all the purposes thereof, as fully in all respects as though he were an original party thereto. And it is further ordered, as regards the complainant Campbell and defendant Eddy, that this cause, the said Eddy consenting thereto in said stipulation, be heard upon the pleadings and evidence as they now stand, unless the court shall hereafter otherwise direct.

(Signed) SAMUEL BLATCHFORD.

True and correct copy of an order of the court on file, and of the whole thereof.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

Exd., T.

(Endorsed:) U. S. circuit court. Filed September 13, 1878. John I. Davenport, clerk.

1329 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
against
THOMAS L. JAMES.

It is now and hereby stipulated that any and all depositions, and also any and all packages of exhibits which have been or may hereafter be transmitted by examiners or by special examiners in this cause, at or before the time for taking testimony shall expire, either on the part and behalf of the complainant or of the defendant herein, may be opened by the clerk of this court and filed in his office; and further, that such testimony and exhibits, so opened and filed, may be delivered by the clerk to Wynkoop & Hallenbeck, printers, on the part and behalf of complainant, and that on the part and behalf of the defendant, to John Polhemus, printer, for the purpose of printing the same; and the said printer or printers for each party shall make and deliver to said clerk of this court a receipt in writing for such papers in this cause as may from time to time be delivered to him for the purpose of printing as aforesaid; and upon the printing being done, completed, or at any time on demand of the clerk, such testimony and exhibits shall be

immediately returned to the files of this court. In the mean time,
1330 counsel for each party shall be responsible for such testimony and exhibits as may be delivered to and receipted for by the printer or printers for that party.

Dated July 2, 1878.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.
STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol'r.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. C. C. Campbell vs. Thos. L. James.

Stipulation of both parties for opening, filing, and printing the testimony, exhibits, etc., in this cause.

MARCUS P. NORTON,
Sol'r for Compl't, Troy, N. Y.
S. L. WOODFORD,
U. S. Attorney, Sol'r for Def't.

U. S. circuit court. Filed July 2, 1878.

1331 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL,
vs.
THOMAS L. JAMES.

Consent is hereby given that the defendant herein may examine such competent witnesses as he may desire to examine, in support of the defenses set up by the answer herein, at Wheeling, West Virginia, and at Cincinnati, Ohio, and that such witnesses may be so examined in the manner and with the same force and effect as they could have been examined had their names, residences, and places of business, and the names, residences, and
1332 places of business of any persons concerning whom they may testify, and the places where any instruments or things testified to by them were used, and the names and residences of the persons by whom the same were used, been duly and in due time stated in the answer in this cause; and that any and all evidence or proofs so taken shall be received by the court in the same manner and with the same force and effect as though the defendant had given the full statutory notice in his answer; complainant's counsel reserving to himself the right to take any objections to questions put to any person who may be called as a witness under this consent that he may deem proper to take during the examination of any such person or witness; but no objection shall be taken because the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used, have not been duly stated in defendant's answer, as by law required.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

Dated Cleveland, Ohio, March 1st, 1878.

(Endorsed:) Circuit court U. S., S. D. N. Y. Christopher C. Campbell vs. Thomas L. James.

1333 Stipulation as to taking testimony at Wheeling and Cincinnati.

STEWART L. WOODFORD,
U. S. Att'y and Def's Sol., N. Y. City.

U. S. circuit court. Filed Mar. 6, 1878.

JOHN I. DAVENPORT, *Clerk.*

1334 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Consent is hereby given that the defendant herein may examine such competent witnesses as he may desire to examine, in support of the defenses set up by the answer herein, at Cleveland, Ohio, and that such witnesses may be so examined in the manner and with the same force and effect as they could have been examined had their names, residences, and places of business, and the names, residences, and places of business of any persons concerning whom they may testify, and the places where any instruments or things testified to by them were used, and the names and residences of the persons by whom the same were used, been duly and in due time stated in the answer in this cause; and that any and all evidence or proofs so taken shall be received by the court in the same manner and with the same force and effect as though the defendant had given the full statutory notice in his answer; complainant's counsel reserving to himself the right to take any objections to questions put to any person who may be called as a witness under this consent that he may deem proper to take during the examination of any such person or witness; but no objection shall be taken because the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where
1335 and by whom it had been used, have not been duly stated in defendant's answer, as by law required.

MARCUS P. NORTON,
Solicitor and of Counsel for Complainant, Troy, N. Y.

Dated Cleveland, Ohio, February 18, 1878.

It is also consented that the above may be filed as of the date Feb. 18, 1878.

New York, Sept. 19, 1878.

MARCUS P. NORTON,
Solicitor and of Counsel for Complainant, Troy, N. Y.

(Endorsed:) U. S. circuit court, southern district of New York. Christopher C. Campbell vs. Thomas L. Jones.

Stipulation as to defendant's taking testimony at Cleveland, Ohio.

STEWART L. WOODFORD,
U. S. Att'y and Def't's Solicitor, N. Y. City.

U. S. circuit court. Filed Sept. 19, 1878.

JOHN I. DAVENPORT, *Clerk.*

1336 Circuit court of the U. S., for the southern district of New York, in the second circuit. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Depositions of sundry witnesses taken before me, J. G. Pomerene, a special examiner under the sixty-seventh equity rule as amended. appointed by the circuit court of the United States for the southern district of New York by an order, a certified copy of which is hereto annexed, at my office in the city of Cleveland, in the State of Ohio, on the 18th day of February, 1878, and following days, on behalf of the defendant in a suit pending in the said circuit court of the United States for the southern district of New York, in which Christopher C. Campbell is complainant and Thomas L. James is defendant, counsel for both complainant and defendant being present.

1337 At a stated term of the U. S. circuit court, held in the city of New York, on the 11th day of February, 1878.
Present, Hon. Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.
In equity.

On reading and filing the subjoined consent, and on motion of Stewart L. Woodford, U. S. attorney and defendant's solicitor herein, it is ordered that J. G. Pomerene, esq., of Cleveland, Ohio, be, and he hereby is, appointed a special examiner of this court under the 67th equity rule, as amended, for the purpose of taking the testimony of such competent witnesses as may be brought before him on the behalf of the defendant herein.

(Signed) HOYT H. WHEELER.

Consent is hereby given that an order in the terms of the above draft may be made.
Troy, N. Y., Feb. 9, 1878.

MARCUS P. NORTON,
Complainant's Solicitor.

Troy, N. Y.

STEWART L. WOODFORD,
U. S. Att'y.

Ex'd.—T.

A copy.
[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Endorsed:) U. S. circuit court, southern dist. N. Y. Christopher C. Campbell v. Thomas L. James. Certified copy order appointing special examiner at Cleveland.

1338 United States circuit court for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Proofs for final hearing taken for and on behalf of the defendant, be-

fore J. G. Pomerene, esq., the special examiner, appointed for the purpose, at his office, in the city of Cleveland, Ohio, on the 18th day of February, 1878, and the following days.

Present, pursuant to notice, Marcus P. Norton, esq., solicitor, and of counsel for complainant, and Samuel B. Clark, esq., assistant U. S. attorney for the southern district of New York, for the defendant.

CHARLES E. WHEELER, a witness called on behalf of the defendant, being by me first duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

Q. 1. What is your name, age, residence, and occupation?

A. Charles E. Wheeler; age, 51; residence, Cleveland, Ohio; occupation, bookkeeper; not specially occupied at present.

Q. 2. Were you ever employed in the post-office in Cleveland?

A. Yes.

Q. 3. During what time were you so employed, and in what capacity or capacities?

1339 A. From on or about the 4th day of May, 1849, until on or about the 1st of October, '66, I was employed there with the exception of about three months; for about the first four years as box delivery and stamping clerk; afterwards as chief of distribution department, until appointed as special agent of the Post-Office Department in charge of railway postal service; afterwards, until about the 1st of October, '66, I occupied the position of special agent, as stated.

Q. 4. About how long were you chief of the distribution department?

A. I would say about ten years.

Q. 5. While you were in the post-office in these various capacities did you have an opportunity of knowing what sort of instruments were used for the postmarking of letters and the cancellation of postage-stamps at different times?

A. I had.

Q. 6. Without referring to dates at all, give a brief general history of the different instruments used in the Cleveland post-office for the purposes indicated, in the order in which they were used.

A. Well, it is rather difficult to answer that question just as you put it; we had a dating stamp, the date daily changed, separate and apart from the canceller or cancelling stamp; sometimes the dating stamp only was used for the two purposes; at other times both stamps; afterwards a combined dating and cancelling stamp was used.

Q. 7. Describe the construction of the separate dating stamp.

A. It was a circular stamp with the words "Cleveland, Ohio" in the circle, and printing type for the month and day of the month in a square mortise in the center, which were held in position by a set screw from the outside, and operated by a wooden handle on top of the stamp.

Q. 8. What material was the part exclusive of the handle?

A. Iron, case hardened, or steel.

Q. 9. What shape was the iron or steel part?

1340 A. Circular, and probably an inch and a half high.

Q. 10. Give the general dimensions.

A. Circumference, about three inches; height, about an inch and a half; length of handle, possibly about three inches.

Q. 11. How were the handle and iron part attached?

A. Sometimes by a screw, and sometimes by a prong, or whatever you choose to call it—an iron attached to the stamp running up through the handle.

Q. 12. What was the shape of the handle?

A. Oval.

Q. 13. Describe the construction and dimensions of the separate canceller.

A. About the same height as the iron part of the dating stamp, circular in form, with bars on the cancelling surface; handle in about same shape of dating stamp, but smaller, and secured in same way; the material was iron, and diameter about three-quarters of an inch or less, and the handle was wood.

Q. 14. What did you mean by saying that the separate dating stamp was sometimes used for the two purposes, and how was it so used?

A. The rules of the department required the use of the cancelling stamp for the cancellation of the postage-stamps, but the dating stamp was frequently used for both dating and cancelling.

Q. 15. You mean, do you not, that the postmark was put on the postage stamp?

A. I do.

Q. 16. You have stated substantially that the rules of the department required that the postmark should not be made on the postage-stamp, but on the envelope apart from the postage stamp; did the department make more than one rule or order on that subject at different times?

1341 (The complainant's counsel objects to the last part of the question, on the ground that the records and files at the Post-Office Department in Washington will show precisely what was done on the subject inquired about. It is therefore improper to inquire of this witness about what may have or may not have been done by the Postmaster-General, unless done at the Cleveland post-office, and within the personal knowledge of the witness.)

A. I could not say positively whether more than one order printed or written was received from the department, or whether succeeding orders were made through special agents, but the attention of the Cleveland office was certainly called to our oversight of the rule on more than one occasion.

Adjourned to Tuesday at 10 o'clock a. m.

FEBRUARY 19th, 1878.

Pursuant to adjournment.

Present, same counsel as before.

Direct examination of Mr. WHEELER resumed:

Q. 17. Give the names of the different gentlemen who were postmasters at this city while you were in the office, and approximate the dates of their term of office, by reference to years and by reference to the administration of different Presidents of the United States.

A. D. M. Haskell, under the Taylor & Filmore administrations, about four years; J. W. Gray, under the Pierce administration, over four years; B. Harrington, under the Buchanan administration, about four years; E. Cowles, under the first Lincoln administration, under whom I served part of his first term.

Q. 18. It was under Mr. Cowles, was it, that you were appointed special agent?

1342 A. It was.

Q. 19. What do you mean by saying that it was over four years that Gray was postmaster under the Pierce administration?

A. That Gray lapped over into the Buchanan administration.

Q. 20. Do you recollect who was postmaster when the order in reference to putting the postmark on the envelope, apart from the postage stamp, was made?

A. After the passage of the three-cent postage stamp law, either at the last part of the Haskell administration or the first part of the Gray administration.

Q. 21. Do you recollect that the attention of the Cleveland office was called to its occasional non-conformity to the rule by the department while Mr. Gray was postmaster?

(Counsel for complainant objects to the question on the ground of its being indefinite and uncertain as to what office defendant refers to when he says "Cleveland office.")

A. My impression is that it was under the Gray administration.

Q. 22. State in how many different places the post-office was located in this city while you were employed therein.

A. Four; first, in old Franklin buildings, on Superior street; second, in Herald building on Bank street; third, in Gray's building, on Water street; fourth, in Government building, on public square, where it now is.

Q. 23. Approximate the date of moving into the Herald building.

A. About the first of January, 1850, as near as I can recollect.

Q. 24. About when did you go from the Herald building to Gray's building, on Water street.

A. Between the first and fourth of July, 1853; the removal occupied two or three days.

1343 Q. 25. About when did you go into the government building, on the public square?

A. On the evening of the 24th of December, 1857 or 1858, on Christmas Eve.

Q. 26. Was an instrument ever used in the Cleveland office to your knowledge by which the letters were postmarked on the envelope apart from the postage stamp, and the postage stamp was cancelled at one blow of the instrument?

A. There was.

Q. 27. Describe how the first instrument of this kind was constructed.

A. One side of the original dating stamp was filed to a flat surface, and the iron part of the old style canceller filed in the same way, and the two put together side by side by binding with twine and wire; the two flat surfaces were brought together before binding.

Q. 28. Were the original dating stamp and the old style canceller which you refer to in your last answer the same as the dating stamp and canceller which you described yesterday?

A. They were.

Q. 29. What became of the handle of the canceller?

A. It was taken off, the iron part only being used.

Q. 30. Have you a model of the canceller and dating stamp as originally combined?

A. I have.

Q. 31. Please produce it.

(Witness produces model asked for and it is marked Defendant's Exhibit No. 137 (Wheeler), J. G. P., Ex'r, Feb'y 19th, 1878.)

Q. 32. In this model the canceller and the dating stamp seemed first to have been bound together with waxed twine, and afterward with wire placed over the twine; was that the case in the original combined stamp?

A. Substantially so, but probably not as artistically done as this one, the object being to hold them as tightly together as possible.

1344 Q. 33. What do you mean by artistically—anything more than evenness of binding?

A. Nothing more.

Q. 34. Were the original combined dating stamp and canceller as securely attached as they are represented in this model?

A. That was the intention.

Q. 35. How about the fact?

A. Continuous use did make it out of true.

Q. 36. Please explain that answer a little more fully.

A. Not being permanently united, the jar would make the surfaces uneven if the blow was not perpendicular; by the term surfaces, I mean the acting faces of the postmarker and canceller.

Q. 37. Did the two acting faces ever become so out of true that both would not make some impression upon the envelope and postage stamp?

A. No, that would be impossible.

Q. 38. You mean, do you, that they never did?

A. No.

Q. 39. What do you mean?

A. I mean that it would be impossible for the two facing surfaces to come in contact with the face of the envelope without making an impression.

Q. 40. Did the two acting faces ever become so uneven with reference to each other that when the instrument was used either of them failed to come into contact with the paper?

A. No.

Q. 41. When the original dating stamp and the old style canceller were first combined in the manner you have described, were they in point of fact held together as firmly and securely as they are represented in this model, Defendant's Exhibit No. 137?

(Complainant's counsel object to the question on the following grounds:

First. The witness having already exhausted the subject mat-
1345 ter of the inquiry in a vague and unintelligible manner, it is now too late for defendant's counsel to pump into the witness the answer he desires the witness to give.

Second. Because the instrument itself will illustrate to the satisfaction of the court the subject matter of the inquiry.)

A. When first put together they undoubtedly were.

Q. 42. Was there a rim or bead at the top of the iron part of the dating stamp where it joined the handle as is represented in this model, Defendant's Exhibit No. 137?

A. My impression is that all the dating stamps furnished by the department had a shank or projection in the handle immediately above and over the iron part of the stamp, substantially as represented in the model; this projection may be called a bead or rim.

Q. 43. Please direct your attention to the original combined instrument and state whether there was such a projection, or rim, or shank, or bead, in that as is represented in this model?

A. My recollection is that there was such a shank.

Q. 44. Did the upper end of the canceller come flush up against this rim or shank, as is represented in Defendant's Exhibit No. 137?

A. Undoubtedly it did, for the purpose of holding it in position.

Q. 45. This model is incomplete in that it is made wholly of wood,

and that the acting face of the dating stamp is not lettered, and in that there is nothing to represent the set screw from the outside by which the printing-type were held in place, and in that the dating stamp is one solid block of wood, and in that the mortise for the dating type is round instead of rectangular, is it not?

A. Yes.

Q. 46. Do you now notice any other respects in which this
1346 model, Defendant's Exhibit No. 137, is not a perfect representation of the original combined stamp when first put together?

A. I do not; I think it is substantially the same.

(Defendant's counsel now offers the model, Defendant's Ex. No. 137, in evidence, the same being marked by the special examiner, as before indicated.

Complainant's counsel now objects to this model as being any part of the evidence in this case, for the following reasons:

First. An inspection of the model bears evidence of having been made within the last two or three days.

Second. As having been manufactured either by defendant's counsel or the witness now on the stand, or by somebody else under their instructions, for the purpose of illegitimate evidence in this cause.

Complainant's counsel now and here objects to any and all evidence that this witness has given or may give in this cause concerning said model, for the reasons last above assigned.)

Adjourned until half-past two p. m.

Present, same counsel as before.

Direct examination of Mr. WHEELER resumed:

Q. 47. Whose idea was it of combining the canceller and dating stamp in the manner that you have described?

A. My own.

Q. 48. Did you fix the dating stamp and canceller together with twine and wire? Did you do it yourself?

1347 A. I did.

Q. 49. What was the reason of your doing it?

A. To economize labor in stamping.

Q. 50. Well, give a full explanation of how this economy of labor was effected, and of any circumstances that existed which made it expedient to try to effect it.

A. Owing to the decrease in letter-postage from five and ten cents to three cents, there was a consequent increase in correspondence, which, if stamped by the two single stamps—dating and cancelling—then in use, would necessitate double labor; the use of the combined stamp made only one operation necessary, and it was only necessary to go over the letter once in order to accomplish both operations of postmarking and cancelling.

Q. 51. Was the combined instrument which you have described, represented by Defendant's Exhibit No. 137, put in use in the Cleveland post-office?

A. It was.

Q. 52. Did you use it there yourself?

A. I did.

Q. 53. Was it used continuously after it was invented?

A. No.

Q. 54. Why?

A. Because, owing to the weight of the two stamps combined and the shape of the handle, it was considered rather clumsy.

Q. 55. What effect did the weight and the slope of the handle have upon the operator?

A. It blistered the hand.

Q. 56. About how often was the instrument used?

A. Whenever there was an unusual accumulation of letters, or just before closing mails.

Q. 57. About how often was there an unusual accumulation of letters on an average?

A. Usually at the close of business hours and during the evening; also on Mondays, the result of Sunday's correspondence.

1348 Q. 58. Do you mean that there was some part of every day, or almost every day, that the instrument like Defendant's Exhibit No. 137 was used in the Cleveland office?

A. No; I will not say that, but an occasional use.

Q. 59. I want to get at about how frequently those occasions came around, on an average; what should you say about that?

(Complainant's counsel objects on the following ground:

First. Because the witness having already several times made answer to the subject matter inquired about in the question, it is improper to waste time in this examination by repetition of leading and instructive questions.

Second. The witness having fully answered the subject matter of the inquiry by the several last preceding questions.)

A. Could not say how often; it was used by others as well as myself.

Q. 60. How often was it used by you while you had stamping to do?

A. My position at that time was box delivery clerk; when there was a necessity for stamping while I was occupied at the windows, others did the stamping; could not give a definite answer.

Q. 61. When you were not occupied at the windows did you do stamping?

A. Sometimes.

Q. 62. Were you accustomed to use the combined instrument when you did do stamping?

A. Only at times, for reasons already explained.

Q. 63. Did the instrument lie continuously by the stamping table, so that it was handy for use whenever there was any need of hurry?

(Complainant's counsel objects to the question for the reasons last above assigned; and he here most respectfully requests the attention of
1349 this court to the manner and character of the direct examination of this witness against which complainant's counsel protests.

Defendant's counsel requests complainant's counsel to specify the grounds of his objection.

(Complainant's counsel respectfully refers defendant's counsel to the record itself, and will reserve argument thereon until the case comes regularly before the court.)

A. It did stand on the stamping table and it was handy for use.

Q. 64. Was any change made in the method of combining the dating stamp and canceller after the instrument like the model described in Defendant's Exhibit No. 137 had been used as you have testified?

A. Yes; three changes in the Cleveland post-office.

Q. 65. Describe the changes in detail and in the order in which they were made.

A. The first change was in brazing together the dating and cancel-

ling stamp, as they appeared in Defendant's Exhibit No. 137; the second change was in brazing a half part of the cancelling stamp to the dating stamp; the third change was the still further cutting down of the cancelling stamp, which was also brazed to the dating stamp; the object of the second and third change in the cancelling stamp was to reduce size and weight.

Q. 66. What is brazing?

A. My meaning of the word brazing was the joining together of the two stamps by a soldering process.

Q. 67. Were they held securely; did the canceller ever get knocked off?

A. I never knew of but one case where the canceller was broken off in our office.

Q. 68. Have you a model representing any of the changes in the combined instrument which you have spoken of?

1350 A. I have one which represents the second change.

Q. 69. Please produce it.

(Witness produces the model asked for, and it is marked Defendant's Ex No. 138, (Wheeler,) J. G. P. Ex'r, Feb. 19th, 1878.)

Q. 70. Point out any respects which you notice in which this model, Defendant's Exhibit No. 138, differs from the combined instrument which was actually made.

A. It is about the same shape and size, but has no lettering on the dating face, nor has it the dating types secured by a set screw, and the dating and cancelling stamp being of wood instead of iron.

Q. 71. In other respects is this model, Defendant's Exhibit No. 138, a perfect representation of an instrument for postmarking and cancelling which was combined and used in the Cleveland post-office?

A. It is.

(Defendant's counsel offers the model in evidence, the same being marked Defendant's Exhibit No. 138, as above indicated.

As to the introduction and reception of this model in evidence, complainant's counsel here interposes several objections. Those objections are the same as were interposed to the introduction and reception in evidence of Defendant's Exhibit No. 137, and those objections are here repeated, as against Defendant's Exhibit No. 138.)

Adjourned until half-past nine o'olock to-morrow morning.

1351 FEBRUARY 20TH, 1878.

Present, pursuant to adjournment.

Same counsel as before.

Direct examination of Mr. WHEELER resumed:

Q. 72. Did you ever apply for a patent on this combined stamp which you have described?

A. I did.

Q. 73. When?

A. According to recollection, in 1863.

Q. 74. What was the result?

A. Application was denied.

Q. 75. What was the reason?

(Complainant's counsel objects to this question on the ground that the matter inquired about by the question has nothing whatever to do with this case, the witness having already answered that he applied for a patent and that that application was denied by the Commissioner of Patents.)

A. I was informed by my attorney it was because of an existing patent.

Q. 76. Did you apply for an interference case with that existing patent?

A. I did.

Q. 77. With what result?

A. The grant was given, and the case set down for hearing on a certain date; the grant was afterward withdrawn before the hearing.

Q. 78. Was any reason assigned for disallowing the interference?

A. Because of the existing patent and the usual time for application having expired, I suppose to be the reason.

Q. 79. What do you mean by the usual time? The usual time for application for the patent, or the application for an interference?

A. The time allowed by law, two years, as I am informed, had
1352 expired to apply for a patent; but for what were considered sufficient reasons for an interference case to be granted, that application was made.

Q. 80. What I want to know is, why the application for an interference case, having been once granted, was then denied?

A. I never knew the reasons, not having seen the Commissioner's letter recalling the grant, my information being received from my attorney.

Q. 81. Have you ever withdrawn your application for the patent or for the interference case?

(Complainant's counsel object to the question on the ground that under the patent laws of this country both the application for the patent, as well as the application for an interference case, cannot now be revived, both being abandoned and as dead as Julius Cæsar, and second, as being incompetent and as consuming the time of the examination upon immaterial matter.)

A. No.

Q. 82. When was the combined instrument represented by Defendant's Exhibit 137 having the dating-stamp and canceller attached by twine and wire first made?

A. Early in the year 1853.

Q. 83. Mention any circumstances by which you are able to fix that date.

A. It was in the Herald building.

Q. 84. Explain what you mean by "it" in your last answer and how the circumstance you have mentioned enables you to fix the date. Give a full explanation, as you would if you had given no previous testimony, and if you were trying to make a person having no information about the matter thoroughly understand it.

A. The three-cent postage-stamp having come into general use while the office was in that building, and correspondence having largely increased, owing to the reduction in postage, the duties of the
1353 stamping clerk were largely increased; owing to the orders of the department requiring all letters to be stamped with both the dating and cancelling stamp, separately, there seemed to be a necessity for economy in labor; from these circumstances I conceived the idea of combining the two stamps, and did so in the way formerly spoken of, and used the combined stamp myself there, and it was also used there by others.

The combined stamp, both in that office and afterwards, was always on or near the stamping-table, accessible for use.

Q. 85. Is your recollection distinct that the combined instrument was combined at about the time three-cent postage-stamps came into use.

A. Within a short time afterward; certainly not before.

Q. 86. Is your recollection distinct that the instrument was combined and used while the post-office was in the Herald building, on Bank st.?

(Complainant's counsel objects to question on the ground that he has sole right to cross-examine witness.)

A. Yes.

Q. 87. Who was postmaster when the combination was made?

A. D. M. Haskell.

Q. 88. Is your recollection distinct about that?

A. It is.

Q. 89. Who was postmaster when the post-office was removed from the Herald Building on Bank street to Gray's building on Water street?

A. J. W. Gray occupied the Bank street office during about the three first months of his administration, and then removed to Water street.

Q. 90. Have you a distinct recollection of that?

A. I have.

Q. 91. Who owned the building on Water street?

A. J. W. Gray, the then postmaster.

1354–5 Q. 92. Have you a distinct recollection that Gray succeeded Haskell?

A. I have.

Q. 93. What President appointed Gray, and at what part of the presidential term?

(Complainant's counsel objects to question, unless examining counsel also inquires of the witness as to the size, age, complexion and politics of that President.)

A. President Pierce, early in 1853.

Q. 94. When was President Pierce inaugurated?

A. Supposed to be on the fourth of March, 1853.

Q. 95. Have you a distinct recollection that Gray was appointed postmaster shortly after Pierce became President?

A. I have.

Q. 96. State the date, as precisely as you can, when the post-office was removed from the Herald building on Bank street to the Gray building on Water street.

A. Between the first and fifth of July, 1853.

Q. 97. You have testified that after the instrument like model Defendant's Exhibit No. 137 was made it was not used all the time. State what other intruments were used.

A. Sometimes the dating-stamp alone, for both dating and cancelling, and sometimes the two stamps separately for the two purposes.

Q. 98. I understand you to mean that, in spite of the rule, the postmark was sometimes put directly on the postage-stamps; is that correct?

A. That was the case.

Q. 99. At any time before the canceller was brazed or soldered to the side of the dating-stamp, was the instrument like the model Defendant's Exhibit 137, having the canceller attached by twine and wire, laid aside as useless or abandoned?

(Complainant's counsel objects to question, on the ground that
1356 the witness cannot give in evidence his conclusions. The subject matter of the inquiry is a question of law solely within the province of this court to determine when proper evidence shall have been presented to the court on that subject.)

A. It was not abandoned or laid aside permanently, but was used from time to time during the whole Gray administration.

Q. 100. I asked you yesterday about how often the occasions for the use of the instrument came around. I ask you that question again now. Was it as often as one day in a week, or one day in a month on an average?

A. There was occasion to use it every day, and it was certainly in use as often or oftener than one day in a week.

Q. 101. How long was it after the combination was first made before the canceller and dating-stamp were first brazed together, as nearly as you recollect?

A. I have no data on that point definite until the commencement of the succeeding administration; not having access to the books and receipts of the Gray administration.

Q. 102. Well, give us your best recollection.

A. I cannot recollect anything about the matter further than I have stated, because for the most of the Gray administration I was chief of distribution department, and the stamping was done by other parties.

Q. 103. You can tell, can't you, whether it was less than five, ten, or twenty years?

A. Probably within five years.

Q. 104. Well, certainly, within how many years?

A. For reasons above given as to data, could not give a definite answer until the year 1860, but could undoubtedly find receipts previous to that date upon search.

Q. 105. How long was instrument having the dating stamp and canceller brazed together used?

1357 A. Referring to last above answer, I can say certainly since and including a portion of the year 1860, to the time that the Post-Office Department furnished the new style postmarking and cancelling stamps with cross bar.

Q. 106. Why didn't you apply for a patent earlier than 1863?

A. On account of sickness of myself and of members of my family, I was unable to spare the money necessary, and those reasons were explicitly stated to the Commissioner of Patents, when the application for interference was made.

Q. 107. How early did you consult a lawyer about getting a patent, if you consulted one at all?

A. Consulted Brainard & Burridge within a short time after the invention, and they, or one of them, told me it was patentable, and urged me to apply for a patent.

Q. 108. About when were the postmarking and cancelling stamps, having cross bars, furnished by the Post-Office Department?

A. Cannot give date, but think during the first Lincoln administration.

Cross-examination of witness by complainant's counsel, MARCUS P. NORTON:

(Complainant's counsel here states that having taken several objections to the introduction and reception in evidence of defendant's Exhibits Nos. 137 and 138 (Wheeler), he will cross-examine this witness, de bene esse, with reference to said exhibits.

Defendant's counsel objects to any conditional cross-examination, and insists that if counsel cross-examines he must do so at the risk of suffering any legal effect which are the natural result.)

X Q. 109. You have stated on your examination-in-chief that
1358 you made an instrument like defendant's Exhibit No. 137; who made that instrument for you?

A. I made it myself, or put it together myself, having the material in the office.

X Q. 110. How many such instruments did you make, and when and where?

A. One in the Herald building and during the latter part of the Haskell administration, in the year 1853.

X Q. 111. Did I ask you to state anything about the Haskell administration?

A. The question was when, and the answer was under the Haskell administration, in the year 1853.

X Q. 112. Now, sir, please answer my question, which was this, and answer it like a man and without evasion, to wit: Have you on your cross-examination been asked to state anything about the Haskell administration or any other administration?

(Objected to, on the ground that witness has answered question.)

A. I suppose in answering questions as to dates, in order to make answers plain, it is necessary to locate circumstances in the different administrations as well as in different years, and that was the reason why the answer was given in that way, without any intention of prevarication, in the year 1853.

X Q. 113. You are here informed that I require of you, on this cross-examination, to state nothing of the kind stated by you in the last answer, but I do require you to give full and direct answers to questions put to you, and I now ask you to state the exact time when you first made an instrument represented by defendant's Exhibit No. 137, without any reference to anybody's administration.

(Defendant's counsel objects to this manner of addressing the witness, who is manifestly trying to be fair in his answers, and requests the witness to answer the questions according to his own understanding
1359 of them, as written down, and according to his own judgment of what they call for, without any reference to what Mr. Norton requires, except so far as such requirement is contained in each individual question as taken down by the examiner.)

A. Between the months of January and the 1st of July, 1853.

X Q. 114. If I understood you correctly, during your examination-in-chief, you stated that you never made but one instrument like or substantially like Defendant's Exhibit No. 137. Was that understanding correct?

A. It was not; I said that the original stamp was made at that time.

Adjourned until 2 o'clock for dinner.

Met pursuant to adjournment, same counsel as before.

Cross-examination of Mr. WHEELER resumed:

X Q. 115. Not understanding you correctly, as you have stated in your last answer, please state what you did say upon the matter inquired about in the last question, or meant to be understood about that matter.

A. In my answer to the original inquiry I understood the question to be: Was more than one stamp made at first; and I so answered—only one.

X Q. 116. When was that made?

A. During the year 1853.

X Q. 117. What has become of that stamp, and where is it now?

A. I have no means of knowing.

X Q. 118. Do you know where it is?

A. I do not.

X Q. 119. When and where did you last see it?

A. I have no remembrance as to date, but saw it in the post-office, on Bank street and Water street. Whether afterwards I could not say.

1360 X Q. 120. In what year did you last see it in the post-office in this city?

A. Probably in the years 1858 or 1859.

X Q. 121. Did you make any other instrument of the kind shown by Defendant's Exhibit No. 137 than that one?

A. I did not. But that stamp or combination was renewed upon one or more occasions, both in the binding and by wedge inserted between the stamps to tighten the binding when it became loose. Other dating stamps were used in this combination afterwards, from the fact of the handles becoming loose or splitting from the effects of heat or falling.

X Q. 122. How many instruments of the kind you have described in your last answer did you ever make or cause to be made?

A. Probably only the first myself. As to others that may have been made or repaired, they were done by or under the supervision of the then stamping clerks in the Cleveland post-office.

X Q. 123. What has become of the one you say you made?

A. I have no idea.

X Q. 124. You cannot tell where it is?

A. No.

X Q. 125. In what year and at what place did you last see the instrument referred to in the last several answers?

A. If the instrument referred to means the original stamp, it was in the Water street office between the 1st of July, 1853, and the balance of the time the office remained on Water street.

X Q. 126. You ought to know that the last question refers to the contrivance about which you were then being examined, to wit, the one which you say had a wedge in it to tighten the binding; please state the year you last saw that contrivance.

A. The wedge was undoubtedly used not only in the original stamp, but in all the renewals or changes in that contrivance during nearly or all the time the office was on Water street.

1361 (Complainant's counsel here moves the court to strike out the last answer, as not only not responsive to the question, but also on the ground of vagueness and intentional evasion by the witness.

Defendant's counsel objects to such remarks as have been put upon the record in form of objection being made in the presence of the witness, the purpose thereof being manifestly to irritate and brow-beat the witness, since the record shows that it is the counsel's questions that are vague and not the witness' answers.)

X Q. 127. Did you understand the last question at the time you attempted to answer it, which question the examiner will now read to you for your information?

A. I request the examiner to read my last answer before answering the last question.

(That answer being read and also the question, the witness says:)

I did not fully understand the question, for it seemed to refer to one particular stamp with a wedge, when the fact was that more than that one particular wedge had been used from time to time.

X Q. 128. How many stamps have you ever seen in your lifetime containing the wedge referred to in your last answer?

A. Probably none other than these spoken of, the object of that wedge being simply to tighten the binding which held the stamps together.

X Q. 129. State how many stamps of the kind you have described in your last answer have been seen by your naked eye during your lifetime.

A. Probably none other.

X Q. 130. How many in round numbers do you mean by the last answer?

A. Have no definite idea, but suppose the different combinations may have been three, four, five, or six.

1362 X Q. 131. Were those combinations all made upon the same contrivance, or were they, as you say, "six" separate and distinct contrivances?

A. As stated in former answer, when a handle was split or became detached from the stamp, it was replaced either by another handle or another handle and stamp; how often that change was made could not say definitely.

X Q. 132. Did you understand the last question at the time you gave your answer to it?

A. I suppose I did, and that it referred to the combination of the two stamps simply.

X Q. 133. State what has become of the stamps mentioned and described by you in your last several answers.

A. When the office was moved from the Gray building to the government building, where the office is now located, none of the old furniture was removed, and everything considered of no account was left in the old building.

X Q. 134. Did you understand the last question at the time you answered it

A. I did.

X Q. 135. Referring to your answer to question No. 133, where you speak of the useless furniture in the post-office not being removed to the new one, were the contrivances about which you have been asked since the recess for dinner to-day a part of that useless and unforgotten furniture left behind in the removal, and which you now cannot give any information concerning, as appears from your answer to question No. 133?

A. They were, for the reason that the old stamp had been cast aside, and others had been brazed or soldered together for stamping and cancelling purposes.

X Q. 136. The question is now again asked you for the fourth time, where those contrivances now are to which I referred in my last question, and which are embraced in the words of your last answer, to wit, "they were."

1363 (Defendant's counsel objects because on complainant's counsel's own showing the question has been put and answered three times.)

A. I have answered that they were left in the Water street building, and if now in existence I have no knowledge of their whereabouts.

X Q. 137. When did you last see the same?

A. I have answered before, while the office was in the Water street building, before they were thrown aside.

X Q. 138. Who was postmaster at that time—I mean from the time you say you first made these contrivances for post-marking letters and cancelling postage stamps like, or substantially like, defendant's Ex-

hibit 137, and until "they were thrown aside," at the time of the removal of the post-office from the Water street building?

A. There were three postmasters during the time covered by the question, viz, D. M. Haskell, J. W. Gray, and B. Harrington.

X Q. 139. Where are the persons named in your last answer?

A. All dead.

X Q. 140. In what year was the removal from the Water street building?

A. My impression is, on the 24th of December, 1859.

X Q. 141. At what time was the use of the several contrivances you have described on your cross-examination discontinued in the post-office at Cleveland, Ohio?

A. In 1858 or 1859; without dates I cannot tell definitely.

X Q. 142. You are very positive, are you not, that those contrivances were used in the Cleveland post-office for the purposes of post-marking the letter and the cancellation of the postage-stamp at one blow—by one handle of the instrument—are you not?

A. Yes.

1364 X Q. 143. You are also positive that those contrivances were used in that post-office every day from the month of January, 1853, until the year 1858 or 1859, are you not, when the use thereof was discontinued, as stated in your answer to question No. 141?

A. I did not state that they were used every day during that period, and do not believe that they were so used, but I did say that they were used at least once a week during that time.

X Q. 144. Where are the stamping and cancelling clerks who were in the Cleveland post-office during the period referred to in the last question and answer?

A. Four or more still reside in the city; one somewhere in Illinois, and one or two are dead.

X Q. 145. From the year 1853, January 1st, to January 1st, 1878, would be a period of how many years?

A. Twenty-five.

X Q. 146. What was the population of this city in the month of January, 1853?

A. Don't know.

X Q. 147. Was it a large or small city at that time?

A. Much smaller than at present.

X Q. 148. What is the population of this city at the present time?

A. I believe it is estimated at between one hundred and sixty and one hundred and sixty-five thousand.

X Q. 149. In 1853 how many clerks were employed at the Clevelan post-office?

A. Twelve or fifteen.

X Q. 150. How many are employed there now?

A. Including carriers, between forty and fifty probably.

X Q. 151. How many clerks were employed in the year 1853 for post-marking letters and the cancellation of postage-stamps thereon?

1365 A. The post-marking and cancellation of letters was not the only stamping which was then done in the office, but included transient newspapers, circulars, etc., and it required at different times the services of three clerks, one from the round table to do the cancellation of miscellaneous matter, and two delivery clerks to do the letter stamping and cancellation as they had opportunity.

X Q. 152. How many such clerks were required to do the post-marking and cancelling of letters during the year 1854 to the first day of

January, 1862, and during each and every intervening year from 1854 to 1862?

(Objected to as immaterial.)

A. The office being a distribution office the city letters and papers dropped in the boxes were stamped at night as well as in the day time, and the gradual growth of the city, increase of correspondence, the additional help for such purposes during those years was double, at least, what it had been previously.

X Q. 153. During what years was that business double, or more than double, as you have stated in your last answer?

A. While in the Herald building it was the practice to close the outer doors at ten o'clock p. m.; after removal to Water street the outer doors were left open all night; for that reason the night watch was materially increased.

X Q. 154. Did you understand the last question when you gave an answer thereto?

A. I thought I did.

X Q. 155. Have you any doubt about it?

A. I have now.

X Q. 156. You understood that question about as correctly as you did questions put to you by defendant's counsel during your examination-in-chief, did you not?

A. I have always intended to answer to the point.

X Q. 157. Between the first of January, 1853, and the time when your several contrivances about which you have testified on your cross-
1366 examination disappeared from the gaze of mortal man amid the abandoned rubbish at the Water street building, did you communicate with the Postmaster-General or any officer in the Post-Office Department at Washington upon the subject of those contrivances?

A. Not to my recollection.

X Q. 158. From the time of the miraculous disappearance of those contrivances to the first day of January, 1861, did you have any such communication or any correspondence whatever with the Postmaster-General, or with any officer in the Post Office Department at Washington, concerning those contrivances, or either of them?

A. The invention had been shown to special agents of the Post Office Department, and also to Mr. A. N. Zevely, then Third Assistant Postmaster-General, who was passing through the city to and from a Lake Superior trip or trips.

X Q. 159. When was that, and by whom was it so shown to A. N. Zevely, as stated in your last answer?

Q. It was shown by myself, during the summer of 1859, 1860, or 1861.

X Q. 160. In what manner and by what means did you make the exhibition spoken of in your last two answers to A. N. Zevely, then Third Assistant Postmaster-General?

A. Upon his visit to the Cleveland post-office, his attention was called to it probably by myself, and he saw its operation while in the distribution department.

X Q. 161. When, by whom, and under whose directions was defendant's Exhibit No. 137 manufactured?

A. It was made on the 17th or 18th of February, 1878, by W. L. Cottrell, and at request of defendant's counsel.

Adjourned until 10 o'clock to-morrow morning.

1367 FEBRUARY 21, 1878.

Met pursuant to adjournment.

Same counsel present as before.

Cross-examination of Mr. WHEELER resumed:

X Q. 162. When and by whom was the model Defendant's Exhibit No. 138, manufactured, and under whose direction?

A. The 17th or 18th of February, 1878, by W. L. Cottrell, and by request of counsel for defense.

X Q. 163. For what purpose was this model made?

A. I suppose for the purpose of calling attention of witness to the style of one of the original instruments.

X Q. 163½. What do you mean in your last answer by "one of the original instruments?"

A. The original instrument as represented in Exhibit 137 being considered objectionable on account of its weight, was afterwards cut down as to weight to about the style represented in Exhibit 138, and was afterward still further cut down for that object, to reduce weight.

X Q. 164. Did you understand the last question when you answered it?

A. I think I did.

X Q. 165. Can you give any better answer to it than you did give?

A. I think not.

X Q. 166. Have you any doubt about it whether you can or not?

A. No.

X Q. 166½. You say defendant's Exhibit 138 was made to illustrate an original instrument of that kind; when was that original instrument first made; by whom was it made, and who for?

A. Model No. 138 was made to illustrate an original instrument; have no means of knowing just when made, or who by positively.

1368 X Q. 167. Did you understand the last question when you made answer to it? The examiner will read you that question for your information at this time.

A. I overlooked the last query "who for?" It was made for the use of the Cleveland post-office.

X Q. 168. Now, you will please state when that "original" instrument was first made?

A. Probably in the year 1858 or 1859.

X Q. 169. Do you know when it was first made?

A. Not positively, having no date to go by.

X Q. 170. Who made it?

A. Probably Jacob Schwartzenberg, for I had in my possession a receipt for the same kind of work afterward.

X Q. 171. Do you know whether he made that first original instrument or not, Mr. Wheeler?

A. I cannot swear positively.

X Q. 172. Who is Jacob Schwartzenberg; what is his business; where does he reside; and how long have you personally known him?

A. He was a resident of Cleveland; was what might be called a metal tinker or repairer; resides, as I understand, somewhere in Illinois; I have known him personally since 1848 or 1849.

X Q. 173. Whenever he did work for you did you on payment for that work take a receipt from him?

A. Whenever the bills against the post-office were presented, they were presented to the cashier and referred by him as to correctness to the head of the department for which the work was done; if correct it was paid by cashier, and he always took vouchers.

X Q. 174. The examiner will read you the last question, and you will then state whether you understood that question at the time you made the answer you did make?

A. I understood the question; I was not the cashier, neither did I pay any bills on account of the Cleveland post-office.

1369 X Q. 175. Having twice dodged and evaded an answer to question No. 173, you are now inquired of concerning the state of your health at this time, whether it be good or bad?

A. General health good; appetite good, and sleep soundly nights.

X Q. 176. That being the case, question No. 173 is here repeated; the examiner will read it to you, and you are affectionately requested to properly answer it, having stated that you understand it and that your mind is unclouded because of healthy physical surroundings.

(Objected to, first, because the question referred to has been fairly answered; and, second, because this question has stated something which he has not stated.)

A. As stated in answer to question No. 173, I paid no bills for the Cleveland post-office.

X Q. 177. The intelligence manifested by you in your answers to questions this morning fairly illustrates the character of the answers you made to questions on your examination in chief, does it not?

A. The answers to all questions so far I have endeavored to answer plainly, fairly, and to the point, in every instance, both in direct and cross-examination.

X Q. 178. Did you understand the last question, when you made answer to it, and do you know what is meant by the word intelligence?

(Objected to as frivolous.)

A. I did; Webster defines the word intelligence in two forms, to wit, news or information, and common sense.

X Q. 179. I did not ask you what Webster knew or did not know about the word "intelligence," and I again ask you what you know about the meaning of the word intelligence—that is, if you understand the proper meaning of that word; and I make this inquiry be-
1370 cause you evaded proper answers to the question, and I want this court to know whether your evasions and pettifogging answers to questions is due to intention on your part, or through right down ignorance on your part, thus far, during your cross-examination. I refer to question No. 177.

(Same question.)

A. As applied to this matter, it is comprehensive of the meaning of the questions asked; there has been no intention of evasion, but all answers have been considered sufficient to cover the questions; if the counsel will indicate where the evasion has been made, and put the question in proper shape, I shall cheerfully answer it.

(Complainant's counsel will at the proper time and place personally call the attention of this court to all evasions and to all pettifogging answers by this witness to questions put to him on this cross-examination. And counsel here moves the court to strike out all that part of the answer last above after the words "of questions asked," as being irresponsive to the question, and as evasive and as pettifogging on the part of the witness in his answer.)

(Defendant's counsel objects to the introduction upon the record of the improper matter which complainant's counsel has just put there, on the ground of its patent impropriety, and because it is plainly only a miserable attempt to intimidate the witness by bluff and bluster.)

X Q. 180. What has become of that original instrument, represented

by Defendant's Exhibit 138, which you have testified you cannot tell where it was made or by whom it was made?

A. I have no definite idea what became of it, but know of its having been made and used, and, if necessary, can produce corroborative evidence of that fact.

1371 X Q. 181. How do you know that?

A. From my own knowledge, and having used it myself.

X Q. 182. Did you at the time make any memorandum in writing as to its having been first made, or to its having ever been used by you or anybody else?

A. Not to my knowledge, if reference is made solely to Exhibit 138.

X Q. 183. When did you last see that original instrument, represented by Defendant's Exhibit 138?

A. In the Cleveland post-office, in government building, previous to leaving the office, as an employee; can't say just when.

X Q. 184. Where is it now?

A. Do not know.

X Q. 185. At what time was it first used in the Cleveland post-office, and by whom and for what purpose?

A. Probably at the commencement of the Harrington administration and probably by A. L. Basset, who was stamping clerk at that time, and for the purpose of dating and cancelling letters.

X Q. 186. Do you know of your own knowledge when that contrivance, represented by Defendant's Exhibit 138, was first used in the post-office in this city?

A. I do know that it was first used during the Harrington administration in that shape.

X Q. 187. I ask you to state "the time" when a contrivance like Defendant's Exhibit 138 was first used at the Cleveland post-office without any reference to anybody's administration or other form of "Miss Nancy-ing" style of evading a just and fair answer to this question; if you cannot state the time say so; if you can state the time then say that?

(Objected to on the ground of question not being in the English language.)

A. Cannot give exact date when it was first used in the Cleveland post-office, but it was used between the first of July, 1858, and the first of July, 1861.

1372 X Q. 188. You swear to that positively, do you not?

A. All the answers given in this examination by me will be sworn to.

X Q. 189. Have you not already been sworn in this case?

A. I have.

X Q. 189½. Do you expect to be sworn again in this case?

A. I do not; but expect to sign my deposition, which makes the law complete.

X Q. 190. In question 188 I asked you "you swear to that positively, do you not?" Do you know what I mean by that question?

A. I do; and I swear to it positively.

X Q. 191. And you have no sort of doubt about it, have you?

A. No.

X Q. 192. For what length of time was the instrument represented by Defendant's Exhibit No. 138 in use at the Cleveland post-office?

A. Could not give the exact length of time, as there was still another change in the height and weight of the cancelling combination afterward.

X Q. 193. Then Defendant's Exhibit No. 138 is not a correct or truthful representation of the last instrument used in the Cleveland post-office previous to July 1st, 1861, postmarking letters and for the cancellation of postage-stamps thereon, is it?

A. Exhibit No. 138 was not the last change made in the shape or form of the dating and cancelling stamps made and used in the Cleveland post-office from about the first of July, 1858, and until the introduction and use of the combined stamps furnished by the Post-Office Department, but the device as represented by model No. 138 was used, as before mentioned, and also the last one indicated. Just at what time the last change took place I cannot state.

X Q. 194. How much was the contrivance like Defendant's Exhibit No. 138 used in the post-office at Cleveland?

1373 A. In every day use until the last change spoken of was made; how long, I have no means of knowing.

X Q. 195. At what time was its use discontinued at that office?

(Objected to as having been answered.)

A. Immediately after its further curtailment, as mentioned by me in the previous answer.

X Q. 196. At what time did that curtailment spoken of take place?

A. I have no means of recalling the date.

X Q. 197. You are sure that the change or curtailment spoken of by you was made, are you not?

A. Yes.

X Q. 198. Cannot you tell the time in which that was done?

A. I cannot definitely.

X Q. 199. Cannot you tell the year in which it was done?

A. No; probably 1859 or 1860.

X Q. 200. When was the contrivance you last speak of used in the post-office at Cleveland?

A. As before stated, immediately before the introduction of the new stamp furnished by the P. O. Department.

X Q. 201. When was the use of that contrivance discontinued in the Cleveland post-office?

(Objected to because it is not clear as to what contrivance reference is made.)

A. The contrivance referred to in the last answer was the last change from Defendant's Exhibit No. 138, and its use was discontinued upon the introduction of the new combined stamps furnished by the Post-Office Department.

X Q. 202. What do you mean by the word "from" in your last answer?

1374 A. The change or cutting down of the cancelling attachment, decreasing its length or height about one-half; no other changes were made in that instrument.

Recess for dinner until 2 o'clock p. m.

X Q. 203. In answer to question No. 13 of your direct-examination, you stated in substance that there was a dating stamp of circular form, and also a postage cancelling stamp of which you had knowledge; when and of whom did you first obtain that knowledge or information; I mean separate stamps, one for post-marking and one for post cancelling?

A. Probably upon my first introduction into the post-office as a clerk, for at that time I had part of the stamping to do.

X Q. 204. In what year was that?

A. In the year 1849.

X Q. 205. Where did those two separate instruments come from, if you know, when they first went into use in the Cleveland post-office?

(Objected to as immaterial.)

A. Suppose they were furnished by the Post-Office Department at Washington.

X Q. 206. How long did the Post-Office Department at Washington continue to furnish the post-office at Cleveland, Ohio, such separate post-marking and postage cancelling instruments or devices, as referred to in my last question and your answer thereto?

A. When they commenced furnishing the separate stamps I cannot tell, but they were furnished until the combined dating and cancelling stamps were introduced by the government to take the place of the individual or single stamps.

X Q. 207. In what year did that take place, if you know, viz: the furnishing of the combined stamps by the Post-Office Department for the Cleveland post-office, referred to in your last answer?

A. Do not know the year, but think it was early in the sixties; I mean by that between 1860 and 1870.

1375 X Q. 208. I have observed during your examination as a witness, and in answer to questions, you have frequently used the word "probably." What do you mean the court to understand by your frequent use of that word?

A. Without a distinct knowledge of dates, in answer to such questions I have given the answers "probably" as meaning to the best of my recollection.

X Q. 209. In your answers to questions 14 and 16 of your direct examination, you state, in substance, that the Post-Office Department had certain rules requiring the separate use of the cancelling stamp, and also that the post-marking stamp be separately used for post-marking and postage cancelling; have you any personal knowledge about such rules?

(Objected to on the ground that the witness has not testified that the rules of the department require that the dating stamp should be used for both post-marking and cancelling, as the question implies, the testimony having been directly contrary to that.)

A. I had knowledge at the time, either by reading the order, or by instructions from the postmaster, that the rule required the use of the dating stamp for dating purposes only, and the use of the cancelling stamp for the purpose of cancelling the postage stamps only.

X Q. 209b. In what year did you have that knowledge or information?

A. Cannot now say in what year the order or orders inquired about were issued.

X Q. 209c. If you know, state who was Postmaster-General at that time; I mean at the time when the order in reference to putting the post-mark on the envelope apart from the postage stamp, and that the postage stamp should be separately cancelled—each being done by separate and distinct instruments—was made.

1376 A. I do not know who was Postmaster-General at the time such orders were made.

X Q. 210. Was not the Hon. Joseph Holt Postmaster-General at that time?

A. I don't recollect.

X Q. 211. Who was First Assistant Postmaster-General at that time, if you knew?

A. Do not recollect that.

X Q. 212. Was not the Hon. Horatio King First Assistant Postmaster-General at that time?

A. Know that Joseph Holt has been Postmaster-General, and also that Hon. Horatio King has been assistant Postmaster-General, but the exact time they held those positions I cannot tell without figures or data.

X Q. 213. What officer in the Post-Office Department at Washington signed the order referred to in the last previous questions and answers?

A. Cannot say.

X Q. 214. In your answer to question 40 of your direct examination, you state, in substance, that the acting faces represented by Defendant's Exhibit 137 never became uneven so as not to make an impression upon the letter and postage stamp; what kind of an impression did you mean by that?

A. I did not intend to convey the idea that with that stamp perfect impressions were always made, as with the stamp afterward soldered together, but that in all cases the inequality of those surfaces would make impression perfect or imperfect.

X Q. 215. Which of the two impressions, the perfect or the imperfect?

A. If the binding was tight, perfect; if loose, imperfect.

X Q. 216. In question 47 of your direct examination, you are asked, "Whose idea was it of combining the canceller and dating stamp in the manner that you have described;" your answer was, "My own." How do you know that?

A. Because I did it myself.

X Q. 217. Is that all you know about it, and the only reason you assign for giving that answer?

1377 A. That seems a sufficient reason; I considered myself the inventor of that combination.

X Q. 218. What did you mean to be understood by the use of the word "idea" in your answer to question 47?

A. By the word idea I meant the origination or conception of the combination.

X Q. 219. You meant, did you not, by the use of that term that you took two instruments furnished by the Post-Office Department, to wit, a post-marking device and a postage-cancelling device, and removed the handle from one of them and then tied the two together by means of twine or string, upon which you afterward put some kind of wire so as to hold the two together?

A. Yes.

X Q. 220. In your answer to question 65 of your examination-in-chief you state, in substance, that there were three separate and distinct changes made in defendant's Exhibit No. 137; you there describe these several changes. In what year was the first change made?

A. Could not tell definitely when the first change was made.

X Q. 221. In what year was the second change made?

(Objected to as having been answered.)

A. I do not recollect when that change was made.

X Q. 222. In what year was the third change made?

A. I think I have already answered that question in my cross-examination, that it was early in the sixties.

X Q. 223. In what year of the "sixties" did you make that "third change" or alteration?

A. Could not say positively.

X Q. 224. What kind of an instrument was the result of these several changes resulting from your experimenting with that contrivance?

1378 A. Neither combination was considered an experiment; each accomplished the work for which they were intended, but the last and the lightest one was more satisfactory as to weight.

X Q. 225. Did you understand the last question when you answered it, and do you mean to undertake to instruct this court as to what is or is not an experiment?

A. I understood the last question, but omitted to say that the last change was more satisfactory on account of its lightness than the previous instruments used; I did not intend to instruct the court, but simply said I did not consider either of those combinations experiments.

X Q. 226. Were the changes you have spoken of both on your direct and cross-examination made on the same day?

A. No; but covered a series of years.

X Q. 227. Do you consider Defendant's Exhibit 138 an improvement upon Defendant's Exhibit 137?

A. I do.

X Q. 228. About how many years after the making of the contrivance represented by Defendant's Exhibit 137 was it that a contrivance like Defendant's Exhibit 138 was made?

A. Could not say positively, probably four, five, or six years afterward.

X Q. 229. In what year would that be?

A. Probably in 1857, 1858, or 1859.

X Q. 230. Is that all you know about it?

A. Without dates I have no means of fixing the exact time.

X Q. 231. Do you know where the original instruments or any of them are upon which these various changes have been made?

(Objected to as having been answered substantially several times.)

A. I have not the slightest idea of their whereabouts.

1379 X Q. 232. In what year was it that you consulted Brainard & Burridge, as stated by you in your answer to question No. 107 of your direct examination?

A. In 1853.

X Q. 233. You are positive about that, are you not?

A. Yes.

X Q. 234. Now go on and state what you said to them or either of them, and what they or either of them said to you during that consultation?

A. The question to them was whether it was patentable; their answer was, in substance, that it was.

X Q. 235. Is that all that was said during that consultation?

A. Probably not, but that was the substance of the conversation and the object of my calling.

X Q. 236. How many years ago was that consultation?

A. Probably about twenty-five years.

X Q. 237. Have you any doubt about its being twenty-five years ago?

A. No.

X Q. 237b. Did you make a memorandum in writing at the time of your interview with those gentlemen?

A. Do not think I did.

X Q. 238. Did you at any time make any such memorandum?

A. Possibly may have done so, but do not now remember the circumstance.

X Q. 239. Did you follow the advice of those gentlemen, or either of them, which you say they gave you twenty-five years ago?

A. Not at that time.

X Q. 240. When did you follow their advice, if at all, on that subject?

A. In September, 1863.

X Q. 241. What is that paper which you took from your pocket after the last question was put to you and upon which you appeared to find your last answer?

1380 A. A receipt from Brainard & Burridge for money to pay for the application for a patent of the combined dating and cancelling-stamp.

X Q. 242. What is the date of that receipt?

A. September 15th, 1863.

X Q. 243. Do you know, from any source whatever, that in October, 1853, a caveat was filed in the United States Patent Office by Marcus P. Norton, the examining counsel, and that in 1854, and within the caveator year, that caveat was so amended as to cover each and every of the instruments or devices which you have testified about on this examination?

A. Knew nothing at the time of the filing of my application in 1863 of the existence of a caveat, or of any papers preceding the application of Marcus P. Norton for his patent of 1859, and until recently had no knowledge of any such caveat.

X Q. 244. How recently did you receive that information?

A. Since my knowledge of this suit I had occasion to look over the Patent Office reports and ascertained the existence of such a caveat.

X 2. 245. Who was postmaster at the Cleveland post-office from 1853 to 1857?

A. J. W. Gray.

X Q. 246. Who was postmaster at the Cleveland post-office from 1857 to 1861?

A. J. W. Gray from about April 1st, 1853, to some date in 1858, and B. Harrington balance of time.

X Q. 247. From 1861 to 1865 who was postmaster at the Cleveland post-office?

A. E. Cowles.

X Q. 248. Where is Mr. Cowles at this time?

A. Resides in Cleveland, and is the editor of the Leader.

X Q. 249. Were you clerk in the Cleveland post-office under Postmaster Cowles from the time he was appointed postmaster and until the first day of January, 1865?

1381 A. Was clerk in that office for the first part of his official term until I was appointed special agent of Post-Office Department.

X Q. 250. State how long a time you served as clerk in the Cleveland post-office under Postmaster Cowles.

A. Until June, 1864, when I was appointed special agent of the Post-Office Department.

X Q. 251. During that time, and until the present time, you have personally and intimately known Mr. Cowles, have you not?

A. Yes.

X Q. 252. Did you during that time have frequent conversations with Postmaster Cowles about these contrivances which you call your invention for postmarking letters and cancelling postage-stamps thereon?

A. Undoubtedly have had conversations with him relating to that subject.

X Q. 253. Frequent conversations?

A. Cannot say as to how frequent.

X Q. 254. Mr. Cowles has been quite friendly to you on the subject of your alleged invention, represented by Defendant's Exhibits 137 and 138, has he not?

A. No; those combinations as represented in 137 and 138 were not in use while he was postmaster.

X Q. 255. Have you ever seen Mr. Cowles write with pen and ink?

A. I think I have.

X Q. 256. Should you see his handwriting and his signature would you know the same?

A. I don't know whether I should or not.

X Q. 257. Why not?

A. Because I never saw but little of his writing, and that was years ago.

X Q. 258. You were his personal friend, on intimate terms with him in the Cleveland post-office while he was postmaster, and one of the superintendents under him, and you do not know his handwriting?

1382 (Defendant's counsel objects because complainant's counsel misconstrues what witness says about knowing Mr. Cowles' handwriting, the testimony being substantially that witness cannot tell till he sees the handwriting of Mr. Cowles whether he shall or shall not recognize it.)

A. I was chief of distribution department, which was located at the south end of the government building; his office was at the north end; never had any written communications from him while I was in the office, and probably never received more than two or three letters after I left the office.

259. X Q. Do you know personally Mr. A. N. Zevely, Third Assistant Postmaster-General during Buchanan's presidential term of office?

A. I do.

X Q. 260. You know him intimately well; and, if so, during what length of time?

A. I knew him personally, not intimately well; I have seen him at times before my appointment as special agent, and afterward frequently in Washington.

X Q. 261. Did you ever have any conversation with him on the subject matter of your alleged invention; and, if so, about how frequently? And you may also state whether you ever wrote him any letter or letters on the same subject.

A. Probably more than one conversation on that subject, and may have written him letters upon that subject.

Adjourned until 10 o'clock to-morrow morning.

1383 FEB. 22, 1878.

Met pursuant to adjournment.

Present, same counsel as before.

Cross-examination of Mr. WHEELER resumed.

X Q. 262. How many times since the midsummer of 1861 have you called upon Mr. A. N. Zevely in Washington and while he was Third Assistant Postmaster-General?

(Objected to as immaterial.)

A. While special agent was in his office every day when I was Washington; the railway postal service, of which I had charge, being partially under his immediate direction; could not say how many times.

X Q. 263. Was it frequently?

(Same objection.)

A. On an average, two or three or more times a month.

X Q. 264. During what years was that?

A. Between 1864 and 1867.

X Q. 265. Did you call upon him previous to 1864 upon any business whatever?

A. Was never in Washington until a few weeks previous to the date of my first commission; was called there at that time to assist in the organization of that service; remained about five weeks, and was afterward appointed special agent.

X Q. 266. Did you understand the last question when you made answer thereto?

A. I did not call upon him previous to 1864; as before stated, was never in Washington previous to the time spoken of in my last answer, therefore could not have called upon him in Washington.

X Q. 267. Now, sir, after wriggling and twisting about in your answer, will you be so kind as to inform the court as to what time you refer to in your last answer?

(Same objection.)

1384 A. Was never in Washington previous to June, 1864; that is the time referred to.

X Q. 268. At your interviews with Mr. Zevely in Washington, did you have any conversation with him about the matter of your alleged invention in postmarking and postage cancelling stamps?

(Same objection.)

A. I undoubtedly had on several occasions.

X Q. 269. Previous to June, 1864, did you meet Mr. A. N. Zevely in the post-office at Cleveland, Ohio?

(Objected to as immaterial, and having already been answered.)

A. On two or more occasions.

X Q. 270. During what year or years were those interviews had?

A. Cannot tell exactly, but previous to 1864.

X Q. 271. Did any of them occur during the year 1863?

A. Have nothing in my possession to recall exact dates.

X Q. 272. Did any of them occur during the year 1862?

A. Same answer as last above.

X Q. 273. Did any of them occur during the year 1861?

A. Same answer as last above.

X Q. 274. Did any of them occur during the year 1860?

A. Same answer as last above.

X Q. 275. At any time when you met Mr. Zevely at the Cleveland post-office, did you have any conversation with him in regard to any alleged invention for postmarking letters and cancelling postage-stamps, about which you have testified on this examination?

(Same objection.)

1385 A. As stated before, probably had one or more conversations with him about that matter.

X Q. 276. Since the close of your examination last evening and the commencement of your examination this morning, have you had any conversation with the defendant's counsel, now present, about this case or about your testimony already given up to that time?

A. Nothing in regard to my testimony and nothing involving the matters in issue in the case.

X Q. 277. Have you had any conversation with him within that time about any person or persons to be examined as a witness in this case?

A. No.

X Q. 278. Have you at any time during the progress of your examination in this case?

A. I did indicate one person that might be called as a witness.

X Q. 279. Only one person for that purpose?

A. Don't think I have more than one person.

X Q. 280. Name that one person, giving place of residence and business?

A. H. S. Bishop; residence, blank Public square; business at present, unknown.

X Q. 281. During the years 1862 and 1863, did you write any letter or letters to Mr. A. N. Zevely, at Washington, D. C., upon the subject matter of your alleged invention in postmarking letters and postage cancelling instrument or instruments, about which you have testified on this examination?

A. Most probably did, either to him or the then Postmaster-General.

X Q. 282. About how many such letters did you write to Zevely or the Postmaster-General during that time?

A. Have no recollection of the number or time or times, never having kept copies.

X Q. 283. Did Third Assistant Postmaster-General A. N. Zevely ever promise you that he would try to get your salary increased as a partial recognition of the eminent services you have rendered the coun-
1386 try in discovering and bringing to the light of day those "original" "instruments" which appeared for a time and then vanished away, so far away that you don't know where they are nor the time when they disappeared, and represented by defendant's Exhibits 137 and 138, and about which you have testified on this examination?

A. Mr. A. N. Zevely was never asked to secure an increase of salary in consideration of such "eminent services," neither did he ever promise to do so.

X Q. 284. Did you ever, verbally or in writing, request Mr. A. N. Zevely to try to get the Postmaster-General to increase your salary upon the ground stated in the last question?

(Objected to as immaterial and as cumbering the record uselessly.)

A. I have no recollection of such a circumstance for such a purpose.

X Q. 285. Did you, during the year 1864, request Mr. Cowles, then postmaster at this city, to write to the then Postmaster-General about your alleged invention which you have testified concerning during this examination?

(Same objection.)

A. I may have done so, but have no definite recollection of the occasion; if so, it was for the purpose of having my then salary increased to full special agent's pay, which was not at first paid me, and which was afterward increased for the reason that I was on the road nearly all the time.

X Q. 286. Did you, at the post office at Cleveland, Ohio, November 28th, 1863, write a letter to the Hon. A. N. Zevely, among other things containing the following words and figures, to wit:

"DEAR SIR: You will probably recollect, when you were in Cleveland having a conversation with Mr. Cowles and myself about that combina-

tion dating and rating stamp of which I was the inventor. Mr.
1387 Cowles promised, when he went to Washington, to bring the matter before the Postmaster-General and endeavor to have my salary increased as an acknowledgment of its value and utility to the service. My object in addressing you is to secure, if possible, your co-operation in the matter, and, as you may have forgotten the circumstance, allow me to state that about the first of July, 1861, the department issued an order discontinuing the cancelling of stamps with the dating stamp, and requiring that thereafter the regular cancelling stamp should be used for that purpose. We followed instructions one day after receipt of the order with two separate stamps. It was about all one man could do before to stamp our letters, circulars, and newspapers, and by the change it would require twice the labor. The idea struck me that by a combination all might be done as required by one operation, and I immediately took the stamps to a locksmith and had them soldered together. The order and receipt you will find among your records. The smith's name is Jacob Schwartzenburg. Ours was the first office that used the combined stamp and very soon we were in receipt of inquiries as to how it was done. The uniformity of the impressions were noticed. We soon found it adopted in nearly every large office, and many smaller ones, and now it has become almost universal. The saving in large offices, where clerks are paid by government, is, you will perceive, quite a large sum annually. In our office it saves the services of one man, in larger offices more. Some one should be rewarded for the improvement. True, another person has the patent for it, but in a test case I can prove priority without doubt. And in this connection I will state that a short time after you were here, in a conversation with a friend on the subject, he advised me to apply for a patent and he would advance the funds necessary. My own circumstances prevented me doing so before. I accepted his generous offer and made my application, which of course was rejected. I have called for an interference
1388 case, which has not, as yet, been set down, but will be, I hope, in a few days.

"Yours, respectfully,

"C. E. WHEELER."

(Objected to on the ground that it is not proper to question the witness as to the contents of any supposed letter of his without producing the same or proving its loss. And

Second. Because the witness is entitled to inspect the supposed letter or those parts of it about which he is questioned before he can be required to make answer to questions concerning same.

Third. Because in asking the question counsel read from a paper the genuineness and authenticity of which is not proved.

Fourth. Because it is immaterial to the issues in this case and to the questions raised by the testimony of the witness hitherto whether he did or did not write the supposed letter.

Counsel for defendant requests examiner to make a note for the information of the court that counsel for complainant, in asking the last question, read all that portion of it from a written paper, and that he, the examiner, compared said written paper with what was written down on the record, by holding the same and following the writing thereon while the question was read from the record by his clerk.)

The application of defendant's counsel is granted and the facts are as stated in the application.

J. G. P., *Ex'r.*

Complainant's counsel, in view of the application made by defendant's counsel as last above stated and granted and signed by the special examiner, now and here offers in evidence and for the purpose of
1389 evidence the original paper referred to in the said application and requests the special examiner to make said paper as Complainant's Exhibit B B.

C. E. WHEELER.

(Defendant's counsel objects to the introduction of said paper in evidence, on the ground:

First. Because it purports to be a copy, and not an original.

Second. Because it purports to be a copy of a part, and not of the whole, of some original document.

Third. Because it is not proved that the original ever existed, nor that it has been lost, nor that it cannot be produced and exhibited to the witness.

Fourth. Because said paper is not proved to be a correct copy, and because the paper is offered without being submitted to the witness, and without any testimony whatever being given in regard to it on its own intrinsic merits.)

Inasmuch as defendant's counsel refuses to accept the paper when tendered him, after having requested the special examiner to make a certain memorandum which was made on the record, complainant's counsel for the present withholds the paper, and will put the original, or a duly authenticated copy of it, in evidence at the proper time and in the proper place, and now requests the witness to answer the pending question.)

A. Witness not having seen the original letter of which above purports to be a copy, and having no distinct recollection of the date of such a letter, cannot say that he wrote such a letter.

1390 X Q. 287. Do you know whether you wrote a letter of the character inquired about in question 286 of your cross-examination?

A. I may have done so, and possibly did.

X Q. 288. Will you swear, on your oath, that you did not write the letter inquired about in question 286 of your cross-examination?

(Objected to on the ground that the letter should be produced and shown to the witness before he can be called upon to swear positively whether he did or did not write it.)

A. No; I will not swear I did not.

(Recess for dinner until 3 p. m.)

X. Q. 289. Whatever you did write on or about November 28th, 1863, to the Hon. A. N. Zevely, who was then Third Assistant Postmaster-General, was true, was it not, and intended to be placed upon the files of the Post-Office Department?

(Objected to as immaterial, and because the letters and the statement should first be brought to the attention of the witness before he is asked whether they are true or not.)

A. If a letter was written on or about that date to A. N. Zevely, whatever was written was intended to be true; have no idea as to its disposal.

X Q. 290. Its contents were true, were they not?

(Same objection.)

A. I give the same answer as to last question, except last sentence.

X Q. 291. I have not, and do not ask you anything about your "intentions," but I do ask you as to the fact whether you wrote to Mr.

Zevely the truth and nothing but the truth in the letter referred to, or whether you, at the time inquired about, wrote him that which was a falsehood, and then known by you to be such.

(Same objection.)

1391 A. Without seeing the letter can give no answer to that question, as the implication of falsehood is unwarranted and uncalled for.

X Q. 292. You think it necessary, first, to see a letter written by you and put on file in a public place before you can tell whether it contains the truth, or whether it contains that which is untrue, do you?

(Objected to as immaterial, and because it assumes that some letter of witness has been put upon the public files.)

A. That is not the reason; if the original letter of which the above are claimed to be extracts had been presented to my notice, I could identify it as having been written by me, and give for answer a plain yes or no.

X Q. 293. In your last answer the following words occur: "If the original letter of which the above are claimed to be extracts had been presented to my notice." Who ever claimed that such paper as you were inquired about was an "extract" from any paper?

(Objected to as immaterial.)

A. My understanding was that the paper presented was a copy of a part or the whole of an original letter written by myself to A. M. Zevely; not knowing positively of having written the letter referred to I could not give a direct answer as to whether it was or was not a copy in full or in part of a letter so written to [*by*] me. I got the idea of the word extract from interrogatory No. 286.

X Q. 293. (293a). Please state that interrogatory and point out where in that interrogatory the word "extract" or the word "copy" may be found?

(Objected to as immaterial, and because it implies that the witness has stated that the words extract and copy appear in that interrogatory; whereas all that witness stated was that he got his idea from that.)

1392 A. In interrogatory 286 the words "among other things" made me infer that the copy of the letter referred to was an extract or a part of said letter. The words extract or copy do not appear in the interrogatory.

X Q. 294. Will you please examine the objections of defendant's counsel to that question, some of which I will read to you for your information: "Defendant's counsel objects to the introduction of the paper in evidence on the ground, first, because it purports to be a copy and not an original; second, because it purports to be a copy of a part and not of the whole of some original document," and then state whether you *you* did not first get the idea about the paper being a copy or an extract of an original paper from that objection.

(Objected to as immaterial, and because it assumes that defendant's counsel has made such objections as are quoted to some question.)

A. As the interrogatory appears I would naturally get the idea, first, from the words quoted in last answer, and afterwards from the objections.

X Q. 295. From which, viz, the question or the defendant's counsel's objection quoted in the last question, did you get the information or the idea that the paper in question was a "copy or an extract from some original paper"?

(Same objection.)

A. From both; but the words "copy" and "extract" occur only in the objection.

X Q. 296. I now show you a paper dated "Cleveland post-office, Cleveland, O., May 7th, 1864," addressed to the Hon. M. Blair, and signed E. Cowles, P. M., with the following indorsement upon the back thereof:

"Respectfully referred to the Committee on Post-Offices and Post-
1393 Roads of the House of Representatives; M. Blair, Postmaster-General, May 10th, 1864." Take it, examine it thoroughly, and state in whose handwriting it is, if you know.

(Objected to as immaterial.)

A. I suppose it to be in the handwriting of E. Cowles, then postmaster [P. M.].

X Q. 297. Postmaster at Cleveland, O.?

A. Cleveland, Ohio.

X Q. 298. Have you any doubt about its being in Mr. Cowles' handwriting?

(Same objection.)

A. I am not sufficiently acquainted with his writing to swear to it positively, but think it is.

X Q. 299. Have you any doubt about this paper being in Mr. Cowles' handwriting?

(Same objection.)

A. No.

X Q. 300. Were you in the post-office at Cleveland, O., as a clerk in the month of May, 1864?

A. Yes.

X Q. 301. What was your position and duties at that time?

A. Head clerk of distribution department, having the charge of that department and the clerks therein employed.

(Complainant's counsel here produces the paper dated Cleveland post-office, Cleveland, O., May 7, 1864, and signed E. Cowles, P. M., and last above referred to, and requests the examiner to mark the same for identification only, as follows, to wit, "Complainant's Exhibits A–A, Feb. 22d, 1878," and to sign the same in his official capacity. The paper is so marked.

1394 Defendant's counsel objects further to all the testimony of the witness in regard to this paper, on the ground that complainant's counsel's disposition of the paper shows that all the questions asked were intended to draw out information irrelevant to anything contained in the direct examination, and that they were therefore improper to be asked on cross-examination, and moves that all such testimony be stricken from the record.

Complainant's counsel, in view of the objections last above made by defendant's counsel, with reference to the paper in question, now offers the same in evidence, and for the purposes of evidence, and requests the examiner to properly file and mark the same for that purpose.)

(Defendant's counsel object to the receipt of letter in evidence, on the ground—

First. That it is not sufficiently proved.

Second. That it is irrelevent and immaterial.

Third. Because it is an attempt to obtain the benefit of a statement of Mr. Cowles without calling him as a witness and having him sworn and made liable to cross-examination.

And a special objection is taken to the indorsement purporting to be made by M. Blair, on the ground that no proof whatever is made of that.

And lastly, to the whole paper it is objected that Mr. Cowles should

first be called as a witness and examined as a witness as to the matters contained in the paper.)

Examiner upon the offering of the said paper in evidence by complainant's counsel marks the same as already marked for identi-
1395 fication, to wit, Complainant's Exhibit A–A, (Wheeler,) Feb. 22d, 1878, J. G. Pomerene, special examiner.

Adjourned until 10 o'clock to-morrow morning.

FEBRUARY 23, 1878.

Met pursuant to adjournment of yesterday.

Present, same counsel as before.

Cross-examination of Mr. WHEELER resumed:

X Q. 302. I understood you, a day or two ago, during your cross-examination to say that Mr. Cowles, formerly postmaster in the city, is still living, and that he now resides here. Is that correct?

A. It is.

X Q. 303. What is his business now, if you know?

A. President of the Leader Newspaper Printing Company and managing editor of the Leader newspaper in this city.

X Q. 304. State, if you remember, the time when Mr. Cowles entered upon the discharge of his duties as postmaster at the post-office in this city.

A. Probably in 1862; I have no dates to fix the time.

X Q. 305. Were you clerk in that office at that time?

A. At the time of his appointment, I was.

X Q. 306. You were clerk under Mr. Cowles for about how many years?

A. From the time of his appointment until about June 4th, 1864.

X Q. 307. I now read you a paper dated Cleveland post-office, Cleveland, O., May 7th, 1864, addressed to the Hon. M. Blair, and signed E. Cowles, P. M., which is in the following words and figures, viz:

1396 "DEAR SIR: I understand that certain parties have presented a claim for $35,000 against the government, and that it is now pending before the House Committee on Claims, for the use of the combined dating and cancelling stamp by the Post-Office Department, the invention of which is claimed by said parties. I have every reason to believe that the original inventor of that stamp is a clerk in this office; he invented it immediately upon the receipt of the order issued by Postmaster-General Holt, several years ago, requiring a separate stamp to be used in cancelling the stamp of letters. Consequently the claim of the parties alluded to above cannot have legal foundation. Should you require testimony, the name of the clerk is Chas. E. Wheeler. I am, very respectfully, yours very truly."

Did you request Mr. Cowles to write that letter?

(Objected to as assuming that such a letter was actually written by Postmaster Cowles.)

A. If the letter was written by E. Cowles, then postmaster, and I have no reason to doubt it was, it was written at my suggestion or request.

X Q. 308. What evidence, if any, have you furnished the Post-Office Department at Washington with, showing or tending to show that you are the original and first inventor of the invention described by you during the examination?

(Objected to as immaterial and not within the scope of the direct examination.)

A. My own depositions and certificates of clerks who knew of its use in the Cleveland post-office, and who used it themselves previous to the date of the first Norton patent.

(Complainant's counsel objects to all that part of the answer after the words "certificate of clerks" as not responsive to the question, as improper, and as volunteered by the witness.)

1397 X Q. 309. Where are those depositions and certificates mentioned by you in your last answer?

A. I suppose them to be in Washington, either at the Post-Office Department or in possession of House Committee on Post-Offices and Post-Roads; I have never recalled them.

X Q. 310. When did you send these papers to the Post-Office Department at Washington?

A. I have no memorandum of the date.

X Q. 311. In what year was it?

A. That I cannot recall definitely.

X Q. 312. Give your "probabilities" about it.

A. Having no dates, cannot tell the year.

X Q. 313. Now you will please give your best recollections about it.

A. Some time in the sixties, and that is as near as I can give now.

X Q. 314. For what purpose did you send those papers to the Post-Office Department at Washington?

A. For the purpose of preventing any remuneration being made to other parties before a fair examination of my claim or title in the invention.

X Q. 315. Was such investigation had by the Post-Office Department at Washington?

A. I never had official notice of such investigation.

X Q. 316. Did you ever have a notice of any kind about such matter?

A. Not that an investigation had been made, but that one was soon to be made; this information came from Mr. Terrell, Third Assistant Postmaster-General, and I think the letter was dated some time in 1870.

X Q. 317. On receiving that information, what course, if any, did you pursue with reference to that matter?

A. I had my papers placed in the hands of the department.

1398 X Q. 318. What papers were those you now speak of? and please make no statement as to their contents. Simply state whether they were affidavits, depositions, your letters, or certificates from other persons about the matter then pending in the Post-Office Department.

A. I think each kind of papers spoken of in question additional to those already in hands of the department were sent there to be used upon that occasion.

X Q. 319. Do you remember whether the several committees of the Congress of the United States have investigated your alleged claim, of which you have spoken to-day, and made several reports in writing or in print thereon? I mean several committees on Post-Offices and Post-Roads of the Senate and of the House of Representatives.

A. I do not know of any such investigation or report having been made by such committee in either house of Congress, and never saw any report in relation thereto.

X Q. 320. Do you know that the Congress of the United States passed a bill or joint resolution which was approved by the President on or about the fourteenth day of July, 1870, authorizing the Postmaster-

General of the United States to continue in use in the postal service of the United States the invention patented to Marcus P. Norton, of Troy, N. Y., on the 14th day of April, 1863, and at that time reissued on the third day of August, 1869, to the said Norton, and for improvements in postmarking letters and for the cancellation of postage-stamps thereon and now, and for the past fourteen years in general and in extensive use in such postal service, and also authorizing the Postmaster-General to investigate any and all claims by other parties to that invention?

A. I have no knowledge of the passage of such a bill or joint resolution; never saw or heard of it before.

X Q. 321. Have you now in your possession the notice or letter from Mr. Terrell, Third Assistant Postmaster-General at Washington,
1399 informing you that an investigation was to be had in or by that department upon the subject-matter about which you have testified upon this examination? I now refer to the notice you say you had in the year 1870.

A. I think I have it among my papers at home.

X Q. 322. Will you look for it, and in case you find it will you here produce it as a part of your evidence in this cause?

A. I will.

X Q. 323. Do you remember that in the year 1864 a suit was brought by Jacob Shaver and Albert C. Corse against Edmund Hoole, in the United States circuit court in and for the northern district of New York, for an alleged infringement of a reissue of the Norton patent of April 14th, 1863?

A. I do not.

X Q. 324. Do you remember of any suit of that kind about that time?

A. I recollect the names of the parties named as contestants in the stamp matter, but upon what particular issue or the time I do not know. I mean upon what particular issue the suit was brought.

X Q. 325. Do you know upon what patent that suit was brought—I mean the person claiming to be the patentee?

A. Do not know.

X Q. 326. Did the defendant in that suit request you to become a witness on his behalf?

A. I do not think that I have ever been a witness in any suit pertaining to this matter; that is my recollection now.

X Q. 327. Did the defendant in that suit, Mr. Edmund Hoole, subpœna you as a witness in his behalf?

A. I now recollect on returning here from one of my official trips of finding a subpœna upon some case relating to this matter, but the time for which I was subpœnaed having passed or having other business to attend to, I paid no attention to it.

X Q. 328. Did you inform Mr. Hoole, the defendant in that suit, by telegraph or otherwise, of the circumstances stated in your last answer?

1400 A. I have no recollection of having made any explanation to him.

X Q. 329. You mean, do you not, in your last answer, that you did not inform him of the reasons why you did not attend the trial of that suit as a witness on the part of the defendant?

A. I do not think I gave him any information whatever about it.

X Q. 330. Hav you in your possession at this time that subpœna?

A. I do not think I have.

X Q. 331. Will you look among your papers, and if you find it will you produce it as a part of your evidence in this cause?

A. I will.

X Q. 332. Did you preserve any copy or copies of the affidavits or depositions or letters or of certificates which you say you sent to the Post-Office Department to be used in the investigation to be had before Mr. Terrell, the then Third Assistant Postmaster-General?

A. I may have in my possession some copies of depositions and certificates sent to the Post-Office Department, but whether sent at this particular time or previous I am unable now to say.

X Q. 333. Do you know whether you have or not such copies?

A. I have some copies of such papers, but how many cannot tell until I search.

X Q. 334. Have you a copy of your letter dated Post-Office, Cleveland, Ohio, Nov. 28th, 1863, and addressed to Hon. A. N. Zevely, at that time Third Assistant Postmaster-General of the United States?

A. I have not.

X Q. 335. During the year 1864 did Postmaster Cowles, at Cleveland, Ohio, use a letter-press book at the Post Office?

A. I think he did; it has generally been a practice to copy all official letters in a book of that kind.

X Q. 336. Look at complainant's Exhibit A-A (Wheeler), February 22, 1878, J. G. Pomerene, special examiner, which I now
1401 hand you, and state whether in your opinion that letter was copied in a letter-press book before it was transmitted to the Postmaster-General at Washington?

A. Owing to the age of the letter I should hardly know whether it was copied or not.

X Q. 337. Will you examine, if you can get consent, the letter-press book of Mr. Postmaster Cowles for the month of May, 1864, and see whether you find there a copy of this paper?

(Objected to as immaterial, and because it is improper to ask the witness to do such service for complainant's counsel, the proper course being to subpœna Mr. Cowles; and defendant's counsel not only objects to the question, but objects to the witness doing anything of the kind, the object of complainant's counsel being plainly by this fishing excursion to find out what Mr. Cowles knows, and has done, without running the risk of calling him as a witness.)

A. As defendant's counsel objects to such service, the witness most respectfully declines to perform it.

X Q. 338. Do I understand you to say that you decline and will not make the examination "kindly" requested of you in the last question?

(Same objection.)

A. As I do not know the whereabouts of such copy-book, and as I understand Mr. Cowles is absent from the city, and as it could not be done without his permission, I am compelled on those accounts to decline.

(Complainant's counsel here requests the special examiner to mark a paper already spread upon the record in a question, No. 286, dated Post-
Office, Cleveland, O., Nov. 28th, 1863, for the purpose of identifi-
1402 cation. Complainant's Exhibit B-B. C. E. Wheeler, Feb. 23d, 1878. J. G. Pomerene, special examiner.

(Recess for dinner.)

X Q. 339. Have you any interest in this suit, or in any matter contained in it, or in the result, or any interest whatever connected with it?

A. No interest in this suit, except as a witness; may become interested in the matter after result is known.

X Q. 340. How do you expect to become interested in this matter after the result is known?

(Objected to as immaterial.)

A. The interest, if any, will be contingent upon the result.

Redirect examination of witness by Mr. CLARK, counsel for defendant:

Re-d. Q. 341. I understand you to have stated that three or four of the clerks, who postmarked letters and canceled postage stamps while J. W. Gray was postmaster, are now living in Cleveland. If that is correct, please give their names.

A. H. S. Bishop, who was what we called at that time a penny-postman; James McGaugh, E. S. Beardsley, and John Albinger, who now reside in Cleveland.

Re-d. Q. 342. Where are the members of the firm of Brainard & Burridge, with one of whom you say you consulted about your invention while the post-office was in Herald building on Bank street, and what are their full names?

A. Jehu Brainard, one of that firm, is now and has been for some years an examiner in the Patent Office at Washington, and Wm. H. Burridge resides at present in this city, and has a patent-solicitor's office on Superior street.

Re-d. Q. 343. Give the names and addresses of any other living
1403 persons who at the time had knowledge of the use of your invention in the Cleveland post-office while J. W. Gray was postmaster.

A. W. L. Cottrell, of this city; S. L. Everett, now residing somewhere in Illinois; D. L. Stevenson, residence unknown; Geo. B. Lester, now in Washington temporarily.

Re-d. Q. 344. State where counsel for complainant can, by inquiry, find out where the residences of Everett, Stevenson, and Lester are, if, in investigating the truth of your testimony, he chooses to make such inquiry.

A. Everett's address may probably be found at the Plain Dealer newspaper office in this city; Stevenson, when I last heard from him, was clerk in the Treasury Department at Washington; Lester is brother-in-law of Thomas Jones, at present city auditor of Cleveland, and when in the city may be found in that office.

Re-d. Q. 345. Where can Jacob Schwartzenberg's address be found?

A. I think on the tax duplicate of this county, he owning property located in this city, as I understand.

Re-d. Q. 346. Give the names and addresses, or places where the addresses can be found, of any other persons who had knowledge of the use of your invention in the Cleveland post-office at any time prior to January first, 1861.

A. James Kerr, when last heard from, was special agent of the Post-Office Department in some of the western Territories; Ithiel Stone, 215 Superior st., Cleveland; L. A. Kelsey, Cleveland & Pittsburgh Railway shop, Cleveland; C. L. Patrick, 127 Case avenue, Cleveland.

Re-d. Q. 347. Did all persons to whom reference has been made in your redirect examination have knowledge, or an opportunity of knowing, that your invention was used in the Cleveland post-office by you yourself personally at the times severally indicated, according to your recollection?

(Objected to as being immaterial, incompetent, and irrelevant.)

1404 A. They all undoubtedly knew of its having been used in the

office, either by myself or others, and was used by some of the above-named persons.

Re-d. Q. 348. You don't answer my question exactly; I am after the names of those who, according to your recollection, knew or had means of knowing that you yourself personally used the instrument.

(Complainant's counsel objects to the question on the ground that while he is a firm believer in the apostolic succession, and of the proper and church catechism of children, yet it is improper for defendant's counsel to catechise his witness while on the stand as a witness, and further, as being immaterial and incompetent.)

A. Most probably W. L. Cottrell, James McGough, E. S. Beardsley, John Albinger, and G. B. Lester, and H. S. Bishop.

349. Re-d. Q. Give the same information in regard to any other persons who knew of the use of your invention in the Cleveland post-office between 1861 and 1863.

A. E. Cowles, postmaster, E. S. Whiting, Chas. G. Aiken, Isaac Snook, all of Cleveland; Elias Avery and F. W. Ames, of Dunkirk, N. Y.; C. O. Ingersoll, of Elyria.

350. Re d. Q. Complainant's counsel, in question 219, asked you as to what you meant by something you had stated, and in his question said, "you meant * * * that you * * * removed the handle from one of them and then tied the two together by means of twine or string, upon which you *afterwards* put some kind of wire so as to hold the two together." Your answer was, yes. What did you understand by the word "afterwards" (which I have italicized in this question) to mean in that connection?

(Question 219 and answer read to witness.)

1405 A. I meant the use of both twine and wire at the same time; the twine being put on first, and then the wire over it, both together being for the purpose of holding the two stamps tightly together.

351 Re-d. Q. Did you ever acquiesce in, or admit or acknowledge that the patent granted to Marcus P. Norton on the fourteenth of April, 1863, and numbered 38175, or any of the reissues of that patent, the same being for an improvement in post-office stamps, which improvement purports to cover the broad idea of a combined postmarking and postage-stamp cancelling hand instrument, was valid?

(Objected to by complainant's counsel on the grounds—

First. That it is improper for the defendant's counsel, after having called and examined the witness, to undertake to turn that witness into a court to pass judgment upon his own evidence; and,

Second. The matter submitted by the question, if deemed worthy of inquiry under the circumstances found in the cross-examination of this witness, is a matter solely and only within the province of this court to pass upon and determine.

Third. The patent named in the question having been litigated in a suit in the northern district of New York in the United States circuit court, of which an exemplified record has already been produced and put in evidence on the part of the complainant, it is quite immaterial what the mere opinion of this witness may or may not be concerning the matter inquired about in the question.

Fourth. The matter inquired about is a matter for the court to determine upon the evidence submitted.)

A. I never did.

1406 Re-d. Q. 352. Did you ever have any talk with Mr. Norton with

reference to the merits of his and your respective alleged inventions?

A. On two or three different occasions in Washington.

Re-d. Q. 353. When were these occasions?

A. Some time in May, 1870, I received a telegram from Mr. Norton to about this effect: "Come to Washington immediately; there is money here for you;" I telegraphed back for explanation as to what was meant, and received a second telegram, which decided me to go to Washington, which I did, and there met Mr. Norton, who, after explaining that there was a disposition on the part of certain parties to swindle or debar him of his rights, proposed to go with me to the Patent Office, open up an interference, waive contest, and allow a patent to issue to myself, provided I would consent to assign one-half of said patent to him; after consideration of the proposition, and supposing I knew the object for which the proposition was made, I did not accede to it; as to the other occasions, I do not recollect when or what was said.

Re-d. Q. 354. What has become of these telegrams?

A. I sent them to Hon. R. C. Parsons, my attorney, then in Washington, and, for what I know, he has them still.

Re-d. Q. 355. From the beginning of your interview with Mr. Norton at Washington, in 1870, to the end of your conversation with him in that year, what was said on the stamp matter? Give the exact words, if you recollect them, or if you do not recollect them, give the substance of what was said in as nearly the exact words used as you can.

A. The answer given to the last question covers the subject-matter of the stamp question then and there, and comprises the substance of what was said; as to the exact language used by either at the time or times I cannot recall it.

Re-d. Q. 356. Look at the model, Defendant's Exhibit 137, hav-
1407 ing the postmarker and canceller attached by twine and wire, and state whether it is in the condition in which it was when first put in evidence; and if it is not, state where it is not.

A. It is not. Either owing to the shrinkage of the wood of which it was made, or the stretching of the wire with which it is bound, or from the effect of falls, or from being handled by counsel, it has become loosened; otherwise it is in the same condition.

Re-d. Q. 357. Did you ever know of the original instruments having iron postmarker and canceller attached by twine and wire becoming loose as speedily as they have done in the case of this model?

A. I think not. We, however, used the wedge before spoken of when such was the case.

(Complainant's counsel here consents that the defendant's counsel may furnish to the court, at the hearing of this cause, another model of the kind represented by Defendant's Exhibit 137, having the canceller bound as thoroughly to the postmarker as twine and wire can secure them.)

J. G. P.,
Special Examiner.

FEBRUARY 23, 1878.

Recross-examination of the witness resumed by complainant's counsel:

Re-X Q. 358. Do you know where Mr. A. L. Bassett now is, a person heretofore named by you as one of the clerks in the Cleveland post-office?

A. Is a wholesale hat and cap dealer on Water street, in this city.

Re-X Q. 359. When was Mr. Bassett a clerk in the Cleveland post-office, and about how long?

A. I think both under a part of the Gray and the Harrington terms of postmastership; don't know how long.

1408 Re-X Q. 360. Referring to question 347 of your redirect examination, and your answer thereto, when you state in substance that certain persons knew "that your invention was used in the Cleveland post-office by you yourself personally," prior to January, 1861, to what contrivance do you refer to in that answer—I mean, which of defendant's exhibits now before you on the table of the special examiner?

A. To the first one, Exhibit 137, certainly, and to Exhibit 138, probably.

Re-X Q. 361. Which of the two, viz, the twine or the wire, do you think is the stronger?

A. I really could not tell, never having tested either separately; they were put on together originally.

Re-X Q. 362. Did it require both twine and wire for the purpose indicated by their use?

A. That idea probably never occurred to me; strength was what was looked for.

Re-X Q. 363. In your answer to question 352 of your redirect examination you stated in substance that you had conversations with Marcus P. Norton, in Washington, on two or three different occasions, about the merits of your alleged invention; state the month and the year in which that alleged conversation took place.

A. Between the latter part of May and the first part of June, 1870.

Re-X. Q. 364. Where was it?

A. In the Post-Office Department at Washington, and in front of the Post-Office Department.

Re-X Q. 365. Anybody present at that time?

A. I think one of those conversations took place in the stamp and blank room of that department, and probably one or more of the at-attachés were present.

Re-X Q. 366. Do you know whether they were or not?

A. Would not say positively, but suppose we were not alone.

1409 Re-X Q. 367. Will you swear upon your oath that any person or persons were present at the time and place stated in your last answer, or at any other time when you allege that you had interviews and conversations with Norton in the city of Washington, D. C.? I desire you to answer this question categorically, and, when you have so answered, please say no more until I further inquire of you.

A. I will swear upon my oath that Marcus P. Norton and Charles E. Wheeler were present at that or those conversations alluded to in question 352; as to other persons being present, I will not swear positively.

Re-X Q. 368. Did you at the time, or any other time, make a memorandum in writing of those alleged conversations, or of any part thereof?

A. Have no remembrance of making any memorandum of the conversation or conversations, but remember the substance distinctly, as above stated.

Re-X Q. 369. In what business were you engaged at that time?

A. I was then in or had just left the office of assessor of internal revenue of this district. Think I had just left.

Re-X Q. 370. In answer to questions 353 and 355 of your redirect examination you have stated an alleged conversation with Norton. Where was that?

A. As before stated, in Washington, at or in front of the Post-Office Department.

Re-X Q. 371. Which was it?

A. To my recollection there was one conversation at the south end of the hall in the second story of the building; another in the blank and stamp room in the first story of the building; and another on the sidewalk or in front of that building, opposite the Patent Office. The subject of this matter was probably talked on each of those occasions.

Re-X Q. 372. Now, sir, having dodged and evaded a proper answer to the last question by stating matters of which you were not inquired about, will you "kindly" make proper answer to that question, which the examiner will now read to you?

1410 A. Do not think the whole conversation referred to took place as a whole in either place, separately. No evasion or dodging is or was intended in giving the answer.

Re-X Q. 373. Who, if anybody, was present when your alleged conversation with Norton took place in answer to questions 353 and 355 of your redirect testimony?

A. If any one was present in the blank and stamp room, it was probably N. A. Gray and his deputy.

Re-X Q. 374. Give the name of his deputy.

A. Do not recollect his name, but he has been in charge of that room a great many years.

Re-X Q. 375. Do you personally know either of them?

A. Knew both well. N. A. Gray is since dead.

Re-X Q. 376. When did Gray die?

A. Within two years.

Re-X Q. 377. You have now stated the names of every person or persons present during those alleged interviews and conversations with Norton, have you not?

A. Would not say that positively.

Re-X Q. 378. Why not?

A. Because I do not recollect positively.

Re-X Q. 379. Give your best recollection about it.

A. I have done so in previous answers.

Re-X Q. 380. In your answer to question 354 of your redirect testimony, you state in substance that the Hon. R. C. Parsons was your attorney in the month of May, 1870. Was the Hon. R. C. Parsons at that time a member of Congress from this Congressional district?

A. He was not.

Re-X Q. 381. When, if ever, was he a member of Congress from this Congressional district?

A. Cannot give the exact dates.

Re-X Q. 382. Was he ever a member of Congress from this district?

1411 A. Supposed to have been, and was succeeded by the present member, Amos Townsend.

Re-X Q. 383. You are positive about that, are you?

A. Without reference to the Congressional Directory could not give answer.

Re-X Q. 384. Your recollections of that matter are about as sound and as much to be depended upon as your alleged conversation in Washington with Norton, are they not?

A. That is for the court to decide.

The examination of this witness is here closed upon both sides. It being now 6:30 o'clock Saturday evening, the reading of the deposition

to the witness by the examiner is postponed until half-past nine o'clock Monday morning, Feb. 25, 1878, to which time these proceedings are adjourned.

The deposition having, this 25th day of February, 1878, been read to witness, both counsel being present, pursuant to adjournment, he states that he desires to make the following corrections, to wit:

A. In reference to the answer to question 3, I wish to state that from June, 1864, until October 1st, 1866, I was special agent of the Post-Office Department; was not connected with the Cleveland post-office during this time.

(Complainant's counsel objects to the last part of the answer after the words "Post-Office Department," on the following grounds, viz: That the same were suggested to the witness by the defendant's counsel in the form of an interrogatory, and the same is therefore not a legitimate correction of his evidence by the witness.

In answer to question 22 I should have said Johnson block, instead of Franklin building, was where the office was located.

Mr. NORTON asks the witness the following questions:

1412 Re-X Q. 385. During your cross-examination certain papers were inquired of you concerning, and you, in answer to those questions, said in substance that you thought you might have those papers among yours at your house, and that you would look for them, and, if you found them, you would produce them in evidence here. I now refer to the letter of the Third Assistant Postmaster-General, W. H. H. Terrell, notifying you of a hearing to be had at the Post-Office Department, under a certain act or joint resolution of Congress, approved July 14th, 1870, about the Norton patent of April 14th, 1863, and its several reissues, for postmarking and postage cancelling. I also refer to the subpœna, subpœnaing you as a witness in the case of Shaver and Corse against Edmund Hoole, U. S. circuit court, northern district of N. Y., and at law. Have you examined your papers as requested to do during your cross-examination?

(Objected to as immaterial, and as not coming properly after cross-examination is closed.)

A. Upon examination of my papers I find one letter addressed to Hon. R. C. Parsons from Mr. Terrell, informing him of an investigation to be had in pursuance of a private resolution of Congress, approved July 14th, 1870, in which he says: "I hope to be able to have the report contemplated ready for submission in the course of a week or ten days;" the report or the act or acts were not inclosed to me in the above referred to letter; as to the subpœna, I have not been able to find that after having made a thorough search.

(Defendant's counsel objects to all the answer except that part which shows that he has examined his papers as desired, on the ground that it is irresponsive.)

Re-X Q. 386. On what day did you make the search and find the paper stated in your last answer?

1413 A. Yesterday.

Re X Q. 387. What day of what month and what year was yesterday?

A. Sunday, February 24th, 1878.

Re X Q. 388. The time that you took for that examination was to suit your own convenience, was it not?

A. Most probably; Sunday being a day in which I have more leisure than on other days.

Re X Q. 389. Have you in your possession the letter of Mr. Terrell to Hon. R. C. Parsons, spoken of by you on this occasion?

A. I have.

Re X Q. 390. Will you let me examine it?

A. I have no objections.

Re X Q. 391. Will you allow that letter dated Washington, D. C., February 13th, 1871, addressed to the Hon. R. C. Parsons, House of Representatives, and signed W. H. H. Terrell, Third Assistant Postmaster-General, which is in the following words and figures: "Sir: I have the honor to acknowledge the receipt of your letter of the 10th inst., addressed to the Postmaster-General in relation to the claim of C. E. Wheeler, of Cleveland, Ohio, for an invention to cancel postage stamps, and asking that he be permitted to submit his claim to the department in relation thereto. An investigation is now being made of the claims of certain parties to the invention now in use by the department for cancelling postage stamps, in pursuance of a private resolution of Congress approved July 14th, 1870, and I hope to be able to have the report therein contemplated ready for submission in *in* the course of a week or ten days. Should Mr. Wheeler desire to file his statement, model, and proofs, so that they may be considered in connection with others, he should do so at once, and they will be embodied in the report. You will see, by reference to the private resolution referred to, that the whole matter is left to the final determination of Congress. Very
1414 respectfully, your obedient servant, ," to be filed in this case as Complainant's Exhibit C-C (Wheeler), February 25th, 1878?

A. No; first, because it was obtained for another purpose, to wit, simple examination; second, as it is addressed to another party, do not consider myself at liberty so to do without his consent; and third, unless compelled to do so by order of the court. I have no other objections.

Re X Q. 392. Will you see Mr. R. C. Parsons and get his consent for the purposes indicated in the last question, and your answer thereto?

(Defendant's counsel requests witness to answer "no" to the question as a means of stopping the illegal and improper proceedings which are being pursued by Marcus P. Norton, solicitor for complainant.)

A. No; the gentleman referred to, being at present in the city, is accessible to complainant's counsel, to whom he can appeal for permission.

Re X Q. 393. Was the Hon. R. C. Parsons, of Cleveland, Ohio, on the 13th day of February, 1871, a member of the House of Representatives of the Congress of the United States, your agent or attorney at that time?

A. Without data could not say that he was a member of Congress at that time, but for the purpose of depositing my papers at the Post Office Department he was my agent.

Re X Q. 394. Who represented the Cleveland district in the Congress of the United States House of Resresentatives for the Congress commencing the fourth day of March, 1869, and ending on the fourth day of March, 1871?

A. Without data do not remember.

Re X Q. 395. You voted in this district for a member of Congress for that term, did you not?

A. I did, but have not carried and do not now carry a Greeley Almanac or other reference book to obtain data at sight.

1415 Re X Q. 396. Did you in 1853, and down to July, 1861, carry a Greeley Almanac or other reference book concerning the several

contrivances about which you have testified on this examination, so as to enable you to give testimony at "sight," as you seem to have done in the several answers to questions on your direct examination?

A. To the best of my knowledge, no; as to the correctness of these answers I respectfully refer you to the testimony of the witnesses who may follow me in this examination.

Re X Q. 397. To what witnesses do you refer in your last answer? Give their names.

A. As no witness has been subpœnaed as yet except H. S. Bishop, I am unable to give their names.

Re X Q. 398. Have you had conference with any person or persons in this city about being a witness or witnesses in this case? and, if you have, please give their names, and also state the names of any person or persons whom you have suggested to the assistant United States attorney for the southern district of New York, now present, as likely to be or probably would be, witnesses in this cause, and before this special examiner, in an attempt to support your testimony already given.

A. I have had no conference whatever with any witnesses who are to give testimony in this case, or in any case now pending, and have indicated as persons competent to testify only those who have been named above.

(Defendant's counsel moves to strike from the record all questions and answers which have been put and made since and including the first question to-day, in reference to the Terrell letter and to the subpœna in the case of Shaver & Corse vs. Hoole, on the ground of manifest impropriety, immateriality, and irrelevancy.

Complainant's counsel objects to the motion on the ground that
1416 the questions and answers referred to will fully explain themselves to the court, and this objection to the motion is made without finding fault with defendant's counsel for the great desire he expresses in his motion to escape from the testimony of this witness and its consequences.)

CHARLES E. WHEELER.

Subscribed and sworn to before me this 25th day of February, A. D. 1878.

J. G. POMERENE,
Special Examiner.

Complain't's Exhibit A A—(Wheeler)—Feb. 22d, 1878.—J. G. Pomerene, special examiner.

(For identification.)

CLEVELAND POST OFFICE,
Cleveland, O., May 7, 1864.

Hon. M. BLAIR:

DEAR SIR: I understand that certain parties have presented a claim for $35,000 against the government, and that it is now pending before the House Committee on Claims, for the use of the combined dating and cancelling stamp by the Post Office Department, the invention of which is claimed by said parties.

I have every reason to believe that the original inventor of that stamp is a clerk in this office. He invented it immediately upon the receipt of the order issued by Postmaster-General Holt several years ago, requir-

ing a separate stamp to be used in cancelling the stamps on letters. Consequently, the claim of the parties alluded to above cannot have legal foundation.

Should you require testimony, the name of the clerk is Charles E. Wheeler.

I am, very respectfully, yours, very truly,

E. COWLES, *P. M.*

1417 FEBRUARY 25TH, 1878.

Present, pursuant to adjournment, same counsel as before.

HENRY S. BISHOP, a witness called for and on behalf of the defendant, being by me first duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Henry S. Bishop; 56 years; reside at Cleveland, Ohio; occupation, accountant.

Q. 2. Were you ever employed in the post-office at Cleveland, Ohio?

A. Yes.

Q. 3. When and how long?

A. During the years 1853 and a part of 1854.

Q. 4. State, if you have a distinct recollection of the facts, who was postmaster at this city, and who was President of the United States at the time you were so employed.

A. J. W. Gray was postmaster, and Franklin Pierce was President.

Q. 5. Where was the post-office then situated?

(By complainant's counsel objected to as being unimportant and incompetent.)

A. On Water street, near the corner of St. Clair street.

Q. 6. What was your occupation in the post-office?

A. I was clerk and had charge of the penny post.

Q. 7. Did you have an opportunity of knowing, and did you know what instrument or instruments was or were used at that time for postmarking letters and cancelling postage-stamps.

A. I did.

Q. 8. State what they were and how they were used.

A. They were cancelling stamps, and were used by hand; hand stamp of course.

1418 Q. 9. Give a description of one of them.

A. The post-office stamp for the Cleveland office was metal'ic, with the words Cleveland, O., and in the center of the stamp the dates were filled in by means of type; the cancelling stamp was a wooden stamp if I remember, with a design upon it for cancelling.

Q. 10. Were they separate?

A. They were.

Q. 11. Was any other sort of instrument afterward used for the two purposes?

A. Yes.

Q. 12. Describe it.

A. There was an attachment made to the post-office stamp, by which the stamp was checked by the one operation.

Q. 13. What stamp do you last refer to when you say that the stamp was checked by the one operation?

A. Postage stamp.

Q. 14. What is checking?

A. Checking or cancelling is my intention.

Q. 15. What substance was used to make the cancellation ink?

(Objected to by complainant's counsel as being leading.)

A. Ink.

Q. 16. In describing this instrument you say that an attachment was made to the post office stamp?

A. Yes.

Q. 17. What stamp was that?

A. A stamp indicating where the letter was from.

Q. 18. When this instrument having the attachment you have spoken of was used, did any part of the impression made by the post-office stamp or postmarker, appear on the postage-stamp?

(Objected to by complainant's counsel as leading.)

A. No.

1419 Q. 19. I understand you to mean by what you have testified that there was a hand instrument in use by which the postmark was put on the envelope, wholly apart from the postage stamp, and the postage-stamp was canceled at one and the same blow or operation; is that correct?

(Objected to by complainant's counsel, first, as leading; second, as suggesting to the witness the answer desired; and third, as being so-called testimony by defendant's counsel, and not by witness.

Complainant's counsel here suggests to defendant's counsel that if this style and form of examination is to continue the witness might be excused and the defendant's counsel do the testifying.)

A. Yes.

Q. 20. Do you know Charles E. Wheeler?

(Objected to by complainant's counsel, on the ground that defendant's counsel refuses to state what Wheeler he has reference to in the question, after being requested by complainant's counsel so to state.)

A. I do.

Q. 21. Was he a clerk in the post-office at Cleveland at the same time you were?

A. He was.

Q. 22. Do you know of his ever having used, at the time you were in the office, the combined postmarker and canceller you have described?

(Objected to by complainant's counsel as leading; and further, counsel for the defendant made the description inquired about, and not the witness.)

A. Yes.

Q. 23. Whose contrivance or invention was this combined instrument, if you know?

1420 A. Charles E. Wheeler's.

Q. 24. I think you stated that a separate canceller and a separate postmarker were first used, and "afterwards" the combined instrument was used; are you sure that the combined instrument was not used at least part of the time when you first went into the office?

(Objected to by complainant's counsel, and each and every objection heretofore taken to any question put to this witness are now and here repeated as objections to this question.)

A. I am not sure.

Cross-examination of witness by complainant's counsel:

X Q. 25. In answer to question one, you state your occupation to be that of an accountant, how long have you been in that business?

A. That is my profession.

X Q. 26. How long have you been engaged in it?

A. Since I was twelve years of age, more or less.

X Q. 27. Well, which is it, more or less?

A. I hardly know how to answer you.

X Q. 28. Have you an office in this city for that business, or as you call it, profession?

A. No.

X Q. 29. Did you ever have one here for that purpose?

A. As superintendent for the Western telegraph lines, as confidential clerk for J. W. Gray, postmaster, and recently as clerk for the receiver of the Forest City Woodware Co., I have.

X Q. 30. Did you understand the last question at the time you made answer to it?

A. I think I did.

X Q. 31. Will you now please answer question No. 29, as read to you?

A. I have.

X Q. 32. When and where was it located, and how long was it continued there?

1421 A. On Bank street, Superior street, corner of Superior and Seneca streets, and at the present time at number nine Public Square; on Bank street about three years, on Superior street about two years, corner of Superior and Seneca streets two years, at No. 9 Public Square four years.

X Q. 33. Well, are you at the present time actively engaged in the occupation of an accountant?

A. No.

X Q. 34. In answer to question 2 of your direct examination you state that you were employed in the Cleveland post-office, and that it was during the years 1853 and 1854. How long were you employed in that office during the year 1853?

A. Cannot say positively; think about six months in 1853.

X Q. 35. What were your duties there?

A. Superintending the penny post, attending the delivery window, and doing the postmaster's private writing.

X Q. 36. For what length of time were you there in 1854?

A. About nine months.

X Q. 37. Your employment there altogether was about a year, was it not?

A. About a year and three months.

X Q. 38. How came you to leave that service at that time?

A. The penny post and my salary would not compensate me for my services.

X Q. 39. In your answer to question 7 you state in substance that you had opportunity of knowing, and did know, what kind of instruments were used at that office for postmarking letters and cancelling postage-stamps during the time you were in that office. What was your opportunity for that purpose?

A. I was in and out of the mailing-room numerous times every day.

X Q. 40. How many years ago was that in round numbers?

1422 A. About twenty-four years.

X Q. 41. Did you at the time you were "in and out" of that mailing-room make written memorandum of what you then and there saw?

A. I did not.

X Q. 42. About how many times since that time, and during each of the intervening twenty-four years to the present time, have you thought of and reflected upon that which you say you saw at that time in that mailing-room?

A. I cannot say.

X Q. 43. To whom, if to anybody, during those twenty-four by-gone years, have you communicated that which you say you saw in that mailing-room more than twenty-four years ago?

A. I might have remarked it to Mr. Chas. E. Wheeler.

X Q. 44. To anybody else previous to the commencement of this examination here in Cleveland?

A. I think not.

X Q. 45. When did you last communicate to Mr. Chas. E. Wheeler that which you say you saw in that mailing-room at least twenty-four years ago?

A. Within ten days last past; I did also talk with Mr. Wheeler in the year 1861 on the cars coming from New York State to Cleveland.

X Q. 46. How came you to communicate with Mr. Wheeler on those two occasions named by you about the matter now being inquired into?

A. First, on the cars; supposing that he had obtained a patent, we discussed the merit of the invention; the last time that we talked I met Mr. Wheeler accidentally at the foot of the stairs leading to the commissioner's, Mr. Pomerene's, office; Wheeler then said he might need me as a witness, as I understood, in the United States court.

Adjourned until half-past nine o'clock to-morrow morning.

1423 FEBRUARY 26, 1878.

Met pursuant to adjournment of yesterday.

Same counsel present as before.

Cross-examination of Mr. H. S. BISHOP resumed by MARCUS P. NORTON:

X Q. 47. You have now stated each and every time or occasion when you have had conversation with Mr. Charles E. Wheeler, a witness in this case, whose examination closed on yesterday, and who signed that deposition in your presence, have you not, in answer to cross-question No. 46, which the examiner will read you for your information at this time?

A. I cannot say that the times now named are the only ones.

X Q. 48. You said that on yesterday on your examination, why can you not say it now?

A. I am unwilling to be dragged into a position compelling me to say what I do not believe is true.

X Q. 49. Having such a high regard for the truth as you seem to indicate in your last answer, you will now please state each and every interview you ever had with Mr. C. E. Wheeler on the subject matter of this examination, giving the time, the places, and the circumstances attending the same.

A. That I cannot do.

X Q. 50. Why can you not do that?

A. For the reason it would be impossible to remember.

X Q. 51. You are a personal friend of Mr. C. E. Wheeler, are you not?

A. I am.

X Q. 52. Have been for how many years?

A. Twenty-eight to thirty years.

X Q. 53. Met him very frequently during all that time?

A. Not very frequently.

X Q. 54. About how frequently during each year?

1424 A. During the last twelve years do not think it will average over two times a month.

X Q. 55. When and by whom were you first applied to to become a witness in this cause?

A. About a week or ten days ago Mr. Charles E. Wheeler intimated to me that I might be needed or required as a witness in this cause.

X Q. 56. What did he say to you about it at that time?

A. He stated that there was a suit in the United States court concerning the postal stamp and postage-stamp canceller; he asked me where I could be found; that I would be needed as a witness.

X Q. 57. Did you inquire of him anything as to what he desired to prove by you?

A. I did not.

X Q. 58. Did he state to you by word, by sign, or otherwise indicate to you, anything that he desired to prove by you on this occasion?

A. He did not.

X Q. 59. After you had this interview with Mr. Wheeler did you have an interview with defendant's counsel upon this subject?

A. I did.

X Q. 60. How many such interviews have you had with him up to this time?

A. One.

X Q. 61. When and where was that?

A. I think last Wednesday morning, in the hall leading to my room, No. 9 Public Square.

X Q. 62. Who, if any one, was present on that occasion?

A. Defendant's counsel and myself.

X Q. 63. Anybody else?

A. No one.

X Q. 64. About how long was that after the interview with Wheeler of which you have last spoken?

A. A day or two.

X Q. 65. On that occasion, did the defendant's counsel tell you what he desired to prove by you on this occasion?

1425 A. He did not.

X Q. 66. Did he tell you who had sent him to you?

A. I think not.

X Q. 67. Since the adjournment last evening, and the commencement of your cross-examination this morning, have you had any conversation with defendant's counsel, now present, about this case, or any matter or circumstance connected with it?

A. I have.

X Q. 68. State what you said to him about it.

A. I said that plaintiff 's attorney was slow get around this morning, and that Mr. Cottrell was a pattern-maker. The defendant's counsel then asked me if a person could look through the window of the post-office when on Water street and see the stamping-table; to which I replied, no; that the mailing-room was partitioned off, and the postmaster's room intervened. I think that was all.

X Q. 69. Have you now stated fully all the conversation you had with defendant's counsel this morning about the subject-matter of this examination?

A. I think I have, in substance.

X Q. 70. Did you not state to him, in words or substance, this morning, that you had no recollection how that alleged Wheeler stamp which you have said you saw in the post-office here more than twenty-

four years ago was made; that is to say, all you knew about it, it was double, and you could not tell whether it was bound together by twine and wire, but you thought the cancelling stamp was attached to the postmarker by means of a screw?

A. I did not say anything of the kind.

X Q. 71. What did you say to him upon the subject-matter of the last inquiry; I mean the manner in which the alleged cancelling device was at that time secured to the postmarking stamp?

A. Not one word.

X Q. 72. Did he ask you if you knew anything upon that subject?

A. He did not.

1426 X Q. 73. Have you not stated to defendant's counsel this morning, and in this room, that you thought that that cancelling stamp was secured to the postmarking stamp by means of a pin, screw, or spring, or stated in substance the same?

A. No.

X Q. 74. You have had not one word of conversation with him this morning on that subject or in anything connected with it?

A. On the subject of the construction of the stamp and canceller, I have never described it to defendant's counsel.

X Q. 75. Have you this morning mentioned to him the words postmark stamp, cancelling stamp, spring, screw, pin, twine, wire, handle, or any of those words?

A. I have not.

X Q. 76. Has he to you?

A. No.

X Q. 77. You will now proceed to describe the exact construction of the postmarking and postage cancelling stamp, which you say you saw more than twenty-four years ago in the post-office at Cleveland, Ohio.

A. I cannot give an exact description of the stamp and canceller. However, they were so arranged as to stamp the postmark and cancel the postage-stamp with or by one and the same blow.

X Q. 78. Why can you not give the description inquired about in the last question?

A. For the reason that I paid more attention to the results of the tool than I did to the tool itself.

X Q. 79. You have now stated your only reason for not being able to describe the construction of that instrument?

A. I think I have.

X Q. 80. How many times did you see that instrument which you say you cannot describe the construction of?

A. Cannot say how many times; numerous times every day, so far as that is concerned, while I was in the office.

1427 X Q. 81. And you never examined the instrument sufficiently to inform yourself as to the manner or the details of its construction?

A. I did not.

X Q. 81½. How do you know it had a cancelling device attached?

A. I saw it.

X Q. 82. Proceed to describe in detail the construction of that cancelling stamp.

(Objected to on the ground that the question has been put and answered fully.)

A. That I cannot do, as I have before stated.

X Q. 83. Why not?

A. For the reason I never examined it, simply examining the work that it done.

X Q. 84. You will now proceed to describe in detail the construction of the postmark device which you say you saw more than twenty-five years ago in the Cleveland post-office, having a cancelling stamp attached to it, which cancelling stamp you swear you cannot describe.

(Same objection.)

A. I cannot give a detailed description of the mechanical arrangement of the post-stamp and canceller.

X Q. 85. Why can you not?

(Objected to because the witness has stated several times that he does not remember the detailed construction of this stamp.)

A. For the reasons, as before stated, that I never examined the construction of the postmark and canceller, giving more attention to the results of its work.

X Q. 86. Were you inquired of in the last question as to giving your attention to results of any kind, which you say took place more than twenty-four years ago?

1428 A. Perhaps not, the answer being explanatory.

X Q. 87. Explanatory of what; anything that you were inquired about?

A. Of my inability to give a detailed description of the mechanacal arrangement of the postmark stamp and canceller.

X Q. 88. You have, in answer to several questions during your cross-examination, mentioned about result of an instrument, which you swear you cannot describe a single part of it, and your answer about result being forced into your evidence without your being asked about it by cross-examining counsel; you will now please state the manner and the means by which this alleged contrivance of postmarking and cancelling instruments were secured together.

A. I cannot describe it.

X Q. 89. Why not?

A. For the reason I don't know.

X Q. 90. Question 23 of your examination-in-chief reads as follows, to wit: "Whose contrivance or invention was this combined instrument, if you know?" Your answer was, "Charles E. Wheeler's." What Wheeler is that?

A. The witness appearing before the commission in this case.

X Q. 91. Do you mean the witness whose examination closed here on yesterday, and who signed his deposition in your presence last evening?

A. Yes.

X Q. 92. How do you know that that contrivance came to the post-office more than twenty-four years ago?

A. I saw it there.

X Q. 93. Do you know who brought it there?

A. I do not.

X Q. 94. What has become of that contrivance you say you saw in that office more than twenty-four years ago, no part of which you swear you can describe?

A. I do not know.

1429 X Q. 95. When and where did you last see that contrivance?

A. In the Cleveland post-office, on Water street, during the years 1853 and 1854.

X Q. 96. In what part of the years of 1853 and 1854?

A. During the latter part of 1853 and a part of 1854.

X Q. 97. In what part of the year 1854 did you see that contrivance, and where?

A. From the commencement of 1854 up to the fall of 1854, in the mailing and stamping room of the Cleveland post-office.

X Q. 98. It took you from the commencement of the year 1854 to the fall of that year to take one last farewell gaze upon that instrument, did it not?

A. I gazed upon it with admiration.

X Q. 99. An instrument which you say you saw twenty-four years ago or more, and which you now swear you cannot describe either of its parts or its construction, was a most suitable device to excite and to challenge your admiration, was it not, at the time when you say that from the commencement of 1854 to the fall of that year you gazed upon it with admiration?

A. Yes.

X Q. 100. Since then, and during the intervening twenty-four years, have you seen any combined post-marker and postage-cancelling stamp?

A. Not since I left the post-office until this morning.

X Q. 101. Where did you see one this morning?

A. In this room.

X Q. 102 Who showed it to you, if anybody?

A. No one showed it to me.

X Q. 103. Where did you see it, and in whose possession was it?

A. First in the hands of the commissioner, next in the hands of defendant's attorney.

X Q. 104. You have, several times during your examination, in-
1430 terpolated into your answers the word "result," and that word you applied to what you saw in the Cleveland post-office more than twenty-four years ago, done by an instrument no part of which now the construction of which you swear you can describe, and which result you say for a long while, to wit, from the first of the year 1854 to the fall of that year, excited your "admiration." Please state whether you ever mentioned to any person anything about that result, or whether you ever stated to any one anything concerning that overwhelming admiration with which you swear at that time you were largely endowed?

(Objected to as immaterial.)

A. I have.

X Q. 105. When, and to whom?

(Same objection.)

A. Charles E. Wheeler, in 1854 and 1861.

X Q. 106. At any other time?

A. I think not.

X Q. 107. What was the occasion in 1861 of your speaking to him upon that subject, and in what part of year was it?

(Same objection.)

A. Mr. Wheeler and myself were coming from New York State to Cleveland, by cars, when the subject came up; this was upon the occasion of which I have before spoken—in the early part of 1862 and latter part of 1861; I remember that there was snow on the ground, and that it was the early part of the winter.

X Q. 108. Who first began that conversation on the cars from New York State to Cleveland, O., during that winter?

(Objected to as immaterial, and as not within the scope of the direct examination.)

1431 A. I cannot say.

X Q. 109. Give your best recollection of it.

(Same objection.)

A. I have no recollection who it was.

X Q. 110. State the conversation upon that occasion between yourself and Mr. Wheeler.

(Same objection.)

A. The conversation was general in relation to postal service, the weather, the health of his and my families, the post-mark stamp and canceller, salaries, and general prospects.

X Q. 111½. State all you said to Wheeler upon the several subjects stated by you in your last answer, and all that he said to you on the same subjects, on that occasion.

(Same objection.)

A. That I cannot do.

X Q. 112. Why not?

A. For the reason that I cannot remember.

X Q. 113. Commencing at cross-question No. 67 and ending with cross-question No. 76, you were inquired to state certain things as to what had taken place at an interview between yourself and defendant's counsel concerning the several matters contained in these questions. You denied each matter inquired about. I now wish to ask you if, on yesterday or on any other day, you had an interview with defendant's counsel in which the matter there inquired about took place?

(Same objection.)

A. I now say, again, no.

X Q. 114. Did you understand the last question at the time you answered it, and do you mean to be understood that the matter there inquired about never at any time occurred between you and de-
1432 fendant's counsel, and that you never stated to him the matters and things there inquired into, or anything in substance the same?

A. I did understand the question. My conversation with defendant's counsel has been in this room, and during the sitting of court, and in the presence of the examiner and his clerk, counsel for plaintiff, counsel for defendant, and in no other place, and at no other time, except, as before stated, when I saw defendant's counsel in the hall.

(No cross-question 115.—J. G. P., ex'r.)

Recess for dinner, and until two o'clock p. m.

Redirect examination of witness by Mr. CLARKE:

Re D. Q. 116. When the office was in Water street state where the stamping-table, upon which letters were post-marked and postage-stamps were cancelled, was, with reference to the windows where letters were delivered to the public.

(Objected to as being new matter introduced now for the first time. It is therefore improper and incompetent to make this inquiry of the witness at this time.)

A. The stamping-table could not be seen from the delivery windows, being in a separate room.

Re D. Q. 117. About how far distant?

A. Nearly full length of building; probably 120 feet.

HENRY S. BISHOP.

Subscribed and sworn to before me this 26th day of February, 1878

J. G. POMERENE,
Special Examiner.

1433 FEBRUARY 26, 1878.

Present pursuant to adjournment.

Same counsel as before.

WELCOME L. COTTRELL, a witness called for and on behalf of defendant, being by me first duly sworn, testifies as follows:

Direct examination by Mr. CLARKE, counsel for defendant:

Q. 1. What is your name, age, residence and occupation?

A. Welcome L. Cottrell; age is 47; residence, No. 218 Birch street, Cleveland, Ohio; occupation, a pattern and model maker.

Q. 2. Did you ever witness the operation of postmarking letters and cancelling the postage-stamps thereon in the Cleveland post-office?

(Objected to by complainant's counsel as leading.)

A. Yes, sir.

Q. 3. How was it done?

A. Done with a hand-stamp, by first striking it upon the ink-pad and then on the letter.

Q. 4. How many blows did it take to make the postmark and the cancellation mark upon each letter?

(Objected to by complainant's counsel in that the last question involves substantially the same matter as this, and the witness having answered that, it is incompetent and improper to lead this witness by a series of questions in themselves leading and repeating the same subject matter of inquiry after the witness has once answered.)

A. One blow upon each letter and one blow upon the ink pad.

Q. 5. Was there a distinct postmark and a distinct cancellation mark?

1434 (Objected to by complainant's counsel for each and every of the reasons assigned to other questions, during the examination of this witness, as objections to those questions.)

A. Yes, sir.

Q. 6. Regarding the surface of the envelope of each letter with the postage-stamp thereon as a whole, state where on that surface the distinct postmark and the distinct cancellation mark that you have referred to appeared.

(Objected to by complainant's counsel on the grounds stated as objections to all questions put to this witness. Each and every objection heretofore taken during the examination of this witness are now and here assigned as grounds of objection to this question.)

A. The postmark appeared to be upon the left of the postage-stamp, and the cancellation mark appeared upon the postage-stamp.

Q. 7. Now give a full history of the circumstances under which you witnessed the operation of postmarking letters and the cancellation of postage-stamps thereon at the Cleveland post-office. Specify time, place, and the person by whom the work was done, and how you came to witness it.

(Objected to by complainant's counsel, and, in view of the kind and character of the examination of this witness thus far by defendant's counsel, the objections made to the last question are here interposed as objections to this question.)

A. The circumstances are, that I was in a habit of calling at the Cleveland post-office in the Herald building, on Bank street, perhaps once a week, perhaps oftener, during the years of 1852 and 1853. My father had a box number in this post-office; Mr. Wheeler usually served me with my letters; during the time I was waiting or calling for
1435 my letters Mr. Wheeler was frequently engaged in stamping let-

ters; my attention was called to Mr. Wheeler's work on account of the rapidity with which he done it; I used to stand and look in at the delivery window and see him working.

Q. 8. Whereabouts in the office was the stamping done?

A. Very nearly opposite the back delivery window.

Q. 9. About how far from the window?

A. Well, I should think about ten feet.

Q. 10. Could you see over the surface of the table and what was on the table?

A. Yes, sir.

Q. 11. What was the operator's position with reference to the window?

A. The window was just to the left hand of the operator and a little in front of him.

Q. 12. About how often did you see this done?

A. I can't tell definitely.

Q. 13. Make as good an estimate as you can.

(Complainant's counsel objects to the question on the ground that the witness has already stated that "I can't tell definitely" in answer to question 12, and that it is therefore improper to undertake to induce the witness to give a different answer upon the subject matter of the inquiry already made, and distinctly and positively answered.)

A. I should think five or six times; I cannot be definite about it.

Q. 14. Do you have a distinct recollection that you witnessed the operation while the post-office was in the Herald building on Bank st.?

(Objected to by complainant's counsel, on the ground that the question is an improper one to put to this witness on his direct examination.

1436 Complainant's counsel claims the exclusive right and privilege to cross-examine the witness.)

A. Yes, sir.

Q. 15. Mention any circumstances which fix that in your recollection.

A. I went to the post-office in the Herald building more frequently than at any other place before or since; have had occasion to think about that since; once in 1864 or '5 I was making a model for a cancelling machine for Mr. Wilbor; the inventor said he thought that cancelling and postmarking by one operation would be a patentable feature in his machine. I told him I thought not; that that was an old device which I had seen in use ten or twelve years before.

Q. 16. Did you ever at any time since have an opportunity of witnessing the operation of postmarkin' and cancelling in any post-office?

A. No, sir.

Q. 17. What was the nature of the letters which took you with such unusual frequency to the post-office at the time you have mentioned?

A. It was love.

Q. 18. From what you saw of the instrument used by the operator, state about how large it was, how it was used, and, if you can, how it was constructed.

A. I did not take notice of how it was constructed, only observed that it was a hand-stamp and that it marked the cancellation as well as the postmark.

Q. 19. Who was the Mr. Wheeler you have referred to?

A. I don't know how to identify him.

Q. 20. Have you seen him in this office to-day?

A. Yes, sir.

Cross examination of witness by MARCUS P. NORTON, complainant's counsel:

X Q. 21. State the year, month, and the day of month in which you were born.

1437 A. 1830, October 17th.

X Q. 22. You are now forty-seven years old, you say?

A. Yes, sir.

X Q. 23. You say that in the year 1852 your father had a box number in the Cleveland post-office; how old were you in that year?

A. After the 17th of October, I was twenty-two years old.

X Q. 24. How many years ago was that?

A. It was twenty-six years last October.

X Q. 25. State the size of the window where you made the wonderful discoveries stated on your direct examination about postmarking letters and canceling postage stamps thereon in the post-office in this city twenty-six years ago.

A. I should think that window was about fourteen inches wide and eighteen high.

X Q. 26. I do not ask you what you think about the size of that window, I want to know what you know about it.

A. I know it was a small window and, as near as I can remember, of the size that I have given you.

X Q. 27. How high from the floor was the bottom of that window at that time?

A. About three feet.

X Q. 28. You were about three feet tall at that time, were you not?

A. I was more than three feet.

X Q. 29. How much more?

A. About three feet and two inches more.

X Q. 30. In all six feet and two inches, is that it?

A. Yes, sir.

X Q. 31. You say in answer to question 7 of your direct examination "I used to stand and look in at the delivery window and see him working," was that the same window you have described in this cross-examination?

A. Yes, sir.

X Q. 32. For how long a time did you "used to stand and look in at the delivery window" in the Cleveland post-office in 1852?

1438 A. Not more than four or five minutes perhaps; not very long.

X Q. 32. Whenever you did thus stand and gaze through that window at the wonderful operation being there performed by Wheeler twenty-six years ago, did you meet anybody else there on those occasions?

A. I might have met other persons there. I presume I did.

X Q. 34. Do you know whether you did or not?

A. I have no distinct remembrance of meeting any particular person except the post-office clerks.

X Q. 35. Name those clerks.

A. I don't know any of their names except Mr. Wheeler's.

X Q. 36. State his Christian name or names.

A. I can't.

X Q. 37. Did you know him personally at that time?

A. Yes, sir.

X Q. 38. Intimately well?

A. No, sir.

1442 received your love-letter twenty-six years ago, but also saw the industrious and patriotic services of Wheeler at that long, square table in the postmarking of letters and the cancellation of postage stamps thereon by a contrivance no part of which, you swear, you can describe?

A. Yes, sir; I did.

X Q. 67. To whom and when was it that you did that which you swear in your last answer you did do?

A. To Mr. J. W. Wilbor, some time in 1865, I think.

X Q. 68. Anybody else?

A. Not that I remember. I told it only to this gentleman here.

X Q. 69. You never said one word about it to Charles E. Wheeler, of Cleveland, Ohio, a person already examined as a witness in this case, did you?

A. I never did.

X Q. 70. Since that event which took place twenty-six years ago—I mean the time when you not only received your love-letters through that delivery window but saw Wheeler performing inside—and the present time you have been very careful not to say anything to Wheeler about what you then and there saw him do?

A. I never had occasion to speak to Mr. Wheeler about it.

X Q. 71. Is that the best answer you can give to that question?

A. Yes, sir.

X Q. 72. Is it true that during all of these twenty-six years that have passed your thoughts by day and your dreams by night have been freighted with the recollections of receiving these love-letters through that window, and at the same time seeing Wheeler at that table performing as stated by you?

A. I have not thought of that only as some occasion has brought the association to my mind.

X Q. 73. Name each and every association that has brought to 1443 your recollection the matter stated by you in your last answer during the time inquired about.

A. The first was the one I have spoken of before, when I told it to Mr. Wilbor in 1865; the second was when Mr. Clarke, counsel for defendant, came to my shop to have a model made of stamp and canceller, last week.

X Q. 74. Never to any other persons, or at any other time, have you mentioned it?

A. Not that I remember.

X Q. 75. Give your best recollections about it.

A. I don't recollect ever mentioning it to any other persons except Mr. Clarke and Mr. Wilbor.

X Q. 76. At the time and places already stated by you, and only at those times and places?

A. I think I have spoken to Mr. Clarke twice about it, but at the same place—in my shop.

X Q. 77. Who was present, if anybody, when you spoke to Mr. Clarke about it, the assistant U. S. attorney, now present?

A. No other person was within hearing.

X Q. 78. Did Mr. Charles E. Wheeler go to your shop with Mr. Clarke to see about the models which you say you made?

A. Yes, sir; he came with him the first time.

X Q. 79. Who informed you on that occasion as to the kind or character of the models which you were to make?

A. I can't tell. It is like this: Mr. Wheeler came in and gave me an

introduction to Mr. Clarke. He told me he was the assistant U. S. attorney, and that Mr. Clarke wished to have me make him a model, and then both told me how to make it. I told them when it would be done, and they went away.

X Q. 80. Did Mr. Wheeler on that occasion inform you as to the kind and character of the model that Mr. Clarke desired you to make?

A. Mr. Wheeler told me just how to make it; and the next morning Mr. Clarke came alone, and desired me to alter it and make another, which I did as requested.

1444 X Q. 81. I now show you Defendant's Exhibits No. 137 and No. 138, Wheeler, and I ask you to state whether those are the models referred to in your last answer, and which you say you made and afterwards altered, and made a new one, as stated by you on this examination?

A. I made 138 just as you see it here. 137 I made in two detached pieces. I did not put the wire or string in it.

X Q. 82. What alterations, if any, did you make in Exhibit 138, which I now hand to you?

A. I cut off about one-half of the cancelling stamp from the upper end, at Mr. Clarke's request.

X Q. 83. Previous to the making of these instruments—defendant's exhibits—had you ever before seen any devices of the kind or character represented by them?

A. I don't know that I ever did.

X Q. 84. You are sure about that, are you not?

A. Yes, I am sure. I don't remember that I ever did.

X Q. 85. Who first applied to you or requested you to become a witness in this case?

A. Mr. Clarke.

X Q. 86. Did Mr. Wheeler, at any time or place, or on any occasion, say anything to you about becoming a witness in this case?

A. He never spoke to me about the case in any manner; I never knew there wss any case depending on these models till Mr. Clarke told me, on the occasion of his second call.

X Q. 87. What did Mr. Clarke tell you about the case depending on these models—exhibits 137 and 138, Wheeler—for defendant?

A. I can't repeat the conversation which we got into about them.

X Q. 88. Why can't you repeat that conversation which happened some time last week?

A. I think I can give the substance of it.

X Q. 89. Do so.

1445 A. Mr. Clarke told me these were going to be taken as evidence in some disputed patent claim, and explained to me how they were to be used; he told me that some party had patented them, I think, or patented a device for cancelling and stamping with one operation—something like that—and that these models were to be used to show that it was an old device invented and used by Mr. Wheeler before the patent was issued. I then told him I had seen Mr. Wheeler use such a device, and he said I was just the man he wanted to find. That is the substance of it.

X Q. 90. Returning to the affairs that happened as stated by you 26 years ago, I desire to inquire of you whether you saw any round table in the post-office at Cleveland during the eventful period described by you? I mean when you were looking through that window 14 by 18 inches.

A. I don't remember of seeing a round table.

X Q. 91. At that post-office at that time?

A. Yes; that is what I mean.

X Q. 92. Was there such a room in that post-office as a room known as a mailing-room, during that period when you were receiving your love letters through that window 14 by 18 inches, 3 feet high from the floor, and at the same time viewing the wonderful displays of Wheeler at that long, square table, 10 feet from where you stood, as stated by you on this examination?

A. I had no knowledge of the interior arrangement of that post-office further than what I could get by looking in at that window, 14 inches by 18, 3 feet high from the floor.

X Q. 93. Had there been a round table in that room you would have seen it, would you not?

A. I don't think I should have noticed the table particularly unless my attention had been called directly to it.

X Q. 94. State the size of that room, as near as you can, in which Wheeler was performing with his lightning instrument on the
1446 long, square table, and which so much attracted your attention, because of the great rapidity of his performance, some 26 years ago.

A. As near as I can remember, the room was, perhaps, 30 by 40 feet.

X Q. 95. Did you, during the period described by you as a period happening 26 years ago, make any memorandum in writing of what you saw through that little window of the post-office at Cleveland, Ohio?

A. No, sir, I didn't make any written memorandum.

X Q. 96. Have you ever made any such written memorandum since that time until you have made one here to-day?

A. I have not made any written memorandum at all.

X Q. 97. In any of your love letters to the girl of your choice in those days, did you tell her of the wonderful things that you had seen Wheeler do through that window fourteen by eighteen inches, three feet high from the floor, on a long square table, ten feet from where you were standing, and performed by a contrivance which you swear was never shown you by anybody, and no part of which, you also swear, you can describe?

A. I didn't write anything of the kind to the girl I then loved, or to any other girl, or to any other person, then or at any other time.

Redirect examination of witness by Mr. CLARKE:

Re D. Q. 98. Do you have a distinct and independent recollection of about how old you were at the time you were receiving the love letters to which reference has so frequently been made?

A. Yes, I have.

Re D. Q. 99. How old were you?

A. I was from 22 to 23 years of age.

Re D. Q. 100. When you looked into the window of the post-
1447 office, about how high were your eyes above the level of the table upon which the stamping was done?

A. Not more than eighteen inches.

Recross-examination by Mr. NORTON:

Re X Q. 101. From where you stood during the time you looked through that window, could you plainly and distinctly see the table upon which the post-marking of letters, newspapers, and other mail matter was done?

A. I could.

Re Q. 102. Was the table upon which letters and other mail matter in that post-office were post-marked during that time, between you and Wheeler, when he was doing those things of which you have testified here to day, and which you seem to have so vividly recollected, not only during the war of the rebellion, but for twenty-six consecutive years?

A. It was partly between me and Wheeler; a line drawn from me to Wheeler would run across the corner of that table.

Redirect examination by Mr. CLARKE:

Re D. Q. 103. Do you have a distinct recollection that from where you stood at the window you could see the marks made upon the letter by the post-office stamp?

A. I do have a distinct recollection; I could see the marks.

Re D. Q. 104. Can you state whether the floor on the inside of the office was on the same level of the floor in the hall?

A. No, I can't.

Re D. Q. 105. When people went for their letters did they have to stoop in order to look in the window?

A. Tall persons did.

Re D. Q. 106. About how high did the heads of the clerks come up in the window?

1448 A. I should think they came up to the top of the window; I can't tell definitely.

Re D. Q. 107. Did they appear to stoop?

A. I could not tell; I never took any notice.

W. L. COTTRELL.

[Subscribed and] sworn to before me this 26th day of February, A. D. 1878.

J. G. POMERENE,
Special Examiner.

Adjourned until 10 o'clock to-morrow morning.

FEBRUARY 27th, 1878.

Met pursuant to adjournment.

Present, same counsel as before.

JOHN COON, a witness called for and on behalf of the defendant, being by me first duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

Q. 1. What is your name, age, residence and occupation?

A. John Coon; age is 55 years; residence Cleveland; by occupation a lawyer.

Q. 2. State the different places in this city in which the post-office has been since 1850; specifying streets and buildings, if you can.

(Complainant's counsel objects to the question on the ground that it is immaterial, incompetent and inadmissible for any of the purposes of this suit, the suit being for an infringement of a patent, not concerning the various localities of the post-office at Cleveland, O.)

1449 A. I think it was in the year of 1850 that the post-office was removed from what was known as the Johnson Building on Superior street, to what was known as the Herald Building on Bank street; I know that the post-office was located in the Herald Building on Bank street as early as February, 1853, and continued there until July of that year, when it was removed from the Herald Building to Water street; I was from February, 1853, to February, 1854, interested as one of the propri.

etors of the Herald, and had my office in that building, and remember that the post-office was removed from the building at the time stated; the building on Water street was a building fitted up by Mr. Gray, the postmaster appointed early in the Pierce Administration, to succeed Mr. Haskell, the former postmaster; the building was the same one now occupied by the Cleveland Rolling Mill Co., I think, on the west side of Water street, near St. Clair street; from that place it was removed to its present location where it has remained ever since; the present location is the building on the Public Square, which was erected by the government for that purpose.

(Complainant's counsel takes the same objection to the answer as to the question.)

X Q. 3. Fix the date of the removal of the Cleveland post-office from the Herald building on Bank street to the building fitted up by Postmaster Gray an Water street as accurately as you can. Please specify precisely the means by which you are able to fix this date, if you are able?

(Complainant's counsel objects to the question on the same grounds and for the same reasons as those stated against the question last above.)

A. The removal was made from the Herald building to the Water street building on Sunday, the third day of July, and Monday, the fourth of the year stated, I mean 1853, Mr. Gray, the postmaster,
1450 availing himself of those two days coming together, during which the office could be removed with least inconvenience to the public. I remember this fact because of a controversy which arose at the time among our citizens to some extent, and between the Plain Dealer and Herald newspapers, in respect to the proposed new location of the post-office. So far as the controversy was carried on by the newspapers referred to I remember that I myself participated in it. And I remember that our objections to the removal were overruled, and that Mr Gray, who was also the editor of the Plain Dealer, objected to the post-office remaining under the administration in the Herald building, which he characterized as a "coon pen."

(Complainant's counsel objects to the answer on the same ground as assigned as objections to the last answer.)

Witness cross-examined de bene esse by complainant's counsel.

(Any conditional cross-examination objected to by defendant's counsel.)

X Q. 4 During the year 1852, where was the post-office at Cleveland located?

A. It was in the Herald building on Bank street.

X Q. 5. During the year 1853 where was the same post office located?

A. Up to the time when it was removed, as I have stated, it remained in the Herald building, and for the balance of the year it was in Mr. Gray's building, on Water street.

X Q. 6. At what time was it removed from the Herald building?

A. I don't know that I can state more precisely than I have that the removal took place on the third and fourth of July of that year. I mean the year 1853.

X Q. 7. Where was that post-office located in this city during 1854?

1451 A. In Mr. Gray's said building on Water street.

X Q. 8. You have now stated the locality of the post-office at Cleveland, O., during the years 1852, 1853, 1854, and also that it was removed in July, 1853. What enables you to make these statements of transactions that took place twenty-five and twenty-six years ago?

A. I think it probable that my recollection in regard to the location in the Herald building, at the time stated, was fixed by the fact of my being at the time a joint owner of the Herald property from February, 1853, to February, 1854, and by the fact of my being personally occupied daily in that building. There was another circumstance that tended to fix the dates of those transactions in my mind, and that was the fact that Mr. Gray and myself were on personally unfriendly terms, growing out of a personal collision that took place not long before that, and I had the impression that one of his reasons for removing the post-office was his personal feeling in respect to myself. Being advised a few days since by defendant's counsel that he desired my personal recollection about these dates, I have examined the files of the Cleveland Herald and of the Plain Dealer, published at the time, and find my recollection refreshed and supported by the publications of those papers of the dates referred to. So far as the files of the Herald are concerned I recall some paragraphs and observations regarding the removal of the post-office to Water street as having been written by myself. I don't know that I can mention any other circumstances that have tended to fix those dates in my mind.

X Q. 9. From what do you render your evidence on this occasion; is it from your personal recollections alone or from the recent examinations you have recently made of the files of the newspapers referred to in your last answer?

A. From my personal recollections, with only this exception, that I had forgotten the fact until it was recalled to my recollection by
1452 the examination referred to, that the post-office was removed on the 3d and 4th of July. My memory being refreshed on that point by that examination I recall the fact as a matter of personal recollection that the removal took place on those days. In respect to the other matters of which I have testified I believe I was able to recall them with satisfactory distinctness, but, as I have stated, the files referred to simply corresponded with my recollection.

X Q. 10. When the defendant's counsel came to you to obtain your evidence on these matters, who, if anybody, was with him at that time?

A. Mr. Charles E. Wheeler called with Mr. Clarke and introduced him to me.

X Q. 11. During 1852, and the year 1853, and the year 1854, were you familiar with the internal construction of the post-office in this city and located at the various places you have stated?

A. I was not at all familiar with the internal construction of the post-office in Mr. Gray's building, but I was occasionally in the post-office while it was in the Herald building, and during the term of Mr. Haskell. I don't know that I was familiar with the internal structure of either office. I can't now recall anything more than the main room of the post-office while it was in the Herald building, and one small room back of the main room.

X Q. 12. Whenever you were in that room during that time did you observe the process of making up mails or postmarking of letters?

A. No, I did not.

X Q. 13. For what purpose, if you know, was that small room you mentioned used for during that time?

A. I think the postmaster, Mr. Haskell, had his desk in that room, and it may have been used for other purposes. I don't know about that.

X Q. 14. How many delivery windows, if you remember, did that post-office have, and about where were they located?

1453 A. I think there were two or more delivery windows for the boxes, and one general delivery, but how located I don't remember.

X Q. 15. During that time, and whenever you were inside of that post-office, do you remember to have seen a long, square table used for mailing purposes, such as postmarking letters, and located ten feet or more from any one of these delivery windows?

A. I don't think I remember what the furniture was or how it was located or used.

X Q. 16. Do you know the size of any of those delivery windows?

A. I do not know the size of any of them; would only say of convenient size.

JOHN COON.

Sworn to and subscribed before me this 27th of February, 1878.

J. G. POMERENE,
Special Examiner.

Adjournment until 10 o'clock to-morrow morning.

FEBRUARY 28TH, 1878.

Met pursuant to adjournment.

Same counsel present as before.

Counsel for complainant states that he desires further to cross-examine the witness Wheeler, before these proceedings adjourn sine die; and that such further cross-examination relates entirely to matters testified to by Wheeler during his examination and before the signing of his deposition; and complainant's counsel requests the defendant's counsel to produce before this special examiner such witness for the pur-
1454 poses indicated in this statement, and to produce him now for such purpose.

Defendant's counsel states that the deposition of the witness Wheeler was closed by consent of both counsel, signed by the witness, authenticated by the signature of the special examiner several days ago, as the record shows; that said Wheeler is not now present in the examiner's room, and that he, defendant's counsel, does not know where said Wheeler is, and could not find him without considerable search, and that he declines with the utmost kindness and courtesy to play the part of errand boy for complainant's counsel in hunting up said Wheeler; but that he is perfectly willing that complainant's counsel may call said Wheeler as his own witness, or may examine him in any legal way, having first secured his presence by any legal means which he is able to adopt.

Complainant's counsel, in reply, states that he did not know that he desired further to cross-examine the witness Wheeler until yesterday at the close of the examination of the fourth witness produced by defendant's counsel, whereupon he requested the witness Wheeler to be produced before closing the examination before this special examiner, as he desires further to cross examine him.

Complainant's counsel claims the right to further cross-examine the witness Wheeler at any time during the continuance of these proceedings here, at such time as defendant's counsel and this special examiner can attend to the same.

Complainant's counsel states that this request is made three
1455 days after the witness Wheeler had signed his deposition before the special examiner in the usual manner of doing such things,

and without the giving of any special consent, and that he has only a few questions that he desires to ask the witness.

And complainant's counsel further replies that he has no intention or desire to impose upon defendant's counsel the onerous duties of an "errand boy," and as to that part where the defendant's counsel suggests the propriety of making this man Wheeler a witness for the complainants, he has long since been taught to look out for traps slyly set, and further, that "When sinners entice thee consent thou not."

Defendant's counsel suggests that complainant's counsel can have all the time he desires to secure the attendance of the witness Wheeler, by process of the court, or by personal request, or in any other manner, to which the complainant's counsel replies that the witness being a witness hostile to the complainant, and produced by the defendant's counsel, is not under the control of the complainant's counsel, and that he knows of no legal power to be exercised on the part of the complainant to compel the attendance of the witness Wheeler under the circumstances stated in the request made to defendant's counsel, as complainant has no control over these proceedings, they being solely under the control of defendant's counsel, by special order of this court, and complainant's counsel will pay all necessary expenses in hunting up this witness by defendant, and the usual per diem for his attendance.

Adjourned sine die.

February 28th, A. D. 1878.

J. G. POMERENE,
Special Examiner.

1456 I, J. G. Pomerene, special examiner, do hereby certify that Charles E. Wheeler, Henry S. Bishop, Welcome L. Cottrell, and John Coon were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions, by them respectively subscribed, and severally authenticated by my signature, as above set forth, were reduced to writing, in part by myself, and in part by E. B. Gregg, who is not interested in the suit, in the presence of the witnesses respectively, and in the presence of counsel for complainant and defendant, as is within indicated, and were respectively subscribed by the said witnesses in my presence, and were taken at my office, in the city of Cleveland, and State of Ohio, on the 18th day of February, 1878, and on the following days, as is within indicated; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand this first day of March, A. D. 1878, at the city of Cleveland, Ohio.

J. G. POMERENE,
Special Examiner.

1457 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court rooms in the city of New York, on the 10th day of January, 1878.

Present, Hon. Hoyt Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Upon reading and filing the annexed affidavit, and on motion of

, it is ordered that Irving Browne, esq., of Troy, New York, be, and he is hereby, appointed special examiner herein, under the 67th equity rule, as amended, to take the testimony of Jacob Shavor, Albert C. Corse, Charles Eddy, Jeremiah D. Greene, F. G. Ransford, and of such other competent witnesses as may be brought before him, on the part of the defendant in this cause.

(Signed) HOYT H. WHEELER.

A copy.

JOHN I. DAVENPORT,
Clerk.

1458 United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

SIR: Please to take notice that on the annexed affidavit an application will be made to the court by the defendant herein for an order that Irving Browne, esq., of Troy, New York, be appointed special examiner herein, under the 67th equity rule, as amended, to take the testimony of Jacob Shavor, Albert C. Corse, Charles Eddy, Jeremiah D. Greene, and F. G. Ransford, and of such other persons as may be brought before him, witnesses on the part of the defendant; and this application will be made to his honor Judge Wheeler, at the United States circuit court room, on Thursday, the 10th day of January instant, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

New York, January 9th, 1878.

Yours, &c.,

STEWART L. WOODFORD,
United States Attorney and Defendant's Solicitor.

To MARCUS P. NORTON, Esq.,
Complainant's Solicitor.

1459 United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

SAMUEL B. CLARKE, being duly sworn, says that he is an assistant to Stewart L. Woodford, who is United States attorney for this district and solicitor for the defendant in the above entitled suit, and that said suit is an equity suit, based on an alleged infringement of a patent by the defendant in his official acts as United States postmaster at New York City; that said suit is at issue; that the complainant has rested, having, as he supposed, made out a prima facie case; that it is now incumbent on defendant to take testimony in his own behalf; that in deponent's opinion it is important and relevant to the defense that the testimony of Jacob Shavor, Albert C. Corse, Charles Eddy, Jeremiah D. Greene, F. G. Ransford, and of others who, as deponent is informed

and believes, reside out of this district, at or near the city of Troy, New York, and of other persons who will be present at said Troy when an examination of witnesses before a special examiner is made, should be taken; that deponent desires that this testimony should be taken orally under the 67th equity rule, as amended; that it is necessary that a special examiner should be appointed for the purpose; that deponent is informed and believes that Irving Browne, esq., of Troy, New
1460 York, is a competent and proper person to be appointed such examiner, and that deponent desires that he may be appointed.

SAMUEL B. CLARKE.

Subscribed and sworn to before me this 9th day of January, 1878.

WM. B. CAPEN,
Notary Public, Kings Co.

Certificate filed in county clerk's office, N. Y. City.
A copy.

JOHN I. DAVENPORT,
Clerk.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
against
THOMAS L. JAMES, U. S. POSTMASTER, NEW York.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

Be it remembered that on the 28th, 29th, 30th, and 31st days of January, and the 1st, 4th, 5th, 6th, 7th, 8th, and 9th days of February, 1878, personally appeared Albert C. Corse, Charles Eddy, Christopher C. Campbell, Helen M. Ingalls, Rev. George C. Baldwin, Jere-
1461 miah D. Greene, John T. Lamport, James Bolton, jr., and R. H. Ward (the said parties appearing at the times named in their several depositions hereto annexed), witnesses on the part of the defendant, before me, a special examiner appointed by the circuit court of the United States for the southern district of New York, to testify, and the truth to say, in a certain matter depending and undetermined in the circuit court of the United States for the southern district of New York, on the equity side, wherein Christopher C. Campbell, assignee in trust, is complainant, and Thomas L. James, U. S. postmaster, New York, is defendant.

IRVING BROWNE,
Special Examiner.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN TRUST,
against
THOMAS L. JAMES, U. S. POSTMASTER, NEW YORK.

Proofs for final hearing taken for and on behalf of the defendant, at

the city of Troy, on the 28th day of January, and following days, 1878, before Irving Browne, duly appointed special examiner for that purpose.

Present, pursuant to notice, George H. Williams, esq., of coun-
1462 sel for complainant, and Marcus P. Norton, esq., complainant's solicitor, and Samuel B. Clarke, esq., Assistant United States District Attorney, for the defendant.

ALBERT C. CORSE, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. Alfred C. Corse; age fifty-four years; reside in Troy, and am a manufacturer of stoves.

(Mr. Williams asks that the witnesses be examined without being in the hearing of each other; to which Mr. Clarke objects, on the ground that no reason is given for such a course, and it is not customary.

The special examiner denies the request for the present.)

2. Q. Have you ever held, either individually or with any other person, any patent of the United States for improvement in post-office stamps?

A. I have.

3. Q. State what patent you have held, and how you obtained it, and if you held it with any other person, give that person's name.

A. I held a patent granted to Marcus P. Norton, in 1863, I think; it was conveyed by Norton to Jacob Shaver and myself.

4. Q. Do you remember the date in 1863?

A. No, sir; I do not.

5. Q. Describe briefly the thing that was patented so that we may identify it.

A. There was a handle and a cross-bar; attached to the cross-bar was a cylinder in which were the name of the office, the date of the month, and also the initials of the month, and on the other end was a blotter that canceled the stamp—a postage-stamp—a post-office stamp I refer to.

1463 6. Q. Was any other patent granted to Marcus P. Norton, in 1863, to your knowledge?

A. None that I recollect of.

7. Q. Was this patent conveyed to you and Mr. Shaver by an instrument in writing?

A. It was.

8. Q. Was the assignment recorded in the Patent Office?

A. I think it was.

9. Q. Do you know the complainant's solicitor in this case—Mr. Norton?

A. Yes, sir.

10. Q. Is he the person to whom the patent of 1863 was granted, and who assigned it to you? (Referring to Mr. Norton.)

A. He is.

11. Q. Where is Mr. Shaver?

A. He is dead.

12. Q. When did you first become acquainted with Mr. Norton?

A. In a business way in 1859.

13. Q. When did you first have business connections with him in regard to patents?

A. Some time in 1860 or 1861.

14. Q. Did your business at that time relate to post-office stamps?

A. It did.

15. Q. What was the nature of the business?

A. It was in relation to a patent for a post office stamp issued to Mr. Norton in 1859.

16. Q. Did you have any business with him in regard to any other post office stamp at about that time?

A. Not that I now recollect.

17. Q. When did you first have any business with him in regard to the thing that was patented in 1863?

A. I couldn't say.

18. Q. State as nearly as you can recollect.

A. It was the subject-matter about every time we met—about
1464 reissuing this patent, but I can't be positive as to dates; during 1862 we talked a good deal about getting out the patent that was issued in 1863.

19. Q. Under what terms, if any, was the assignment to Shaver and you made?

A. In consideration of moneys advanced and to be advanced, we were to have one-half of the patent, or the proceeds, or whatever was got out of it after the expenses were paid.

20. Q. Were these terms and conditions part of any general agreement you had with Mr. Norton?

(Mr. Williams objects on the ground that it is not competent to go into other business matters between the parties.)

A. It was.

21 Q. Was this general agreement in writing?

A. Not that I know of.

22. Q. State what the agreement was.

(Mr. Williams objects on same ground as above stated, and also because it is not competent to give evidence of any agreement not in writing.)

A. The agreement, as understood between us, was that we were to advance what moneys were necessary for procuring this patent, and pay necessary expenses in procuring compensation from the government; in consideration therefor we were to receive one-half.

23. Q. Under the agreement in whom was the legal title to the patent to be?

(Mr. Williams objects, on the ground that it is not competent for the witness to give his opinion as to the legal title.)

A. In Shaver & Corse.

24. Q. Was this agreement made before the patent was issued?

A. It was.

1465 25. Q. Did the agreement apply specially to this patent, or was it a general one applicable to other inventions of Mr. Norton's?

(Objected to as above stated to question 22.)

A. It applied to a patent of 1859, of 1862, and of 1863.

26. Q. Was there any provision in the agreement, which you say was made before the patent of 1863 was granted, relative to a reassignment by Shaver & Corse (yourself) to Mr. Norton?

(Objected to as above.)

A. There was not.

27. Q. Was the patent of 1863 assigned to you and Mr. Shaver, in pursuance of the agreement of which you have spoken?

(Objected to as above.)

A. It was.

28. Q. Did you, in 1864, reassign the patent of 1863 to Mr. Norton, or did you join with Mr. Shaver in so reassigning?

(Complainant's counsel objects to this question on the ground that it is not competent to give parol evidence on that subject, and because no such question is raised by the pleadings in this case.)

A. Not to my knowledge.

29. Q. Did Mr. Shaver, in that year, reassign the patent of 1863 to Mr. Norton to your knowledge?

(Same objection made.)

A. He did not.

30. Q. Did you or Mr. Shaver ever reassign the patent of 1863 to Mr. Norton?

(Same objection made.)

1466 A. I have no recollection of any such transaction.

(Defendant's counsel requests complainant's counsel to produce the original of the reassignment by Shaver & Corse to Marcus P. Norton, which, in the bill of complaint, is alleged to have been made on or about February 23, 1864, and to have been recorded in the Patent Office on July 24, 1869, notice to produce which was served on complainant's solicitor January 23d inst., service being admitted by him.

Complainant's counsel did not produce the paper.

Defendant's counsel produces a paper purporting to be a certified copy of all assignments of record under letters patent granted Marcus P. Norton, dated April 14, 1863, No. 38175, for improvement in post-office stamps, and shows to the witness the paper, which is entitled "Affidavit and Assignments, Transfer of Patents," and which purports to be signed by Jacob Shaver and Albert C. Corse, and to be subscribed and sworn to before John T. Lamport, U. S. Commissioner; said paper is marked on the first and last pages thereof as "Defendant's Exhibit No. 15 (Corse), I. B., Examiner, January 28th, 1878," and asks witness to read the same.)

31. Q. Have you read the paper marked "Deft's Exhibit No. 15"?

A. I have.

32. Q. On page 3 of the exhibit it is stated as follows: "We agree with him, the said Marcus P. Norton, to furnish him with such sums of money as he might require, in order to get his said inventions into general use," etc.; did you and Mr. Shaver ever make an agreement of that sort with Mr. Norton?

(Objected to as leading, and for same reasons stated in objection to question 28.)

1467 A. We made an agreement with him to furnish him what sums were necessary to procure these patents and press the thing through, in our opinion.

33. Q. Did you agree to furnish him such sums as he might require?

A. Not to my knowledge.

(Same objection made to this question.)

34. Q. Did you, on the 23d day of February, 1864, or at any other time, make an affidavit in which you stated that you had so agreed?

(Same objection.)

A. I have no recollection of making any such affidavit.

35. Q. How positive are you on the subject?

(Same objection.)

A. I have no recollection of ever making anything of the kind.

36. Q. Have you any reason to suppose that you did not, and if so, what?

(Same objection.)

A. I have; he was owing us considerable amount of money, and I shouldn't have parted with any security that I had until I got something in return for it.

Adjourned to January 29th, at 9.30 a. m.

JANUARY 29*th*—9.30 *p.* m.

Pursuant to adjournment, counsel present yesterday, appeared.

Examination of ALBERT C. CORSE continued:

37. Q. On page 5 of Defendant's Exhibit No. 15, it is stated as follows: "It was also agreed that whenever the said Norton should be able in his own judgment to manage the affairs concerning and
1468 connected with his said inventions, improvements, and letters patent, and to us assigned and transferred in the manner as aforesaid, and upon being requested so to do, we were to reassign, reconvey, and retransfer" the patent of 1863, and every reissue thereof; and on page 6 it is stated to have been agreed, "that whenever he, the said Norton, should for any cause desire, request, or demand of us the reassignment, retransfer, or reconveyance of any or of all his said patents by him assigned to us, under our said agreement with him, and for the purposes aforesaid, then the same should be so done without any trouble to him, or unnecessary delay," and it is also stated on pages 6 and 7 that in consideration of such reassignment the said Norton "was only to pay to us all sums of money, and lawful interest thereon, paid out by us at the request of said Norton, when we should present to him proper vouchers for the same;" did you ever make an agreement with Mr. Norton of the kind indicated in my quotations from Exhibit 15?

(Same objection.)

A. I have no recollection of ever having made any such contract.

38. Q. How sure are you on the subject?

(Same objection.)

A. I am sure that we never should have parted with any security we had until we got something in its place; never having got anything leads me to suppose it was not done.

39. Q. I didn't ask you whether it was done, but whether it was agreed to be done at the time stated in Defendant's Exhibit 15.

(Same objection.)

A. It never was, to my knowledge.

40. Q. If such an agreement had been made, do you think you would now be likely to remember or know of it?

(Same objection.)

1469 A. I think I should.

41. Q. Do you feel positive that you would remember it, if such an agreement had been made?

(Same objection.)

A. To my own mind I think I would.

42. Q. Did you, on the 23d day of February, 1864, or at any other time, make an affidavit in which you stated that it had been so agreed between you, Mr. Shaver, and Mr. Norton?

(Same objection.)

A. I have no recollection of ever having made any such affidavit.

43. Q. If you had made such a one would you or would you not remember it?

(Same objection.)

A. I think I should remember it.

44. Q. Have you any knowledge that Mr. Shaver ever made such an agreement or such an affidavit?

(Same objection)

A. I have not.

45. Q. Would you have known it if he had?

(Same objection.)

A. I think he wou'd have said something to me about it if he had made any such paper at the time.

46. Q. Did he ever say anything to you on the subject?

(Same objection.)

A. He did.

47. Q. When?

(Same objection.)

A. My impression is, it was some time in 1869; it might have been in 1868. I am not positive about it.

1470 48. Q. When did you first hear that there was a paper in existence purporting to be such affidavit and reassignment?

(Same objection.)

A. I think it was in 1869.

49. Q. Was it the time when Mr. Shaver spoke to you about it, as you have stated?

(Same objection.)

A. It was.

50. Q. What did Mr. Shaver say?

(Same objection as above, and also, because it is not competent to give Mr. Shaver's declarations in evidence.)

A. As near as I can recollect, he said he had received a letter from Washington, from some party, stating that Mr. Norton had said that he had papers to that effect. I told him I had just received one pertaining to the same matter, and wanting to know if such was the fact.

51. Q. Did Mr. Shaver say anything more about it?

(Same objection.)

A. We talked about it at various times.

52. Q. State all that Mr. Shaver said at about the time that you first obtained knowledge of the existence of a paper purporting to be such affidavit and reassignment.

(Same objection.)

A. I don't know that I could state all. He said he never had given any such papers.

53. Q. Did you ever see the original paper of which Defendant's Exhibit 15 purports to be a copy?

(Same objection.)

A. I have no recollection of ever having seen it.

1471 54. Q. If you had ever seen it and at the time had known its contents, would you now remember that you had seen it?

(Same objection.)

A. I think I should.

55. Q. Have you any doubt that you would?

(Same objection.)

A. I have not.

56. Q. If, in 1864, you had reassigned the patent of 1863 to Mr. Norton, would you now remember that you had done so?

(Same objection.)

A. I think I should.

57. Q. Have you any doubt about it?

(Same objection.)

A. I haven't.

58. Q. What relations, if any, subsisted between Mr. Shaver and you on the one hand, and Mr. Norton on the other, in 1864 and 1865, in reference to this patent?

(Same objection.)

A. I suppose we were all equally interested. Mr. Norton had one-half, while we had one-half—or were to have.

59. Q. Do you mean one-half of the patent or one-half of the proceeds?

(Same objection.)

A. One-half ot the proceeds—whatever was got from it.

60. Q. What did Mr. Norton do, if anything, in reference to the patent in 1864 or 1865?

A. He drew the papers for a reissue in 1864, or had them drawn up, and I think in 1865 or 1866, I am not sure as to which, he com-
1472 menced a suit before the Court of Claims. I think he procured some signatures of postmasters through the country in relation to the value of the stamp.

61. Q. Was there any suit touching this patent prior to that in the Court of Claims?

A. I think there was one commenced against a party by the name of Hould.

62. Q. Whereabouts?

A. I think the case was tried in Albany, or brought in Albany.

63. Q. Who were plaintiffs?

A. Shaver & Corse.

64. Q. Who had charge of the suit of Shaver & Corse against Hould?

A. Mr. Norton.

65. Q. Who paid the expenses of the suit?

A. I presume Shaver & Corse.

66. Q. Who paid the expenses of the proceedings in the Court of Claims, and of obtaining certificates of postmasters as to the value of the stamps, and in obtaining the reissue of 1864?

A. So far as obtaining those of the postmasters of Brooklyn, Williamsburgh, Binghampton, Syracuse, Rochester, and I think, Buffalo, I paid individually; the others, I presume, were paid by Shaver & Corse, or by Charles Eddy & Co.; I couldn't tell you which.

67. Q. Who composed the firm of Charles Eddy & Co.?

A. At that time Charles Eddy, Jacob Shaver and myself.

68. Q. Who procured the certificates of postmasters at the places you have just named?

A. I did.

69. Q. By going to the several places?

A. Yes, sir.

70. Q. What other steps, if any, were taken towards obtaining compensation for the patent besides the suit against Hould and the suit against the United States in the Court of Claims?

A. Some efforts were made to get an appropriation from Con-
1473 gress; efforts were made to have Congress refer the matter to the Postmaster General for settlement; also efforts were made to get a bill through referring the matter to the Court of Claims.

71. Q. Did you have an agent in Washington to attend to these several matters.

A. We had a gentleman, a lawyer, by name of Merrimon, that had

them in charge at one time, and I think at another time we had a Mr. Clark, of the firm of Weed & Clark, I think; I couldn't say that Mr. Clark was our agent, but I believe he assisted Mr. Norton in drawing some papers there.

72. Q. Who paid the expenses of these gentlemen?

A. I presume Shaver & Corse, or Charles Eddy & Co.

73. Q. Have you any doubt that you and Mr. Shaver paid the expenses, or a part of them?

A. I have not.

74. Q. Did you have any agent from this place in Washington for the purpose you have indicated?

A. None at that time aside from Mr. Norton; I was there more or less, but Mr. Norton attended to the papers.

75. Q. If you had reassigned the patent to Mr. Norton, was there any reason why you and Mr. Shaver should have incurred these expenses?

A. None that I am aware of.

76. Q. Who paid Mr. Norton's expenses while he was in Washington about the purposes you have indicated?

A. Shaver & Corse, Charles Eddy & Co., a portion of them; I couldn't say that they paid them all, you know.

77. Q. With reference to the reissue of 1864, do you recollect what the nature of the expenses were that you paid?

A. I do not.

73. Q. In reference to all the transactions that you have referred to, specify some of the different sorts of expenses that were paid by Shaver & Corse, or by Charles Eddy & Co.

A. There were some printing bills, traveling expenses, and some counsel fees.

1474 79. Q. Do traveling expenses include Mr. Norton's hotel bills?

A. I presume so.

80. Q. Have you any doubt about it?

A. I have not.

81. Q. Who were plaintiffs in the suit against the United States?

A. In the Court of Claims, Shavor & Corse.

82. Q. What was the claim in that suit?

A. The claim was for damages for use of the stamp.

83. Q. Do you recollect whether you made oath in that suit that you and Mr. Shavor own the patent of 1863, and its reissue of 1864?

A. I think I did.

84. Q. Have you any doubt whatever that your oath was true?

A. I have not.

85. Q. Did you, between 1864 and 1869, receive any letters from Mr. Norton in reference to the stamp matter?

A. I did.

86. Q. Did Mr. Shavor, to your knowledge?

A. Yes, sir.

87. Q. About how frequently, when Mr. Norton was out of town, did you and Mr. Shavor receive letters from him on the subject?

A. I couldn't say, but quite often.

88. Q. Look at the paper that I now produce, and which purports to be a letter from Marcus P. Norton to A. C. Corse, esq., dated National Hotel, Washington, D. C., January 24th, 1865, and state, if you know, in whose handwriting it is?

A. (Witness looking at paper.) Marcus P. Norton's.

89. Q. What is that paper?

A. It is a letter from Mr. Norton to myself.

(Letter offered in evidence, and it is marked Def't's Exhibit No. 16 (Corse). I. B., examiner. January 29th, 1878.)

1475 90. Q. Who is Mr. King, referred to in that letter?

A. He was the gentleman who had something to do with the Post-Office Department there; my impression is that he was Postmaster-General or assistant at one time, but not at this time; I think he was; I am not positive.

91. Q. What was his first name?

A. I am not positive, but I think it was Horatio.

92. Q. What did he have to do with the case at this time?

A. He was assisting to prepare some bills.

93. Q. Was he paid for his services, or was there an agreement to pay him?

A. I think we paid him some.

94. Q. Who is we?

A. Shavor & Corse, or Chas. Eddy & Co.

95. Q. What did the bills relate to?

A. To the stamp.

96. Q. The letter states, "the Postmaster-General sent the papers to Congress on the day he promised." What papers?

A. I suppose they were papers in relation to the stamp matter.

97. Q. Who is the Mr. Norton referred to in the body of the letter?

A. (Witness looking at letter.) I couldn't say just now.

98. Q. Was it the same person who subscribed the letter?

A. That I couldn't say.

98. Q. Look at the paper that I now produce, and that purports to be a letter from M. P. Norton to A. C. Corse, esq., dated National Hotel, January 25th, 1865, and state in whose handwriting it is.

A. (Witness looking at paper.) M. P. Norton's.

99. Q. What is that paper?

A. It is a letter from Washington to A. C. Corse, written by M. P. Norton.

100. Q. The same person who wrote the other letter, and is complainant's solicitor here?

A. Yes, sir.

1476 (Letter offered in evidence; it is marked Def't's Exhibit No. 17 (Corse). I. B., examiner. January 29th, 1878.)

101. Q. What suit is referred to in this letter? They say that the suit is conclusive.

A. I suppose it refers to the Hould suit.

102. Q. Look at the paper that I now produce and that purports to be a letter from M. P. Norton to A. C. Corse, dated Troy, N. Y., July 22d, 1863, and state in whose handwriting it is.

A. (Witness looking at paper.) It is in M. P. Norton's handwriting.

103. Q. What is that paper?

A. It is a letter written to A. C. Corse by M. P. Norton.

(Letter offered in evidence; marked Def't's Exhibit No. 18 (Corse). I. B., examiner. January 29th, 1878.)

104. Q. What does this letter mean when it says "I send you certified copies of assignments in our matter"?

A. I suppose it refers to the stamp matter.

105. Q. What does it mean in the postscript when it says "the last patent does not seem to be assigned; at least there is no record of it"; what patent does that refer to?

A. I suppose it refers to the stamp matter.

106. Q. Look at the paper that I now produce that purports to be a

letter from Marcus P. Norton to Shavor & Corse, dated Washington, D. C., January 27th, 1865, and state in whose handwriting it is, and what it is.

A. (Witness looking at paper.) It is a letter from Marcus P. Norton to Shavor & Corse, in Mr. Norton's handwriting.

(Letter offered in evidence, and is marked Def't's Exhibit No. 19 (Corse). I. B., examiner. January 29th, 1878.)

1477 107. Q. Look at the paper that I now produce, and that purports to be a letter from Marcus P. Norton to A. C. Corse, dated Washington, January 28th, 1865, and state what it is, and in whose handwriting.

A. (Witness looking at paper.) It is a letter addressed to A. C. Corse, from Washington, by Marcus P. Norton, and is in Mr. Norton's handwriting.

(Letter offered in evidence, and is marked Def't's Exhi't No. 20 (Corse). I. B., examiner, January 29th, 1878.)

108. Q. What did the additional papers, referred to in this letter as "our papers," relate to?

A. I am sure I don't know; I presume the papers referred to were about the post-office stamp matter.

109. Q. Between 1864 and 1869 did you have any other matter before Congress except the stamp matter?

A. I don't recollect of any other just now.

Adjourned to 2 o'clock p. m.

2 O'CLOCK, P. M., *January 29th*, 1878.

110. Q. Look at the paper now produced and that purports to be a letter from M. P. Norton to A. C. Corse, dated May 15th, 1868, and state in whose handwriting it is, and what it is.

A. (Witness looking at paper.) It is in Marcus P. Norton's handwriting, and is a letter from him to A. C. Corse.

(Letter offered in evidence and marked Def't's Exhibit No. 21 (Corse). I. B., examiner, January 29th, 1878.)

111. Q. What does this letter refer to where Mr. Norton states that he hopes "to be able to convince you all that I have acted honorably and rightfully," if you recollect?

A. I don't recollect now.

112. Q. Look at the paper that I now produce and that pur-
1478 ports to be a letter from Marcus P. Norton to A. C. Corse, dated Troy, December 26th, 1868, and state in whose handwriting it is and what it is.

A. (Witness looking at paper.) It is a letter directed to A. C. Corse in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 22 (Corse). I. B., examiner, January 29th, 1878.)

112. Q. Is the Merrimon here referred to, the agent who you said was employed in regard to this stamp case in Washington?

A. I think he is.

113*a*. Q. Was this bill you were asked to meet here, one relating to the stamp case?

A. I think so.

114. Q. Look at the paper I now produce and that purports to be a letter from M. P. Norton to A. C. Corse, dated Troy, N. Y., January 25th, 1869, and state what it is and in whose handwriting.

A. (Witness looking at paper.) It is a letter from Marcus P. Norton to A. C. Corse, in Norton's handwriting.

115. Q. What does the letter relate to?

A. To the stamp matter.

(Letter offered in evidence and marked Def't's Exhibit No. 23 (Corse). I. B., examiner, January 29th, 1878.)

116. Q. Look at the paper that I now produce and that purports to be a letter from Marcus P. Norton to A. C. Corse, dated February 27th, 1869, at Troy, N. Y., and state in whose handwriting it is and what it is.

A. (Witness looking at paper.) It is a letter written to A. C. Corse by Marcus P. Norton, and is in Norton's handwriting.

(Letter offered in evidence and marked Def't's Exhibit No. 24 (Corse). I. B., examiner, January 29th, 1878.)

1479 117. Q. Look at the paper I now produce and that purports to be a letter from M. P. Norton to A. C. Corse, dated Washington, April 8th, 1869, and state what it is and in whose handwriting.

A. (Witness looking at paper.) It is a letter to A. C. Corse, written by Marcus P. Norton and in his handwriting.

(Letter offered in evidence and marked Def't's Exhibit No. 25 (Corse). I. B., January 29th, 1878.)

118. Q. Look at the paper that I now produce and that purports to be a letter from Marcus P. Norton to A. C. Corse, dated Washington, April 14, 1869, and state what it is and in whose handwriting.

A. (Witness looking at paper.) It is a letter to A. C. Corse, from Marcus P. Norton, in Mr. Norton's handwriting.

119. Q. State all you recollect in regard to the circumstances in connection with the stamp matter to which this letter pertains.

A. My impressions are that I went right on to Washington within a day or so, and that we succeeded in getting the bill before the Senate, I think, but am not positive about that.

120. Q. Who is J. D. Green, referred to here?

A. A gentleman who resides in Troy.

121. Q. What connection had he with this case or with the stamp matter?

A. I have no recollection that he had any at that time.

122. Q. What relation to the case has he had at any time?

A. He had a power of attorney from Shavor and myself to act in the stamp matter; can't tell the date, but think it was later than that.

123. Q. Who are Low and Hatch, referred to here?

A. I suppose it is Peter Low, now of Chicago, formerly of Troy; Hatch was a partner, I think, of Fairbanks & Co., of New York.

124. Q. What connection had they with the stamp matter, if any?

1480 A. Low claimed to have an interest in the 1859 patent; I think Hatch claimed the same; I am not positive as to that; he claimed to have an interest by assignment from somebody.

125. Q. What was the 1859 patent for?

A. It was for postmarking and canceling stamps.

(Letter offered in evidence and marked Def't's Exhibit No. 26 (Corse). I. B., examiner, Jan. 29th, 1878.)

126. Q. Look at the paper I now produce and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Washington, March 23d, 1863, and state what it is and in whose handwriting.

A. (Witness looking at paper.) It is a letter to Jacob Shavor from Marcus P. Norton, and is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 27 (Corse). I. B., examiner, Jan. 29th, 1878.)

127. Q. What patent is referred to in that letter as being just passed for issue.?

A. I suppose it is some stamp; I don't know about that.

128. Q. Was there more than one stamp patent in that year?

A. I don't recollect of but one in 1863; still there may, though.

129. Q. What were the four patents that letter refers to?

A. I couldn't tell you now.

130. Q. Do you mean that you do not recollect?

A. I do.

131. Q. Look at the paper I now produce and that purports to be a letter to J. Shavor, from Marcus P. Norton, dated January 10th, 1864, and state what it is and in whose handwriting.

A. (Witness looking at paper.) It purports to be a letter to Jacob Shavor from Marcus P. Norton; it is in the handwriting of Mr. Norton.

1481 (Letter offered in evidence, and marked Def't's Exhibit, No. 28 (Corse). I. B., examiner, January 29th, 1878.)

132. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to "Dear Jacob," dated Troy, February 27th, 1864, and state in whose handwriting it is.

A. (Witness looking at paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 29 (Corse). I. B., examiner, January 29th, 1878.)

133. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Washington, March 11th, 1864, and state in whose handwriting it is.

A. (Witness looking at paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 30 (Corse). I. B., examiner, January 29, 1878.)

134. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to "Dear Shavor," dated March 20th, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Mr. Norton.

(Letter offered in evidence, and marked Def't's Exhibit No. 31 (Corse). I. B., examiner, Jan. 29, 1878.)

135. Q. Look at the paper I now produce, and that purports to be a request by Marcus P. Norton to Jacob Shavor to pay a bill of $20, dated April 27th, 1363, and state in whose handwriting it is.

A. (Witness examining paper.) It is in Marcus P. Norton's hand.

1482 (Paper offered in evidence and marked Def't's Exhibit No. 32 (Corse). I. B. examiner, Jan. 29th, 1878.)

136. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 2, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 33 (Corse). I. B., examiner, Jan. 29th, 1878.)

137. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 11th, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 34 A & B (Corse). I. B., examiner, Jan. 29th, 1878.)

138. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 15th, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 35 (Corse). I. B., examiner, Jan. 29th 1878.)

139. Q. Look at the paper I now produce, and that purports to be a note from M. P. Norton to "Dear Shavor," dated Aug. 31st, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) M. P. Norton's.

1483 (Paper offered in evidence and marked Def't's Exhibit No. 36 (Corse). I. B., examiner, Jan. 29, 1878.)

140. Q. Look at the paper I now produce, and that purports to be a note from M. P. Norton to J. Shavor, dated Aug. 30th, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) M. P. Norton's.

(Paper offered in evidence and marked Def't' Exhibit No. 37 (Corse). I. B., examiner, Jan. 29, 188.)

141. Q. Look at the paper I now produce, and that purports to be a note from M. P. Norton to "Dear Shavor," dated Sept. 3d, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) It is in M. P. Norton's.

(Paper offered in evidence and marked Def't's Exhibit No. 38 (Corse). I. B., examiner, Jan. 29, 1878.)

142. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to "Dear Shavor," dated Metropolitan Hotel, Dec. 29th, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of M. P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 39 (Corse). I. B., examiner, Jan. 29, 1878.)

143. Q. Look at the paper I now produce that purports to be a letter from Marcus P. Norton to "Dear Shavor," dated January 13th, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 40 (Corse). I. B., examiner, Jan. 29th, 1878.)

1484 142½. Q. Look at the paper I now produce that purports to be a letter from Marcus P. Norton to Jacob Shavor, my dear friend, dated February 3, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 41 (Corse). I. B., examiner, January 29, 1878.)

143½ Q. Look at the paper I now produce that purports to be a letter from Marcus P. Norton to my dear Shavor, dated February 6, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 42 (Corse). I. B., examiner, Jan. 29, 1878.)

144. Q. Look at the paper I now produce, that purports to be a letter

from Marcus P. Norton to dear Shavor, dated February 10, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit 43 (Corse). I. B., examiner, Jan. 29, 1878.)

145. Q. Look at the paper I now produce that purports to be a letter from Marcus P. Norton to Jacob Shavor, esq., dated February 17, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in Marcus P. Norton's handwriting.

(Letter offered in evidence and marked Def't's Exhibit No. 44 (Corse). I. B., examiner, Jan. 29, 1878.)

1485 146. Q. Look at the paper I now produce that purports to be a letter from M. P. Norton to Jacob Shavor, dated February 24, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is Mr. Norton's handwriting.

(Letter offered in evidence and marked Def't's Exhibit N. 45 (Corse). I. B., examiner, Jan. 29, 1878.

Adjourned to January 30th, 1878, at 9.30 a. m.

JANUARY 30, 1878, at 9.30 a. m.

Met pursuant to adjournment.

Counsel present as before.

146½. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated August 2d, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 46 (Corse). I. B., examiner, Jan. 30th, 1878.)

147. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated November 14th, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 47 (Corse). I. B., examiner, Jan. 30th, 1878.)

148. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated November 19th, 1865, and state in whose handwriting it is.

1486 A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 48 (Corse). A. & B., I. B., examiner, Jan. 30th, 1878.)

149. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to J. Shavor, esq., dated November 22d, 1865, and state in whose handwriting it is.

A. (Witness examining paper.) It is in Marcus P. Norton's handwriting.

(Letter offered in evidence and marked Def't's Exhibit No. 49 (Corse). I. B., examiner, Jan. 30th, 1878.)

150. Q. Look at the paper I now produce and that purports to be a letter from Marcus P. Norton to my dear Shavor, dated March 7th, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of M. P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 50 (Corse). I. B., examiner, Jan. 30th, 1873.)

151. Q. Look at the paper I now produce that purports to be a letter from Marcus P. Norton to J. Shavor, dated March 11th, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 51 (Corse). I. B., examiner, Jan. 30th, 1878.)

152. Q. Look at the paper I now produce and that purports to be a letter from Marcus P. Norton to J. Shavor, dated March 19th, 1866, and state in whose handwriting it is.

1487 A. (Witness examining paper.) It is in Marc us P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 52 (Corse). I. B., examiner, Jan. 30th, 1878.)

153. Q. Look at the paper I now produce and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated March 22d, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 53 (Corse). I. B., examiner, Jan. 30th, 1878.

154. Q. Look at the paper I now produce and that purports to be a letter from M. P. Norton to Jacob Shavor, dated March 27th, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In M. P. Norton's.

(Letter offered in evidence, and marked Def't's Exhibit No. 54 (Corse), A & B, I. B., examiner, Jan. 30th, 1878.)

155. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Hon. T. W. Ferry, dated Washington, March 28, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) I couldn't say.

156. Q. In whose handwriting is the signature?

A. (Witness looking at signature.) I should think that was Marcus P. Norton's.

157. Q. Look at the word "injunction" on the 11th page, at about the 11th line down, and state in whose handwriting that word is.

A. (Witness examining word.) I should think that it was in Marcus P. Norton's handwriting.

1488 158. Q. Look at the words "late" and "law," that are interlined on the 6th page, and state in whose handwriting those words are.

A. (Witness looking at words.) I should think that they were in Marcus P. Norton's.

159. Q. Look at the words "purpose the," interlined on the 3d page, and state in whose handwriting they are.

A. (Witness looking at the words.) They are in Mr. Norton's.

160. Q. Look at the word "whereby," on the 7th line of the 2d page, and words "papier mache," on the 17th line of the 2d page, and state in whose handwriting they are.

A. (Witness looking at words.) In Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Exhibit No. 55 (Corse), A, B, C, & D, I. B., examiner, Jan. 30th, 1878.)

161. Q. Look at the paper I now produce, and that purports to be a

letter from Marcus P. Norton to Jacob Shaver, esq., dated March 29, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Exhibit No. 56 (Corse), I B., examiner, Jan. 30, 1878.)

162. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to J. Shavor, dated April 3, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 57 (Corse), I. B., examiner, Jan 30, 1878.)

1489 163. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated April 15th, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 58 (Corse), I. B., Examiner, Jan. 30, 1878.)

164. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated April 18th, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 59 (Corse), I. B., Examiner, Jan. 30, 1878.)

165. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated April 22d, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 60 (Corse), I. B., Examiner, Jan. 30, 1878.)

166. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 2, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 61 (Corse), I. B., Examiner, Jan 30, 1878.)

1490 167 Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 3, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 62 (Corse), I. B., Examiner, Jan. 30, 1878.)

168. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 8, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and Marked Def't's Exhibit No. 63 (Corse,) I. B., Examiner, Jan. 30, 1878.)

169. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated June 6, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 64 (Corse), I. B., Examiner, Jan. 30, 1878.)

170. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated June 12, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 65 (Corse), I. B., Examiner, Jan. 30, 1878.)

1491 171. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated July 15, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Exhibit No. 66 (Corse), I. B., Examiner, Jan. 30, 1878.)

172. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated July 21st, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Exhibit No. 67 (Corse), A & B, I. B., Examiner, Jan. 30, 1878.)

173. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to Jacob Shavor, dated July 30, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Morton's.

(Letter offered in evidence, and marked Defendant's Exhibit No. 68 (Corse), I. B., Examiner, Jan. 30, 1878.)

174. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated July 30, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Exhibit No. 69 (Corse), I. B., Examiner, Jan. 30, 1878.)

1492 175. Q. Look at the paper I now produce and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated October 24, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) It is in the handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Exhibit No. 70 (Corse), I. B., Examiner, Jan. 30, 1878.)

176. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Dec. 15, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 71 (Corse), I. B., Ex'r, Jan. 30, 1878.)

177. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Dec. 29, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 72 (Corse), I. B., Ex'r, Jan. 30, 1878.)

Adjourned to 2 o'clock p. m.

2 O'CLOCK P. M., January 30th.

Met pursuant to adjournment.

Same counsel present.

178. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to dear Shavor, dated Jan. 3, 1867, and state in whose handwriting it is.

1493 (Witness examining paper.) It is M. P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 73 (Corse), I. B., Ex'r, Jan. 30, 1878.)

179. Q. Look at the paper I now produce and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Jan. 5, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) M. P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 74 (Corse), I. B., Ex'r, Jan. 30, 1878.)

180. Q. Look at the paper I now produce and that purports to be a letter from M. P. Norton to Dear Shavor, dated Jan. 9, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) It is in M. P. Norton's handwriting.

(Letter offered in evidence and marked Def't's Ex. No. 75 (Corse), I. B., Ex'r, Jan. 30, 1878.)

181. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Dear Shavor, dated Feb. 1st, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 76 (Corse), I. B., Ex'r, Jan. 30, 1878.)

182. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Feb. 2, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) It is written by Marcus P. Norton.

1494 (Letter offered in evidence, and marked Def't's Ex. No. 77 (Corse), I. B., Ex'r, Jan. 30, 1878.)

183. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor and A. C. Corse, dated Feb. 5, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Written by M. P. Norton.

(Letter offered in evidence, and marked Def't's Ex. No. 78 (Corse), I. B., Ex'r, Jan. 30, 1878.)

184. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated Feb. 5, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 79 (Corse), I. B., Ex'r, Jan. 30, 1878.

185. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Dear Shavor, dated February 6, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 80 (Corse), I. B., Ex'r, Jan. 30, 1878.)

184½. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shaver, dated Feb. 10, 1867, and state in whose handwiting it is.

A. (Witness examining papers.) It is in Mr. Norton's.

1495 (Letter offered in evidence, and marked Def't's Ex. No. 81 (Corse), A & B, I. B., Ex'r, Jan. 30, 1878.)

185½. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to J. Shavor, dated March 6, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In M. P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 82 (Corse), I. B., Ex'r, Jan. 30, 1878.)

186. Q. Look at the paper I now produce, and that purports to be a letter from Norton to dear Shavor, dated March 13, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Ex. No. 83 (Corse), I. B., Ex'r, Jan. 30, 1878.)

187. Q. Look at the paper I now produce, that purports to be a letter from Marcus P. Norton to Dear Shavor, dated March 14, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 84 (Corse), I. B., Ex'r, Jan. 30, 1878.)

188. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shaver, dated March 15, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

1496 (Letter offered in evidence, and marked Def't's Ex. No. 85 (Corse). I. B., Ex'r, Jan. 30, 1878.)

189. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated March 19, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 86 (Corse), I. B., Ex'r, Jan. 30, 1878.)

190. Q. Look at the paper I now produce, and that purports to be a letter from Norton to "Dear Shavor," dated March 28, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Ex. No. 87 (Corse), I. B., Ex'r, Jan. 30, 1878.)

191. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated March 31, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Ex. No. 88 (Corse), I. B., Ex'r, Jan. 30, 1878.)

192. Q. Look at the paper I now produce, that purports to be a letter from Marcus P. Norton to J. Shavor, dated April 3, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

1497 (Letter offered in evidence, and marked Def't's Ex. No. 89 (Corse), A, & B, I. B., Ex'r, Jan. 30, 1878.)

193. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated April 23, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's

(Letter offered in evidence and marked Def't's Ex. 90 (Corse), I. B., Ex'r, Jan. 30 1878.)

194. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to J. Shavor, dated Oct. 16, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 91 (Corse), I. B., Ex'r, Jan. 30, 1878.)

195. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to J. Shavor, dated Oct. 31, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 92 (Corse), I. B., Ex'r, Jan. 30, 1878.)

196. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to J. Shavor, dated March 1, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

1498 (Letter offered in evidence and marked Def't's Ex. No. 93 (Corse), I. B., Ex'r, Jan. 30, 1878.)

197. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to Jacob Shavor, dated March 9, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letters offered in evidence and marked Def't's Ex. No. 94 (Corse), A & B, I. B., Ex'r, Jan. 30, 1878.)

198. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to J. Shavor, dated March 18, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 95 (Corse), I. B., Ex'r, Jan. 30, 1878.)

199. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated March 19, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 96 (Corse), I. B., Ex'r, Jan. 30, 1878.)

200. Q. Look at the paper I now produce, and that purports to be a letter fom Marcus P. Norton to Jacob Shavor, dated March 23, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

1499 (Letter offered in evidence and marked Def't's Ex. No. 97 (Corse), A, B, & C, I. B., Ex'r, Jan. 30, 1878.)

201. Q. Look at the paper I now produce, that purports to be a letter from M. P. Norton to J. Shaver, dated May 3, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 98 (Corse), I. B., Ex'r, Jan. 30, 1878.)

202. Q. Look at the paper I now produce, that purports to be a letter from Marcus P. Norton to J. Shavor, dated May 16, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 99 A, B, & C (Corse), I. B., Ex'r, Jan. 30, 1878.)

203. Q. Look at the paper I now produce, and that purports to be a letter from Norton to J. Shavor, dated May 24, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 100 (Corse), I. B., Ex'r, Jan. 30, 1878.)

204. Q. Look at the paper I now produce, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 31st, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

1500 (Letter offered in evidence and marked Def't's Ex. No. 101 (Corse), I. B., Ex'r, Jan. 30, 1878.)

205. Q. Look at the paper I now produce, and that purports to be a letter from M. P. Norton to Jacob Shavor, dated June 1st, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 102, A, B, & C (Corse). I. B., Ex'r, Jan. 30, 1878.)

206. Q. Look at the paper I now produce, and that purports to be a letter from Norton to Jacob Shaver, dated June 20, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 103, A & B (Corse). I. B., Ex'r, Jan. 30, 1868.)

207. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated June 23, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In the handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 104 (Corse), I. B., Ex'r, Jan. 30, 1878.)

208. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated July 6, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) In Marcus P. Norton's.

1501 (Letter offered in evidence and marked Def't's Ex. No. 105 (Corse), I. B., ex'r, Jan. 30, 1878.)

209. Q. Look at the paper now produced, and that purports to be a letter from M. P. Norton to Jacob Shavor, dated July 18, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence and marked Def't's Ex. No. 106, A & B, & C (Corse), I. B., ex'r. Jan. 30, 1878.)

210. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Jacob Shaver, dated Aug. 23, 1873, and state in whose handwriting it is?

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 107, A, B, C & D (Corse), I. B., ex'r, Jan. 30, 1878.)

Adjourned to January 31st, at 9.30 a. m.

JANUARY 31ST—9.30 a. m.

Met pursuant to adjournment.
Same counsel present.

Examination of ALBERT C. CORSE continued:

211. Q. Look at the paper now produced, and that purports to be a letter from M. P. Norton to dear Shavor, dated January 21, 1864, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 108 (Corse), I. B., ex'r, Jan. 31, 1878.)

1502 212. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to dear Shavor, dated Feb. 24, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Ex. No. 109 (Corse), I. B., ex'r, Jan. 31, 1878.)

213. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated July 24, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 110 (Corse), I. B., ex'r, Jan. 31, 1878.)

214. Q. Look at the paper now produced, and that purports to be an envelope addressed to Jacob Shavor, esq., postmarked Washington, July 24, and state in whose handwriting the ink-writing on that paper is.

A. (Witness examining paper.) In Marcus P. Norton's.

(Envelope offered in evidence, and marked Def't's Ex. No. 110½ (Corse), I. B., ex'r, Jan. 31, 1878.)

215. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated July 25, 1866, and state in whose handwriting it is?

A. (Witness examining paper.) Marcus P. Norton's.

216. Q. Look at the paper now produced, and that purports to be an envelope addressed to Jacob Shavor, esq., postmarked Washington, July 25th, and state in whose handwriting the ink-writing on it is?

1503 A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 111 (Corse), and A, I. B., ex'r, Jan. 31, 1878, and envelope offered in evidence, and marked Def't's Ex. No. 111½ (Corse), I. B., ex'r, Jan 31, 1878.)

217. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Hon. A. W. Randall, Postmaster General, dated Dec. 26, 1866, and also at the envelope now produced, addressed to Jacob Shavor, esq., postmarked Washington, December 27th, and state in whose handwriting the letter is, and the ink-writing on the envelope?

A. (Witness examining both papers.) In Marcus P. Norton's.

218. Q. Look at the interlineations in the letter; are those Mr. Norton's?

A. (Witness examining paper.) They are.

(Letter and envelope offered in evidence, and marked, the former, Def't's Ex. No. 112 (Corse), A and B, I. B., ex'r, Jan. 31. 1878; and the latter, marked Def't's Ex. No. 112½ (Corse), I. B., ex'r, Jan. 31, 1878.)

219. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Hon. A. W. Randall, Postmaster-General, dated Dec. 28, 1866, and state in whose handwriting it is?

A. (Witness examining paper.) I don't know.

220. Q. In whose handwriting is the blue pencil writing on the last page?

A. (Witness examining paper.) In Marcus P. Norton's.

(Letter offered in evidence, and marked Def't's Ex. No. 113 (Corse), I. B., ex'r, Jan. 31, 1878.)

1504 221. Q. Look at the paper now produced, and that purports to be a portion of a letter to Jacob Shavor, dated Jan. 9, 1867, and state in whose handwriting it is?

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence, and marked Def't's Ex. No. 114 (Corse), I. B., ex'r, Jan. 31, 1878.)

222. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated March 25, 1867; and also at the paper that purports to be an envelope addressed to Jacob Shavor, esq., postmarked Washington D. C., March 25, and state in whose handwriting the letter is, and the ink-writing on the envelope.

A. (Witness examining papers.) Both in the handwriting of Marcus P. Norton.

Letter and envelope offered in evidence, and former, with inclosure, marked Def't's Ex. No. 115 A (Corse), and B, and latter Def't's Ex. No. 115½ (Corse), I. B., ex'r, Jan. 31, 1878.)

223. Q. Look at the paper now produced, and that purports to be a letter from Norton to Dear Shavor, dated March 26, 1867; and also at the paper now produced, and that purports to be an envelope addressed to Jacob Shavor, esq., postmarked Washington, D. C., March 26, and state in whose handwriting the letter is, and the ink-writing on the envelope.

A. (Witness examining papers.) Both in handwriting of Marcus P. Norton.

(Letter and envelope offered in evidence, and former marked Def't's Ex. No. 116 (Corse), A & B, and latter Def't's Ex. No. 116½ (Corse), I. B., ex'r, Jan. 31, 1878.)

1505 224. Q. Look at the paper now produced and that purports to be a letter from Norton to Jacob Shavor, dated April 20, 1867, and also at the paper that purports to be an envelope addressed to Jacob Shavor, postmarked Washington, D. C., April 21st, and state in whose handwriting the letter is and also the ink-writing on the envelope.

A. (Witness examining papers.) Both in Marcus P. Norton's handwriting.

(Letter and envelope offered in evidence and marked, the former, Def't's Ex. No. 117, A & B (Corse), and the latter Def't's Ex. No. 117½ (Corse), I. B., Jan. 31, 1878.)

225. Q. Look at the paper now produced that purports to be a letter from M. P. Norton to Jacob Shavor, dated April 25, 1867, and at the paper that purports to be an envelope addressed to Jacob Shavor, postmarked Washington, D. C., April 25, and state in whose handwriting said letter and address are.

A. (Witness examining papers.) In Marcus P. Norton's—both.

(Letter and envelope offered in evidence and marked Def't's Ex. No. 118 (Corse), and Def't's Ex. No. 118½ (Corse), I. B., ex'r, Jan. 31, 1878.)

226. Q. Look at the paper now produced and that purports to be a letter from Marcus P. Norton to Jacob Shavor dated April 25, 1867, and at the paper that purports to be an envelope addressed to Jacob Shavor, postmarked Washington, D. C., April 25, and state in whose handwriting the letter and the address on said envelope are.

A. (Witness examining paper.) Both in Marcus P. Norton's.

(Letter and envelope offered in evidence and marked Def't's Exhibit No. 119 (Corse), A, B, & C, and Def't's Exhibit No. 119½ (Corse), I. B., ex'r, Jan. 31, 1878.)

1506 227. Q. Look at the paper now produced and that purports to be a letter from Marcus P. Norton to Jacob Shavor, dated April 22, 1869, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Exhibit No. 112 (Corse), I. B., ex'r, Jan. 31, 1878.)

(Complainant's counsel objects to the introduction of above letter for the reason that there has been an apparent alteration made in its date.)

228. Q. Look at the paper now produced that purports to be a letter from Marcus P. Norton to A. C. Corse, dated May 13, 1869, and the paper that purports to be an envelope addressed to A. C. Corse, postmarked Washington D. C., May 15, and state in whose handwriting the letter and the address on the envelope are.

A. (Witness examining papers.) Both in the handwriting of Marcus P. Norton.

(Letter and envelope offered in evidence and marked Def't's Ex. No. 121 A & B (Corse), and Def't's Ex. No. 121½ (Corse), I. B., ex'r, Jan. 31, 1878.)

229. Q. In whose handwriting is the figure "9" in the date in above Exhibit No. 120?

A. (Witness examining paper.) I should think it was in Marcus P. Norton's.

230. (By Mr. WILLIAMS.) Is not the figure "9" in "1869" in said letter of a much darker and different color from the other figures with which it is connected?

A. (Witness examining figures.) I think it is; it looks to me as if he caught something on the end of his pen when he went to make that.

The witness being ill is excused until Friday morning, Feb. 1st, 1878, at 9.30 a. m.

Adjourned to 2 p. m.

1507 MONDAY MORNING, *Feb.* 3, 1878—at 9.30 a. m.

Met pursuant to adjournment.

Same counsel present.

Direct examination of ALBERT C. CORSE continued:

231. Q. Look at the paper now produced and that purports to be a letter from Shavor & Corse to Hon. Alex. W. Randall, Postmaster-General, dated June 10, 1868, and state in whose handwriting it is.

A. (Witness examining paper.) The handwriting in the body of the letter is Marcus P. Norton's, and the signature is in my handwriting.

(Letter offered in evidence and marked Def't's Ex. No. 122 (Corse), I. B., ex'r, Feb. 4, 1878.)

232. Q. Look at the paper now produced and that purports to be a letter from Marcus P. Norton to A. C. Corse dated October 23, 1869, and state in whose handwriting it is.

A. (Witness examining paper.) Handwriting of Marcus P. Norton.

(Letter offered in evidence and marked Def't's Ex. No. 123 (Corse), I. B., ex'r, Feb. 4, 1878, A & B.)

233. Q. Do you recollect what the arrangement referred to in the last letter was?

A. I think it refers to a contract made between Mr. Eddy and Mr. Norton in the fall of 1869.

234. Q. Was that after you had discovered the existence of the pretended reassignment?

A. Yes, sir.

235. Q. Was the arrangement made by Mr. Eddy put in writing?

A. I think it was.

236. Q. What was the general character of the arrangement; what was it to do?

1508 A. As I understood it, they were to put all the patents in together and press them for settlement with the government.

237. Q. Was this 1863 patent or the reissue one of those?

A. I think it was.

238. Q. What interest in the '63 patent were you to have or were you given by this arrangement, if any?

A. I don't now recollect.

239. Q. Was Mr. Eddy authorized to make such arrangement as he saw fit?

A. He was.

240. Q. Orally or in writing?

A. I think orally.

241. Q. Was the arrangement that was made, made according to Eddy's judgment without previous consultation with you?

A. We had some conversation in relation to it before he went to Washington.

242. Q. Did the conversation relate to the terms that should be agreed on and accepted?

A. I don't now recollect, but I think it was left entirely with him to do as he saw fit when he should get there.

243. Q. Do you know whether or not the patent of '63 was reissued in '69?

A. I do not.

244. Q. Did you ever assent to a reissue of the patent in '69?

A. Not to my knowledge?

245. Q. Either before or since '69?

A. It was reissued in 1864.

246. Q. Have you either before or since '69 assented to a reissue in 1869?

A. Not to my knowledge.

247. Q. Did Mr. Shavor?

A. Not to my knowledge.

248. Q. Did you or Mr. Shavor, either before or since, assent to a reissue of the patent in 1870?

A. Not that I know of.

1509 249. Q. What is your best recollection?

A. I have no knowledge of any transaction of that kind.

250. Q. Do you know whether or not the patent was reissued in 1870?

A. I have no knowledge of it.

251. Q. I think your testimony as to the agreement you had with Mr. Norton, prior to the issuing of the '63 patent, is not wholly distinct on the record; please state fully what the agreement was, specifying who, under the agreement, was to have the entire legal title, who was to pay the expenses, and what was to be the disposition of the proceeds or profits of the patent, if any.

A. Shavor and Corse were to have the title; they were to pay all

necessary expenses, and were to have one-half of the net proceeds; the balance was to go to Mr. Norton or his heirs.

252. Q. "Net proceeds;" what do you mean by that exactly?

A. After the expenses we had been to were taken out, the balance was to be divided.

253. Q. Did you have any other security for the money advanced, except the holding of the title?

A. On this '63 patent you mean?

254. Q. Yes?

A. We had an assignment of a '62 patent.

255. Q. What I want to know is, whether you had any other security for the money advanced upon the thing that was patented in '63, except the holding of the title to the patent of '63?

A. None that I know of.

256. Q. Which was regarded as the really valuable patent?

A. I always regarded the patent of 1863 and 1864.

257. Q. At any time between 1864 and 1869, did Mr. Norton in any way whatsoever pretend or claim, to you' knowledge, that he was the owner of the '63 patent?

A. He did not.

1510 258. Q. Did he, during that time, treat you and Mr. Shavor as the owners of said patents?

A. He did.

259. Q. On what patent was the suit in the Court of Claims based?

A. I think it was on the '63 and '64.

260. Q. Was it the same as the one on which applications for compensation were made to Congress and the Postmaster-General between 1864 and 1869?

A. I think it was.

261. Q. Look at the paper which I now produce, and which is marked Def't's Ex. No. 126 (Campbell), and which has been produced by the plaintiff as the original of the alleged reassignment, and state whether, on inspection of said alleged original, you' memory is in any respect refreshed as to the matters you have testified to in regard to said reassignment, and whether you wish to make any correction in the testimony you have given so far.

(Mr. Williams objects. Defendant's counsel having procured and filed said paper, as a part of his evidence in this case, complainant's counsel objects to any evidence on his part now tending to discredit or impeach the validity of said exhibit.)

A. I do not.

262. Q. Look at the signature, "Albert C. Corse," to that document, and state whether it is your signature.

A. (Witness examining signature.) It looks like it.

263. Q. In whose handwriting is the body of the instrument?

A. (Witness examining instrument.) In Marcus P. Norton's.

264. Q. In whose handwriting is the jurat on page 11—the part beginning with the words "subscribed and sworn to"—on the same lines with the signatures?

A. I couldn't say.

1511 265. Q. You are familiar with Mr. Norton's handwriting; is it his, in your judgment?

A. (Witness examining paper.) I shouldn't be willing to swear it was.

266. Q. Supposing the signatures on the 11th page to be genuine, did you ever deliver that document to Mr. Norton, with intent to pass title to the patent of 1863?

(Objected to, as tending to contradict the instrument, and otherwise incompetent.)

A. I did not.

267. Q. You are sure of it, are you?

A. I am.

268. Q. Did Mr. Shavor, to your knowledge?

A. Not to my knowledge.

269. Q. Was, or was not, Mr. Norton your attorney in February, 1864?

A. I think he was.

270. Q. State fully as many reasons as you can for believing that that document was never made by you.

(Same objection made as to question 261.)

A. In the first place, if we parted from the title, we would not have reissued the patent of 1864, thereby putting ourselves in a false position before the government; we shouldn't have sued Hould claiming to be the owners of the patent; we shouldn't have went to the Court of Claims, claiming to be the owners of that patent, if we hadn't supposed we owned it; we shouldn't have applied to Congress for relief if we hadn't supposed that we had the title, nor we wouldn't have spent the amount of money that we spent in the matter if we didn't suppose that we had the title; nor Mr. Norton never intimated to me, either verbally nor in any other manner, but what the title was in us; and I never heard to the contrary until some time about the 1st of August, 1869.

1512 271. Q. Was Mr. Norton cognizant, during all the time between 1864 and 1869, of what was being done in the stamp matter, and of the representations which you and Mr. Shavor made to the courts, to the departments and to Congress, as to the ownership of said patent?

A. He was.

Q. Did he ever in any manner protest against your claim of ownership?

A. Not to me.

273. Q. Did Mr. Norton personally do a large part of the work that was done in this matter before the courts, the departments and Congress?

A. He did.

274. Q. Have you ever conveyed to anybody the 1863 patent?

A. Mr. Shavor and I assigned a portion of it, I think in the spring of 1869—it might have been spring or winter of 1869—I mean February or March.

275. Q. To whom?

A. To Charles Eddy.

276. Q. Was that before you had heard of the alleged reassignment?

A. It was.

Cross-examination by Mr. WILLIAMS:

277. Q. When did Mr. Norton commence to do professional business for or in connection with Shavor and Corse, or Charles Eddy & Co.?

A. I think in 1859.

278. Q. When did he render the last professional services for those persons, or either of them?

A. I should think somewhere in 1873—'73 or '74, I think.

279. Q. Has there ever been any final settlement of accounts between Mr. Norton and Shavor & Corse, or Charles Eddy & Co.?

1513 A. I think that in 1869, when Mr. Eddy made this arrangement in Washington, he took a paper passing receipts up to that time.

280. Q. Have you paid him for his professional services since that date?

(Objected to by Mr. Clarke as utterly immaterial.)

A. I couldn't say. I think he has had money since that time.

281. Q. Can you state about the amount?

(Same objection.)

A. I could not. I don't think that I have ever looked at his account from that date to the present.

282. Q. Who wrote to you from Washington, in 1869, that Mr. Norton claimed to have a reassignment of this patent?

A. John J. Weed.

283. Q. Do you remember the date of that letter?

A. No; I do not. I think I can produce it, however.

284. Q. Was Mr. Weed your attorney, or acting for you in any way?

A. He was not, at that time, for me.

285. Q. What reason did he give for writing to you?

(Objected to, that the writing should be produced.)

A. Well I couldn't say now without examining the letter. My impressions are now that he had some accommodation in money matters, and I presume it was through that, although I wouldn't be positive.

286. Q. Was Mr. Horatio King your attorney in Washington?

A. Never was employed by me.

287. Q. Did you ever pay him anything for services rendered to you as an attorney in this business?

1514 A. I have no recollection of ever having paid him anything.

288. Q Were you aware of the fact that he was acting for you in Washington?

A. I know that he was assisting Mr. Norton there, but who he was employed by, unless by Mr. Norton, I couldn't say.

289. Q. How many affidavits have you made in reference to the patent business with Norton before John T. Lamport?

A. I couldn't say.

290. Q. Have you not made several affidavits of that kind before him?

A. I think we have.

291. Q. Can you remember now the contents of those different affidavits which you made?

A. I cannot.

292. Q. Were not those affidavits made to meet objections that were made in Congress, and to facilitate an appropriation to pay for the use of this patent by the government?

A. I presume so, but I couldn't say. I know there were several made, but what the contents were I couldn't tell you now.

293. Q. Do you remember that on the 12th day of January, 1865, you and Mr. Shavor made an affidavit before John T. Lamport, of this city, in which you stated that you assumed title and control of the patent of 1863 to save it from the unworthy creditors of Norton, or anything to that effect?

A. I do not.

294. Q. Are you willing to swear that you did not make any such statement and affidavit?

A. I have no recollection of any such document.

295. Q. According to your last statement of the original contract between you and Norton about the patent of 1863, you were to get one-half of it, or of the proceeds, as I understand you, for nothing; is that so?

A. We were to get one-half for advancing the money and taking the chances of getting it through—paying expenses.

1515 296. Q. Were you a witness in the Court of Claims in the case of Corse and Shavor against the United States?

A. I don't recollect that I was.

297. Q. You have stated that in that suit you made oath that you and Shavor owned the patent of 1863 and its reissue of 1864. When and how did you make that oath?

(Objected to because the question misrecites the evidence, witness having only stated that he thought he took the oath.)

A. I couldn't say. I suppose in order to commence the suit we should have to make an affidavit that we were the owners of the patent. It is simply from recollection. I haven't seen the record, that I know of, within the last six or seven years.

298. Q. You do not know, then, as I understand you, whether you made oath to the complaint or not?

A. I am not positive, but I suppose that we did.

299. Q. Can you tell the date of the first conversation you had with Norton about this patent, or the invention patented in 1863?

(Objected to as immaterial and not called for by anything testified to on the direct.)

A. I could not. My impressions are that it was some time in 1862, referring to the '63 patent.

300. Q. You have stated in your direct examination that the agreement with Mr. Norton did not apply specially to the patent of 1863, but that it was a general one, and applied to the patents of 1859, 1862, and 1863. When was that agreement made—before or after the patent of 1859?

(Objected to as immaterial.)

A. It was after the '59 patent and after the '62 patent that this '63 matter came up.

301. Q. Did the agreement with Norton embrace all three of those patents?

1516 A. So far as his interests were concerned, as I understood it; as my memory serves me now, the '59 patent or a portion of it had been transferred to Ransford & Low; that Norton held an interest in it —I am giving it to you now as I remember it—and that interest they were to assign to Charles Eddy & Co. in consideration of moneys paid and to be paid; we were paying bills along from time to time as they occurred for Mr. Norton, about his office, cleaning his office, curtains, coal bills, clerk hire, &c.

302. Q. Did you have an assignment of that patent?

A. Of the '59 patent I think there was an assignment made by Ransford & Low; I don't know whether by both or by one as attorney.

303. Q. Did you have an assignment of the patent of '62?

A. Yes, sir.

Adjourned to 2 o'clock p. m.

2 p. m., met pursuant to adjournment; same counsel present.

304. Q. What was the consideration for that assignment?

(Objected to as immaterial.)

A. Moneys advanced, and being advanced from day to day.

305. Q. With how many patents of every nature and description have you and Shavor, or Chas. Eddy & Co., been connected together with Mr. Norton?

A. I couldn't say.

306. Q. Are there not as many as six or eight altogether?

A. All the assignments that I can now recollect were, there was a portion of the '59 patent, the '62 patent, and the '63 patent; then
1517 we were to have an interest in a mail bag, or paper bag, I couldn't say which, or both; there was a railroad chair; then there was, personally, an interest in some kind of a "shut-off," I think, for a fire-engine, patented by a man named Nims, I think.

307. Q. Do you remember being connected with him in a whisky meter, in car-wheel patents, and also in a patent issued to one Hagan, also in a patent to one Grooms?

A. The car wheel I have no recollection about; the whisky meter, I do; I was on to Washington before the committee there; Hagan's and Grooms' matters were between Mr. Shavor and Norton, or rather my impressions now are that Mr. Louis Potter, and Mr. Shavor and Mr. Hagan were some way connected with a dissulphurizer for taking impurities from gold; they were the parties principally interested; Norton and myself were to have an equal interest with Shavor in the Grooms matter, also in the Hagan matter.

308. Q. Was not Mr. Norton, in prosecuting claims under the patent of '63, acting as well for himself as for you and Shavor?

A. I supposed he was.

309. Q. In whose handwriting is the signature of Jacob Shavor, on page 11 of Def'ts Ex., No. 126?

A. (Witness examining signature.) It resembles Mr. Shavor's.

310. Q. Don't you think it is Mr. Shavor's?

A. There are some things about it that lead me to think that it is not.

311. Q. What are the things?

A. It appears to be written with a tremulous hand; the "a" in Jacob is not written as he usually wrote an a, and the "cob" in Jacob is crowded; the "o" is crowded, right in between the "c" and the "b"; he usually wrote a very round and plain hand; what I mean by that is a steady hand; I don't now recollect of ever having seen him make a "J" in that shape.

312. Q. Will you swear that that is not the handwriting of Jacob Shavor to that instrument?

1518 A. I will not.

313. Q. Will you swear that the signature of Albert C. Corse is not in your handwriting?

A. No, sir.

314. Q. Do you know the handwriting of John T. Lamport?

A. I do not to designate it.

315. Q. When did you first hear of the interest of Miss Ingalls in this patent?

A. My impression is, it was somewhere in the fall of 1869.

316. Q. What did you hear about it then?

A. I don't know that I could tell now just what it was; whether Norton had assigned to her or she had reissued the patent, I couldn't say.

317. Q. You had heard that the patent was reissued to her?

A. I had, but whether it was in 1869, 1870, or 1871 I couldn't say; for, after the contract made between Norton and Mr. Eddy, I think in the fall of 1869, I have given the matter but very little thought or attention.

318. Q. Did you have anything to do with the application that was made to the Postmaster-General for compensation under an act of Congress approved July 14, 1870?

A. I may have had, but I don't now recollect.

319. Q. Who was the attorney of record in the case of Shavor and Corse against Hould, for the plaintiffs?

A. I couldn't say, unless it was Mr. Norton; I don't know as I ever gave it any attention, except to sign such papers as were requested by Mr. Norton.

320. Q. Did you pay anybody for professional services for the plaintiffs in that case?

A. I have no recollection of paying any; I presume Mr. Shavor did, he usually paid the bills himself.

321. Q. Was Mr. Gale—John B. Gale, of this city—an attorney for you in that case?

1519 A. I couldn't say.

322. Q. Who was your attorney in the case in the Court of Claims?

A. Well, there were two or three, or more, that had something to do with that; there was Merrimon, a man named Peck, a lawyer there; there was another man whose name I don't remember—Merrick, I think his name was.

323. Q. Did you pay Mr. Merrimon for his professional services in that case?

A. I have no recollection of paying any one but Mr. Peck, and I think his bill was made out in the name of the firm in which he was a partner.

324. Q. Do you know how the attorney for the defendant obtained Mr. Norton's letters to Mr. Shavor?

A. I do not.

325. Q. Do you know how he obtained the letters of Mr. Norton to Mr. Corse?

A. I do; I gave them to him.

326. Q. You have stated that Mr. Norton was your attorney; are you aware that the relations between client and attorney are generally regarded as confidential?

(Objected to as assuming a fact that does not exist in the form stated.)

A. I am not.

327. Q. If you were to write to your attorney confidential letters about your business in his hands, and you should afterwards get into a lawsuit with another party, and he should turn those confidential letters over to your antagonist to be used against you in that suit, wouldn't you regard him as a scoundrel?

(Objected to, because how the witness would regard it is immaterial, and because the matter inquired about is irrelevant to the circumstances of this case, since there is no rule protecting an attorney from a

1520 disclosure of his statements to his client, though there may be protecting a client from a discovery of his disclosures to his attorney.)

A. If he advanced sums of money and we had refused to pay it, I should consider him perfectly justified.

Redirect examination by Mr. CLARK:

328. Q. In your cross-examination reference was made to a final settlement of accounts having been made in 1869; did such settlement contain an assignment by you to Norton of any interest in the '63 patent, or any admission that he was the owner thereof?

(Objected to, because the transaction is in writing, which is in evidence.)

A. I did not so understand it.

329. Q. When you stated that Mr. Norton was acting for himself as

well for Shavor and you under the '63 patent, did you intend to convey any other impression by that than that you supposed such to be the fact, because, under the agreement, Norton was to have half of the proceeds?

(Objected as leading.)

A. I did not.

330. Q. Are you sure that it was in the fall of 1869, and not later, that you first heard of Miss Ingalls' alleged interest?

A. I am not.

(The testimony was read over to the witness, and he was asked if he desired to make any correction in it; witness states that in regard to his testimony about their connection with Mr. King, he would add that according to his recollection Mr. King came on to Troy and stated to him that Mr. Norton had promised him an interest in the patent,
1521 but whether or not they paid Mr. King anything at that time for his services he does not now remember.

Defendant's counsel offers in evidence a certified copy of the alleged reassignment by Shavor and Corse to Norton, dated February 23, 1867, and which, in the direct examination of the witness Corse, was referred to as Defendant's Exhibit No. 15, the same being marked as Def't's Exhibit No. 15 (Corse), I. B., Examiner, January 28th, 1878.

ALBERT C. CORSE.

Subscribed and sworn to before me this 4th day of February, 1878.

IRVING BROWNE,
Special Examiner.

FEBRUARY *4th*, 1878.

Met pursuant to adjournment.

Same counsel present.

(Defendant's counsel offers in evidence a certified copy of an assignment by Marcus P. Norton to Jacob Shavor and Albert C. Corse, purporting to be dated 20th April, 1863, recorded March 8th, 1864; received and Marked Def't's Ex. No. 15—A (Corse), I. B., Ex'r, Feb. 4, 1878.

Defendant's counsel offers in evidence a certified copy of an alleged assignment from Marcus P. Norton to Charles Eddy, as trustee for Albert C. Corse and Jacob Shavor, purporting to be dated October 23, 1869, and to be recorded Oct. 25, 1869; received and marked Def't's Ex. No. 15—B (Corse), I. B., Ex'r, Feb. 4, 1878.

1522 Defendant's counsel offers in evidence a certified copy of an assignment from Marcus P. Norton to Helen M. Ingalls, purporting to be dated Oct. 23, 1869, and recorded Aug. 1, 1870; received and marked Def't's Ex. No. 15—C (Corse), I. B., Ex'r, Feb. 4, 1878.

Defendant's counsel offers in evidence a certified copy of an article of agreement between Marcus P. Norton and W. W. Secombe, purporting to be dated Aug. 15, 1870, and to be recorded Nov. 1st, 1870, and to be subscribed by Marcus P. Norton; received and marked Def't's Ex. No. 15—D (Corse), I. B., Ex'r, Feb. 4, 1878.

Defendant's counsel offers in evidence a certified copy of an article of agreement between Helen M. Ingalls and W. W. Secombe, purporting to be dated Oct. 4, 1870, and to be recorded Nov. 1st, 1870, and to be subscribed by Helen M. Ingalls; received and marked Def't's Ex. No 15—E (Corse), I. B., Ex'r, Feb. 4, 1878.

Defendant's counsel offers in evidence a certified copy of an assignment from Helen M. Ingalls to William W. Secombe, purporting to be

dated March 4th, 1871, and to be recorded March 11th, 1871, received and marked Def't's Ex. No. 15—F (Corse), I. B., Ex'r, Feb. 4, 1878.

Defendant's counsel offers in evidence a certified copy of an assignment from the Secombe Manufacturing Company, and W. W. Secombe, president, to Helen M. Ingalls, purporting to be dated July 10, 1873, and to be recorded September 20, 1873, received and marked Def't's Ex. No. 15—G (Corse), I. B., Ex'r, Feb. 4, 1878.

Defendant's counsel offers in evidence the foregoing, and also
1523 the memorandum of agreement purporting to be executed by William A. Wheeler, F. G. Ransford, Albert C. Corse, Charles Eddy, Jacob Shavor, Peter Low, William B. Hatch, April 22d, 1870, and to be recorded May 11th, 1870, under the certificate of the Patent Office, that they are a true copy from the records of that office of all assignments of record under letters patent granted Marcus P. Norton April 14, 1863, number 38175.

Complainant's counsel objects to said memorandum of agreement because it is irrelevant, and also to said certificate of the Patent Office, because the same is not true, and the law confers no power on the Commissioner to certify that said copies are "all" of the copies of assignments of record in relation to said patent.

(Received and marked Def't's Ex. No. 15—H (Corse), I. B., Ex'r, Feb. 4, 1878.)

Adjourned to Feb. 5, 1878, 10.30 a. m.

IRVING BROWNE,
Special Examiner.

JANUARY 31*st*, 2 p. m.

Met pursuant to adjournment.

Same counsel present.

CHARLES EDDY, being called as a witness and duly sworn, testified as follows:

By Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?
1524 A. Charles Eddy; age, 62 years; residence, 192 North 2d street, Troy, N. Y.; and am a stove manufacturer.

2. Q. Do you know Marcus P. Norton, the complainant's solicitor here?

A. I do.

3. Q. How long have you known him?

A. I think about 18 years.

4. Q. Have you ever had any business connections with him in regard to any patent relating to post office stamps?

A. I don't know what you mean by "business" there.

5. Q. Have you ever made any contract or agreement, or been connected with him in any similar transactions in regard to such a patent?

A. I have.

6. Q. What patent was it?

A. A patent known as Norton's Postmarking and Cancelling Stamp, patented in 1863.

7. Q. When did you first have such transactions with him?

A. I think it was in October, 1869.

8. Q. What was the nature of the transaction?

A. It was an assignment, by Norton to me, in trust, for Charles Eddy & Co., of which I was a member, of a one-third interest and a consideration of $20,000, to be paid to me from the first moneys that might

be realized from the government or any other source, for the past or future use, of said patent of 1863.

9. Q. Who, then, composed the firm of Chas. Eddy & Co.?

A. Myself, Jacob Shavor and Albert C. Corse.

10. Q. Was the firm of Chas. Eddy & Co. then in existence?

A. As a firm, no; not at that date; but it was in existence in the interest of this patent and the settlement of that matter.

11. Q. Was this agreement you have spoken of in writing?

A. Yes, sir.

1525 12. Q. Was it in the form of an assignment?

A. Yes, sir; it was in the form of an assignment and an agreement.

13. Q. Was the assignment recorded in the Patent Office?

A. Yes, sir.

14. Q. Was the agreement you have spoken of a part of the assignment—a part of the same document, I mean?

A. I think the assignment was on a separate paper from the agreement, but for correctness I would rather see the papers.

15. Q. What became of the papers?

A. I believe we have them, or rather I have them.

16. Q. Do you remember whether or not the agreement that you think was separate from the assignment was an oral or a written agreement?

A. It was written.

17. Q. Is that written agreement in your possession?

A. It is.

18. Q. About what time was the assignment recorded, if you recollect?

A. I think it was October 23, 1869.

19. Q. Whereabouts are the assignment and agreement; are they here?

A. I have the agreement here, but the assignment is at my office.

20. Q. Please let me see it.

(Witness produces the agreement.)

21. Q. I see that this purports to be signed, sealed, and delivered in presence of John I. Weed and W. Penn Clark; where are those gentlemen now, if you know?

A. I believe they are in Washington, D. C.

22. Q. Where were they the last you knew of them?

A. They were in Washington, D. C.

23. Q. What was their business there?

A. They were a law firm, under the name of Weed & Clark, or Clark & Weed, I am not sure which.

1526 24. Q. Did you ever know of their ever having any residence in the State of New York?

A. I do not know.

25. Q. Do you know Mr. Weed's handwriting?

A. I do.

26. Q. Did you ever see him write?

A. I have.

27. Q. Is that his signature?

A. (Witness examining signature.) It is.

28. Q. Do you know Mr. Clark's handwriting?

A. I know it by seeing him write his name to this document.

29. Q. That is his signature?

A. It is.

30. Q. Do you know Marcus P. Norton's handwriting?
A. I do.
31. Q. Did you ever see him write?
A. I did.
32. Q. Is that his signature?
A. (Witness examining signature.) It is.
33. Q. Is your signature subscribed to that?
A. It is.
34. Q. In whose handwriting is the signature of Jacob Shavor and Albert C. Corse?
A. (Witness examining signature.) It is mine.
35. Q. Were you authorized to sign their names?
A. I believe I was.
36. Q. How was the authority given, orally or in writing?
A. Orally.
(Agreement offered in evidence, and marked Def't's Ex., No. 125. (Eddy). I. B., Ex'r, Jan. 31, 1878.)
37. Q. What were the differences and disagreements referred to in the beginning of this exhibit?
(Mr. Williams objects to this question, and to all questions proposing to explain or change the written instrument produced, as it is entirely plain in its language upon its face.)
1527 A. (Witness examining paper.) I don't think I can express it in any better language than contained in the instrument itself as to the main fact.
38. Q. With reference to the ownership of the invention referred to, what were the claims of the respective parties to this instrument?
(Same objection.)
A. Mr. Norton claimed that he was the owner by virtue of a reassignment from Mr. Shavor & Corse of the patent of 1863, known as the Norton stamp patent; Mr. Shavor and Mr. Corse claimed that they had made no such assignment, and that all differences were to be considered amicably settled by this instrument, and the assignment, which was a part of this transaction by Mr. Norton to Chas. Eddy & Co., or Chas. Eddy, Jacob Shavor, and Albert C. Corse, composing the firm of Chas. Eddy & Co., and the several releases named in said agreement.
39. Q. Do you mean in your answer to convey the impression that it was the claim of Shavor & Corse only that all differences were to be considered amicably settled by this instrument, &c., or that such was the claim of both—Shavor & Corse on one hand and Mr. Norton on the other?
A. I mean to include myself—Shavor and Corse on the one hand, and Mr. Norton on the other.
(Defendant's counsel objects to all the last part of the answer to question 38, beginning with "and that all differences were to be considered amicably settled," &c., on the gound that that portion of the answer is irresponsive to the question, and because it tends to vary the contents of a written document.)
40. Q. How did Shavor and Corse claim that they owned the original patent?
(Same objection.)
A. By assignment from Mr. Norton.
1528 41. Q. When?
A. I think in 1863.
42. Q. When did Mr. Norton claim that Shavor and Corse had reassigned?

(Same objection.)

A. I think it was in 1864; my recollection now.

43. Q. Was it this reassignment of 1864 that Shavor & Corse denied having made at the time of this settlement you have spoken of?

A. It was.

44. Q. Did Mr. Norton make any statement in regard to Shavor & Corse having executed the reassignment?

(Same objection as above, and also because it is not competent to give Norton's declarations in evidence.)

A. He did.

45. Q. What did he say?

(Same objection as above.)

A. He said that Shavor and Corse executed that assignment for the purpose of use before the committee of Congress, and that said assignment never was intended for record, nor for the conveyance of any equity interest of Shavor and Corse, and that said assignment was so used, as aforesaid, before said committee, and was left in the archives of the committee room until about July, I think, of 1869, and that it was an afterthought of Mr. Norton's that such an instrument was in existence, and that he hired a clerk, I think a clerk in that department, to go and search for that instrument, for which he paid him $5; he obtained it and put it on record, as he then said, for his own protection.

46. Q. Did he claim that he had a right to put it on record?

(Same objection.)

1529 A. Well, he said he had no right to put it on in equity.

47. Q. Were mutual releases executed, as was agreed should be done in this Exhibit No. 125?

A. They were.

48. Q. Where is the release made by Mr. Norton?

A. I believe I have it at the office.

(Defendant's counsel requests witness to produce release at his earliest convenience.)

49. Q. Where is the release that you gave to Mr. Norton?

A. I don't know.

50. Q. Where did you last see it?

A. In Washington, where it was executed.

51. Q. Who took possession of it?

A. Mr. Norton.

52. Q. Did Mr. Norton pay you, as trustee, &c., any money, besides executing the release, assignment, and agreement that you have spoken of?

A. He did not.

53. Q. Did he then owe you, or Messrs. Shavor and Corse, any money?

A. He did.

54. Q. Have you stated that the assignment was made out and executed in pursuance of this agreement, Exhibit No. 125, was it?

A. It was.

55. Q. Do you know Helen M. Ingalls?

A. I know her by sight; never had any personal acquaintance.

56. Q. Do you know whether or not Mr. Norton ever conveyed, or pretended to convey, by an instrument in writing, the patent of 1863, or any reissue thereof, to Miss Ingalls?

A. I know only by the records of the Patent Office that he has.

57. Q. Did you know, at the time of the making of the agreement

(Exhibit No. 125) that Mr. Norton had conveyed, or pretended to convey, the patent of 1863, or any reissue to Miss Ingalls?

1530 A. I did not.

58. Q. Did Mr. Norton owe you anything personally at that time?

A. I think he did.

59. Q. Did he owe anything to the firm of which you were a member?

A. He did.

60. Q. To the firm of Chas. Eddy & Co., that you have referred to?

A. Yes, sir.

61. Q. When did you first hear of the pretended assignment to Miss Ingalls?

A. I think not till 1871 or 1872; I am not positive as to the date.

62. Q. Was the patent of 1863, or a reissue thereof, reissued in 1870, to your knowledge?

A. It was not, to my personal knowledge, except as I have seen it reported in some of the papers pertaining to this matter.

63. Q. When did you first hear of the reissue of 1870?

A. I don't know.

64. Q. Did you, prior to such reissue, consent that the reissue then in force should be surrendered, and that new letters patent should be issued?

A. I never did—to my knowledge and belief now.

65. Q. Since the reissue of 1870, have you ever assented to or ratified the surrender of the patent, as it was prior to 1870, and to the issue of the new letters patent in 1870?

A. I have not, to my knowledge now, and I don't believe I ever did.

66. Q. Did you have anything to do with this stamp matter, between 1864 and 1869, personally?

A. I did not.

67. Q. Has Mr. Norton ever been discharged from the obligation to pay the debts which you say he owed you at the time of the making of the agreement and assignment in October, 1869?

A. Never; only as provided in that agreement, releases and assignment.

1531 68. Q. Did they discharge him?

A. Well, I think that is a legal question to be determined by the papers.

69. Q. Did the papers that you have referred to purport to discharge Mr. Norton from those debts?

A. I think not—only that compensation was obtained, and the money paid to us in that way which would discharge him from those debts undoubtedly.

70. Q. How did you come to be connected with the matter, so as to act in 1869 in the way you have described for Shavor & Corse, and for yourself?

A. When the firm of Chas. Eddy & Co. was dissolved, in January, 1869, I found the moneys which had been advanced to Mr. Norton were still the moneys of Chas. Eddy & Co., and in making a settlement upon this matter I assumed one-third of the liability of Mr. Norton to the firm of Chas. Eddy & Co., for which I received from Jacob Shavor and Albert C. Corse an assignment of an undivided one-third interest in this patent of 1863, which, if they did not own, was a fraud on me.

71. Q. Was this assignment in writing?

A. I believe it was.

(Complainant's counsel objects to any parol evidence of said assignment, as it is in writing and not produced.)

72. Q. Where is that assignment, Mr. Eddy?

A. I suppose it is among my papers, but I don't know; I haven't seen it in a long time.

73. Q. Was the assignment recorded?

A. I don't know.

(Witness is requested to make a search for the assignment and produce it.)

74. Q. At the time of the assignment you speak of, did you know anything about the pretended reassignment of 1864?

A. I did not; if I had, I would not have made any such agreement.

1532 Witness excused until Friday morning, February 1st, 1878, at 9.30 a. m.

Adjourned to February 1st, 1878, at 9.30 a. m.

FEBRUARY 1st, 1878—9.30 a. m.

Met pursuant to adjournment.

Same counsel present.

75. Q. At the time of the assignment of the one-third interest to you as trustee in 1869 by Mr. Norton, did you know that any interest in the patent had then been assigned to Helen M. Ingalls?

A. I did not.

78. Q. State as nearly as you can what the amount of the indebtedness of Mr. Norton was to the members of the firm of Chas. Eddy & Co. at the time of the assignment of the one-third interest, and of the mutual releases of which you have spoken?

A. Eighteen thousand dollars and over; I don't know exactly how much.

79. Q. Do you desire to correct any part of your testimony?

A. I would like to have the clerk read that part of my answer referring to the absolute release of Mr. Norton's indebtedness to us.

(Question 69 and answer were read to witness.)

WITNESS states: I want to correct that answer, by stating that the papers do purport to give him an absolute release.

80. Q. Was that release under seal?

A. My recollection is that it was.

Cross-examination by Mr. WILLIAMS:

82. Q. Mr. Norton was not to pay you anything, as I under-
1533 stand, and you were not to receive anything by virtue of this arrangement in 1869, until money had been obtained from the government for the use of the stamp?

(Objected to because it tends to vary a written instrument.)

A. I can't vary the answer from the contract.

83. Q. What was your understanding on the subject?

(Same objection.)

A. I don't remember to have had any understanding different from the contract.

84. Q. Do you consider yourself capable of understanding this contract?

A. I think I do.

85. Q. Can you not then tell me what your understanding of it is on that subject?

A. I can, if you give me the paper. (Paper handed witness.) "That in consideration of certain large sums of money heretofore paid out for and advanced to Marcus P. Norton, by the firm of Chas. Eddy & Co., and by Albert C. Corse and Jacob Shavor, in procuring patents for said inventions, in litigation in regard to said patents, and for its introduction into general use by the Post-Office Department, there shall be paid to and received by the said Chas. Eddy, in trust for himself and Albert C. Corse and Jacob Shavor, the sum of $20,000 out of the first moneys paid by and received from the United States, from any source or in any way, for the past or future use of said invention."

86. Q. (By the witness to Mr. Williams.) Is there any other way that I can answer your question without reading the whole paper, that you can suggest?

1534 87. Q. (By Mr. WILLIAMS) Are you not aware that nothing has yet been received by anybody from the government or any other source, for the use of that stamp?

A. I believe there has not.

88. Q. Was there any understanding at the time this agreement was made in 1869 as to who should advance money or provide means for the prosecution of this claim against the government

(Objected to on the ground that the understanding must be found in the paper, if anywhere.)

A. There was none to my recollection, for the reason that we believed we should be able to effect a settlement with the Postmaster General, immediately after the execution of these papers, without any expense or cost to any one, and further that Mr. John I. Weed and W. Penn Clark, myself, Mr. Norton, went immediately after the execution of this paper to Postmaster-General Cresswell, for that purpose—for the purpose of settlement—and informed him (Creswell) that all differences between the owners of said patent were amicably settled, and that Mr. Norton and myself, as trustee, were the only owners of interests in this patent, and had full power to settle the same with the government; Mr. Cresswell solicited from us a proposition for settlement, which was made, considered by him, and rejected—that appeared to be the end of the controversy on the subject with the Postmaster-General.

(Defendant's counsel objects to all the answer after the word "recollection" in the first line, on the ground that it is irresponsive to the question.)

89. Q. Was the provision in the contract for the payment of the $20,000 intended to embrace and cover the moneys which Mr. Shavor and Corse or Eddy & Co. had advanced to Mr. Norton, in the business of procuring and prosecuting claims for patents?

1535 (Objected to on the ground that the intention must be found in the instrument.)

A. It was intended to cover the claim of Charles Eddy & Co.

90. Q. I understood you to say that Shavor and Corse, instead of advancing their own money to Norton, had advanced the moneys of Charles Eddy & Co., which you found out upon the dissolution of the firm; am I correct?

(Objected to as immaterial.)

A. That was correct.

91. Q. These moneys were charged to Mr. Norton, were they, on the books of Charles Eddy & Co.?

(Objected to, on the ground that the contents of a written document cannot be brought out in this way, and on the ground that it is immaterial.)

A. They were.

92. Q. You stated, if I understood you, that Shavor and Corse, when this discovery was made by you, assigned to you one-third of the patent of 1863; is that correct?

A. That is correct.

93. Q. When Mr. Shavor and Mr. Corse made this assignment to you, they retained, as you understood it—did they—one-sixth of the patent for themselves?

A. I didn't understand any such thing.

94. Q. How much of the patent did you understand them to retain for themselves at that time?

A. Two thirds.

95. Q. Can you state whether or not you were in Washington in October, 1870?

A. I don't remember.

96. Q. Can you remember whether you were there at any time in 1870?

A. I don't now remember.

1536 97. Q. When was the firm of Charles Eddy & Co. dissolved?

A. I think the papers of dissolution were finally executed in March, but it was dissolved, as to all intents and purposes, in January, 1869.

(Witness states he wants to correct the answer, so as to have it appear that the assignment from Norton to him was recorded October 25th, 1869, instead of October 23, 1869.)

CHARLES EDDY.

Subscribed and sworn to before me, this 1st day of February, 1878.

IRVING BROWNE,
Special Examiner.

FRIDAY MORNING, *February* 1*st*, 1878.

Same counsel present.

CHRISTOPHER C. CAMPBELL, called as a witness on the part of the defendant, and, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence and occupation?

A. My name is Christopher C. Campbell; age, 43 years; residence, East Chatham, N. Y., and am station agent on Boston and Albany railroad.

2. Q. Are you the complainant in this case?

A. I am.

3. Q. When did you first become interested in the so-called Norton post-office stamp?

A. I think the assignment from Miss Ingalls to me was executed January 2d, 1877; I had no legal interest that I know of previous to that.

4. Q. Had you any interest previous to that?

1537 A. I had an interest previous to that, so far as I had arranged with her for an interest in the stamp, patented to Mr. Norton, and afterwards assigned to me, as stated in my last previous answer.

5. Q. When was this arrangement you speak of made?

A. Some time in the fall previous.

6. Q. Did you swear to the bill of complaint herein?

A. I did.

7. Q. Was this arrangement with Miss Ingalls that you have spoken of, in the fall of 1876, oral or in writing?

A. Oral.

8. Q. State what the arrangement was.

(Objected to as immaterial, and the arrangement was afterwards reduced to writing.)

A. The arrangement will appear in the original assignment from Miss Ingalls to me; I cannot give the exact language in regard to it.

9. Q. Was there anything in the arrangement which does not appear in the assignment of January 2nd?

A. I think not.

10. Q. Did you pay Miss Ingalls any money for assigning her interest to you?

A. I did; through her agent, Mr. Norton.

11. Q. When?

A. After the assignment was executed.

12. Q. Did you pay her anything, except after the execution of the assignment, and except through Mr. Norton?

A. I have not—only as called for by the assignment and through Mr. Norton, as her agent.

13. Q. Did you pay her anything at all before the assignment was made, or at the time of the making of it?

A. I think I have answered that question.

14. Q. Please answer it again, if you have.

A. I did not pay her anything previous to that.

15. Q. Have you paid her anything personally since?

1538 A. I have not.

16. Q. When did you pay anything to Mr. Norton for her?

A. I have paid him at different times—different dates—from that time to the present—the dates of which I do not remember without reference to memoranda.

17. Q. Mr. Norton is your solicitor in this case?

A. He is.

18. Q. Did Miss Ingalls ever authorize you to pay moneys to Mr. Norton for her.

A. She did.

19. Q. When?

A. At the time the assignment was made.

20. Q. Was the authority oral or in writing?

A. Oral.

21. Q. State what Miss Ingalls said at that time.

A. I am not able to state the exact language from memory.

22. Q. State as nearly as you can.

A. As near as I can, Mr. Norton was to be her agent, and whatever money was paid according to the assignment I was to pay to him; I don't remember anything else.

23. Q. Was the money referred to, money for expenses in prosecuting your attempts to get compensation for the stamp, or was it money to be obtained from the government or otherwise as compensation, or both?

A. The money I was to pay was to be for expenses, and not money to be received as compensation; I would add, that such moneys as were received for compensation, were to be receipted for by Miss Ingalls and myself, as stated in the original assignment from Miss Ingalls to me.

24. Q. Have you paid any other money except for expenses?

A. Only as stated in the assignment, which reads in consideration of so much money paid, the amount of which I do not remember.

25. Q. Have you paid any money except for expenses?

1539 A. I have.

26. Q. When and to whom?

A. At different times—I can't state the dates from memory—to Mr. Norton, her agent.

27. Q. What did you pay money except for expenses for?

A. For an interest in the patent.

28. Q. How much did you pay her?

A. Can't state the amount now, not having any memoranda of it with me.

29. Q. Were the sums that have been paid agreed to be paid by the assignment?

A. They were not specified in the assignment.

30. Q. Were you under any obligation to pay them?

A. No written obligation.

31. Q. Under an oral?

A. No.

32. Q. Why did you pay them?

A. I paid them at the request of Mr. Norton, her agent.

33. Q. Are you accustomed to pay money to any one who asks you for it?

A. Under certain circumstances.

34. Q. What were the circumstances in this case that induced you to pay those sums?

A. I don't remember the circumstances at this time.

35. Q. What is your best recollection?

A. My recollections are that Mr. Norton requested it for her; in the course of conversation with him I became satisfied to pay the money as requested by him.

36. Q. What satisfied you?

A. The conversations with Mr. Norton.

37. Q. Do you, or did you, recognize any right or claim on the part of Miss Ingalls or Mr. Norton to obtain sums of money other than for expenses in this matter?

1540 A. I did not consider myself bound to pay them—bound by any writing, any further than we arranged at the time it was paid; that is to say, had I not been willing to pay it at the time, they could not have collected it.

38. Q. Did you ever promise to pay these sums?

A. I did not.

Adjourned to February 1st, at 2 p. m.

2 O'CLOCK P. M.

Met pursuant to adjournment.

Same counsel present.

39. Q. Were you under any agreement with any person aside from Miss Ingalls and Norton to pay these sums?

A. No.

40. Q. Have you at any time been a party to any agreement in relation to this stamp matter, other than the assignment which you rely on in the bill of complaint, and other than the arrangement which you say you had with Miss Ingalls in the fall of 1876?

A. I have.

41. Q. With whom?

A. With E. W. Ely, R. C. Clark.

42. With any other person?

A. Yes; with Austin Bartlett and F. J. Childs.

43. Q. Any other person?

A. Those are all.
44. Q. Where do those gentlemen reside?
A. In Chester, Mass., but Bartlett lives in Becket, Mass.
45. Q. Was there more than one agreement with these people?
A. There was.
46. Q. How many?
A. Three; one with Ely and Clark, and one each with Bartlett and Childs.
1541 47. Q. Are these agreements all that you have been a party to in this stamp matter?
A. There is an agreement from Clark to C. W. Merrifield, and I think my name is to it—am not positive, but think it is.
48. Q. Where does Mr. Merrifield reside?
A. He lives in Becket, Berkshire Co., Mass.
49. Q. Are those all the agreements?
A. Those are all I remember of.
50. Q. Which was the first in the order of time?
A. As I have stated them.
51. Q. That with Ely and Clark?
A. Yes.
52. Q. When was that made?
A. I think in the last of December, 1876—some time in December.
53. Q. Was that after the arrangement you had with Miss Ingalls?
A. It was.
54. Q. Did you have any arrangement or understanding with Ely and Clark before you entered into that with Miss Ingalls or at the time thereof?
A. I did not.
55. Q. Was the agreement with Ely and Clark oral or in writing?
A. In writing.
56. Q. Who drew up the agreement?
A. Mr. Norton, I think.
57. Q. Where is the agreement?
A. I do not know.
58. Q. Where was it the last you knew of it?
A. I placed it in the mail the last I knew of it, directed to E. W. Ely.
59. Q. When?
A. I can't state the time; don't remember.
60. Q. About when?
A. It might have been the first of January, 1877; it might not have been till the last.
61. Q. Are you sure it was as long ago as January, 1877?
A. I wouldn't swear positive.
1542 62. Q. Are you sure it was six months ago?
A. To the best of my recollection it was longer ago than that.
63. Q. Have you seen it since you mailed it to Mr. Ely at that time?
A. I have no recollection of seeing it since.
64. Q. To what place was it addressed when put in the mail?
A. Chester, Massachusetts.
65. Q. Where is Mr. Ely now?
A. I couldn't tell you where he is now.
66. Q. Where was he the last you knew of him?
A. I saw him at Chester the last I knew of him—the last time I saw him.

67. Q. Were there three originals of this agreement made—one for each of the parties.

A. Not to my knowledge—no more than one.

68. Q. Is this agreement under your control; could you get it if you sent for it?

A. I don't think I could; I don't see why I should; it is not under my control.

69. Q. You were a party to it, were you not?

A. I was.

70. Q. Why do you think you could not obtain it if you were to send for it?

A. It occurred to me in my last answer that they wouldn't like to part with it or let it go out of their possession.

71. Q. Not into your possession simply?

A. That was what I wished to be understood in my last answer.

72. Q. What reason have you for thinking that they would not give you possession of it, when you are a party as much as they are?

(Complainant's counsel objects to any further continuance of this examination, on the ground that it is encumbering the record with frivolous and immaterial matters.)

A. For the reason that Mr. Ely is very peculiar in those things—
1543 he keeps his papers close; and from business transactions I have previously had with him.

73. Q. Have you sent for this agreement since you were subpœnaed in this case?

A. I have not.

74. Q. State what that agreement was.

A. In consideration of certain moneys paid to me by said Ely and Clark, they were to have a certain proportion of the recovery.

75. Q. What proportion?

A. One-twelfth.

76. Q. Each?

A. Each.

77. Q. What was to be done with the rest?

A. The balance was to remain in my hands.

78. Q. What to be done with it by you?

A. By my assignment from Miss Ingalls I am to have one-third of the recovery; the balance is to be received by Miss Ingalls by receipting for the same in my presence.

79. Q. This was before the assignment, was it?

A. This was the assignment from Miss Ingalls.

80. Q. Was the arrangement with Ely and Clark before the assignment from Miss Ingalls?

A. It was.

81. Q. By the arrangement you were under with Miss Ingalls at the time of the agreement with Ely and Clark, were you to have one-third of the recovery?

A. Previous to my making the arrangements with Ely and Clark I was to have one-third of the recovery, by agreement with Miss Ingalls.

82. Q. Was there any provision as to what was to be done by you with the moneys advanced by Ely and Clark?

A. There was; they were to be used in paying expenses.

83. Q. According to your own discretion?

A. Yes, by counseling with them.

84. Q. Is that all you remember as to the provisions of that agreement?

1544 A. That's all I remember.

85. Q. When was the next agreement made?

A. I think it was made in June, 1877.

86. Q. Who were the parties to it?

A. Bartlett and myself.

87. Q. What was that agreement?

A. It was similar to the one with Ely and Clark.

88. Q. In all respects?

A. Yes, with the exception of the first consideration.

89. Q. How did that differ—in amount only?

A. In amount only.

90. Q. Was Bartlett to have one-twelfth?

A. He was.

91. Q. Is that all you remember about that agreement?

A. That's all.

92. Q. Who drew it up?

A. I think I did.

93. Q. Who were the parties to the next agreement, and when was it made?

A. F. J. Childs and myself; it was made, I think, in the fore part of July, 1877.

94. Q. What was that agreement?

A. The same as Bartlett's.

94a. Q. In all respects?

A. I think it was.

95. Q. Conveying to Childs one twelfth of the recovery?

A. Yes.

96. Q. Is that all you remember about that agreement?

A. That's all.

97. Q. What interest have you yourself now in the recovery?

A. I have a one-twelfth interest.

98. Q. How do you make that out, you having already conveyed four twelfths?

A. I had an arrangement with Miss Ingalls whereby I was to receive one-twelfth more than my one-third previously assigned.

1545 99. Q. When was that made?

A. It was made a short time previous to the agreement with Childs—I think in June, 1877.

100. Q. Where is that agreement?

A. I do not know where it is now, but I suppose it to be in the hands of my solicitor, Mr. Norton.

101. Q. Was it there the last you knew of it?

A. Yes.

101a. Q. Have you asked him to produce it since you were subpœnaed?

A. I had a conversation with him in regard to it.

102. Q. I ask you to produce it.

A. I cannot produce it without the consent of my counsel.

103. Q. Where are the other agreements—those with Bartlett and Childs?

A. I don't know—I suppose them to be in possession of the parties named.

104. Q. Did Mr. Norton tell you to object to producing the agreement with Miss Ingalls?

A. Mr. Norton said he would produce it at the proper time.

105. Q. Did he tell you to decline to produce it when I asked for it?

A. He did.

106. Q. When was the agreement with Merrifield made?

A. About November 1st, 1877.

107. Q. Who are parties to that?

A. Merrifield and Clark—and I think myself, as I have stated before.

108. Q. What was that agreement?

A. An agreement whereby Merrifield was to have one-half of Clark's one-twelfth.

109. Q. Is that all?

A. Merrifield was under the same obligation to Clark that Clark was to me.

110. Q. Have you ever conveyed any part of your title to the patent to anybody since you received it?

A. I have not.

1546 111. Q. Has anybody conveyed any other interest in the patent to you since you first had anything to do with it?

A. Not by assignment.

112. Q. In any way?

A. I have an agreement with Miss Ingalls for the one-twelfth I now hold.

113. Q. Any other with any person?

A. No other.

114. Q. Who first began negotiations with you in regard to this stamp matter?

A. Mr. Norton.

115. Q. When?

A. In the fall of 1876.

116. Q. Did you have an examination of the title made?

A. I got the records of the Patent Office in regard to the title.

117. Q. Did you discover the assignment to Charles Eddy, as trustee for himself, Shavor and Corse, in 1869?

A. I think there was one assignment that mentioned Charles Eddy, but what it related to I couldn't say at this time—whether it was 1869 or not I couldn't say.

118. Q. Did you discover any re-assignment from Eddy, or any assignment from him to Miss Ingalls?

A. I don't remember that I did.

119. Q. Why did you go into this thing when the title was apparently defective?

A. I wrote to the Commissioner of Patents to know if there were any assignments of the Norton patent; he answered that there were five—I think four or five, I am not positive; I then wrote to him for copies of those assignments, which he sent me; I took those copies to Mr. Norton for his explanation, he being my counsel and solicitor in another case; he explained it to me, that is, the title, to my entire satisfaction, consequently I made the arrangement as heretofore stated.

120. Q. Is Mr. Norton paid anything for his professional services in this case?

1547 A. Not by me, nor by any one I know of.

121. Q. Have you any arrangement with him to pay him anything at any time?

A. I have not.

122. Q. Is there any arrangement or agreement in existence, to your knowledge, by which he is to receive any part of any sum that may be recovered in this matter?

A. None that I know of.

123. Q. Where is the original assignment by Miss Ingalls to you?

A. I do not know where it is now—I suppose it to be in Mr. Norton's possession; it was sent to New York by me to his address some two months ago.

124. Q. Can you produce it?

A. With the advice and consent of my counsel.

(Witness is asked to produce assignment.)

(Counsel for complainant produces the assignment for inspection and use of the counsel for the defendant, but not to be made an exhibit in this deposition; but if required it will be produced, on the hearing of this case, for the use of the court.

Defendant's counsel states that if he takes the document it must be without any conditions, so that if he thinks proper he shall consider himself at liberty to offer the instrument in evidence, and have it attached to the deposition of the witness as an exhibit, and wishes to be informed whether it is understood thoroughly that he will do with it as he thinks best.

Counsel for complainant consents that the witness may be examined with reference to the paper, but reserves the right to consent as to whether it shall be an exhibit or not, after the evidence is given.)

1548 125. Q Please produce the assignment, understanding that I shall offer it in evidence if I think fit.

A. Witness says the answer is now here.

126. Q. Will you do as I request?

A. I cannot do so any further than I have.

127. Q. Why?

A. I am advised not to by my counsel.

128. Q. How far have you produced it?

A. By requesting counsel to bring it into court.

129. Q. Where is the original of the assignment which, in your bill of complaint, is alleged to have been made on or about the 20th of October, 1869, from Marcus P. Norton to Helen M. Ingalls?

A. I do not know.

130. Q. Did you ever see it?

A. I think I have.

131. Q. When and where did you last see it?

A. At the Hubbel House in Canaan, New York, about two months ago.

132. Q. Since you were subpœnaed have you endeavored to obtain it?

A. I have not.

133. Q. Why?

A. It was in the possession of Mr. Norton, and out of my control.

134. Q. Mr. Norton is your solicitor, is he not?

A. Yes.

135. Q. Does he give any reason for not producing papers that relate to the case?

A. He has not objected to producing papers, but said he would at the proper time.

136. Q. Does he give any reason for not putting you in possession of the papers, so that you can produce them when I call for them?

A. No more than that he would do it when he thought proper.

137. Q. Will you now use your best endeavors to obtain possession of this paper, so that you can produce it?

A. If there is no objection on the part of my counsel I will do so.

1549 138. Q. Please do so?

139. Q. Have you done so?

A. (Witness to Mr. Norton.) Mr. Norton, do you make any objections to doing so?

140. Q. Have you used your best endeavors to obtain possession of the paper?

A. I think I have.

141. Q. What have your endeavors been?

A. Asking Mr. Norton if he were willing that I should produce it; Mr. Norton says it is not in his possession at present, but that he has sent for it, and expects it in a few days, with other original papers, and then will produce it.

142. Q. Where is the original of the assignment which in your bill of complaint is stated to have been make on the 23d day of February, 1864, by Jacob Shavor and Albert C. Corse to Marcus P. Norton.

A. I suppose it is in the hands of Mr. Norton.

(Counsel for complainant states that he has that assignment in his possession, but that it will not be produced until he has had an opportunity to cross-examine Mr. Corse as to what he has said about it—then it will be produced.

Defendant's counsel gives notice that he desires to examine Mr. Corse in regard to that original on direct examination, and generally, that it may be put in evidence, so that other witnesses may be called in order to testify as to its genuineness.)

143. Q. Is it under your control?

A. It is not.

144. Q. It is in the possession and under the control of your counsel, is it?

A. It is.

145. Do they decline to give it to you, so that you can produce it when I ask for it?

A. They have done so.

1550 146. Q. Do you decline to produce it?

A. I do not.

By Mr. CLARKE: Please produce it.

(Instrument produced by witness.)

147. Q. When did you first see this document?

A. I think it was in the fall of 1876.

148. Q. Do you produce this as the original assignment from Shavor, and Corse to Norton?

A. I do.

(Instrument offered in evidence, and marked Deft's Ex., No. 126 (Campbell). I. B., Ex'r. Feb, 1st, 1878.)

Cross-examination by Mr. WILLIAMS:

149. Q. I understand that these agreements with other persons to which you referred were personal obligations of yours to pay the money when you received it, and it was in no way to affect your title to the patent; is that so?

A. That is so.

150. Q. State about how much money you have advanced, or paid out, under the assignment from Miss Ingalls, up to this time.

A. About $5,000.

151. Did you take the title to the patent, mentioned in the assignment from Miss Ingall's to you, upon the faith of the record title that was sent to you from the Patent Office?

A. I did.

152. Q. Referring to what you said about your agreement with Miss Ingalls, as to an additional one-twelfth interest in the patent, do you wish to make an additional statement as to the whereabouts of that agreement at this time, or in any way about it?

A. I wish to correct my statement in regard to that answer in
1551 this respect by stating that the agreement for the additional one-twelfth was made by Miss Ingalls to Merrifield and Clark.

153. Q. That would leave you the right to one-twelfth of the proceeds, under the original assignment, would it?

A. It would.

CHRISTOPHER C. CAMPBELL.

Subscribed to and sworn before me this first day of February, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned to Feb. 1st, at 7 o'c. p. m.

7 o'c. p. m., Feb. 1.—Met pursuant to adjournment; same counsel present.

Adjourned to Feb. 4th, 1878, at 9.30 o'c. a. m.

FEBRUARY 5TH, 1878—10.30 a. m.

Met pursuant to adjournment; same counsel present.

Miss HELEN M. INGALLS, called as a witness for the defendant, and being duly sworn, testified as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Helen M. Ingalls; reside at Canaan, N. Y.; age 36 years; have no occupation.

2. Q. What relation, if any, are you to Mr. Norton, the complainant's solicitor here?

1552 A. His sister-in-law.

3. Q. Are you the person who assigned to the complainant in this action, Christopher C. Campbell, on or about the 2d day of January, 1877, the patent granted to Marcus P. Norton, in 1863, for an improvement in post-office stamps, and certain reissues of said patent?

A. I am.

4. Q. What interest, if any, if you know, has Allen C. Smith, of East Chatham, in the stamp matter?

A. I know nothing of it.

5. Q. Has any agreement been made with any person providing that under any conditions whatever they shall receive any portion of any sums of money that may be recovered in the stamp matter?

A. The agreement, I presume, is set forth in the assignment.

6. Q. Have there been any other agreements made except what appear in the assignment?

A. I know of no other.

7. Q. Do you know anything about an agreement made by Mr. Campbell with a person named Ely, whereby Mr. Ely is to receive $\frac{1}{12}$th of what sums may be recovered?

A. I do not.

8. Q. Do you know anything about such an agreement made by Mr. Campbell with a person named Clark?

A. I do not.

9. Q. With a person named Bartlett?

A. I do not.

10. Q. With a person named Child or Childs?

A. I do not.

11. Q. With a person named Merrifield?

A. I think not.

12. Q. Do you recollect what interest Mr. Campbell was to have by the assignment?

A. I can't think just now.

13. Q. Just look at the bill of complaint, and see if your recollection is refreshed.

A. (Witness looking at complaint.) I presume that is right; one third.

1553 14. Q. Have you at any time, since the assignment, made any additional agreement with Mr. Campbell, by which he is to receive an additional one-twelfth, or something of that sort, of whatever may be recovered?

A. There is an agreement, something of that kind.

15. Q. Is it oral or in writing?

A. I think it is in writing.

16. Q. Where is it?

A. I don't know just where it is.

17. Q. Where was it the last you knew?

A. I think it must have been put with other papers after it was made.

18. Q. Where?

A. I think with my own papers.

19. Q. In what place?

A. I don't know just where they are.

20. Q. Where would you look for them, if you wanted to find them?

A. I should look where I thought they might possibly be—among other papers.

21. Q. Please tell me where that agreement is, to the best of your knowledge.

A. I can't tell exactly where it is; I am sure I don't know.

22. Q. Please tell where it was the last you knew of it.

A. I haven't very good recollection about it.

23. Q. You know there was such an agreement, do you not?

A. I think there was.

24. Q. Now, where was it the last you knew of it?

A. I don't recollect whether the arrangement was made in New York or Canaan; wherever it was made it was there I last saw it.

25. Q. Who took possession of it then?

A. I think I must have done so.

26. Q. What did you do with it?

A. I probably put it with other papers.

27. Q. Have you made any search for it since you were subpoenaed?

1554 A. I looked for all papers connected with this case.

28. Q. Do you mean that you looked for this agreement?

A. Not for this one in particular, but for all papers.

29. Q. Did you endeavor to find this one?

A. I looked for all that had anything to do with the case; every one.

30. Q. What search did you make for this agreement?

A. I looked where I kept all papers.

31. Q. Had you any reason to suppose that you would find this one in the place you looked?

A. I didn't think of that one paper specially.

32. Q. Did you find this one?
A. I think not.
33. Q. Is there any other place than where you looked that this paper would be likely to be?
A. It is possible Mr. Campbell may have had it.
34. Q. Why didn't you ask Mr. Campbell for it?
A. It didn't occur to me to do so.
35. Q. Do you think he has?
A. I haven't thought about it since; I don't know who has it.
36. Q. Did Mr. Norton ever have it, to your knowledge?
A. I don't remember.
37. Q. Do you know Allen C. Smith, of East Chatham?
A. I don't think I have ever met him.
38. Q. Do you knew whether or not there is such a person?
A. I have reason to suppose there is.
39. Q. Did you ever directly or indirectly have any transaction with him in regard to the stamp matter?
A. I don't remember of any arrangement with him.
40. Q. Did you ever sign any paper in regard to the stamp matter to which he was or was intended to be a party in any way?
1555 A. I don't remember anything of the kind.
41. Q. What is your best recollection, that you did or did not?
A. I don't think I did.
42. Q. Did you with any person by the name of Smith?
A. I think not.
43. Q. Did Mr. Norton, to your knowledge, ever have any transactions with Smith in regard to the stamp matter?
A. I don't know of any.
44. Q. When did you first become personally interested in the stamp matter?
A. I don't remember just when—I have always been interested in it; I don't understand the question exactly.
45. Q. In what way have you always been interested in it?
A. In the same way that we would be interested in any business.
46. Q. That your brother-in-law was in, is that the idea?
A. Certainly.
47. Q. In any other way than that?
A. Not before it was my own—before the assignment.
48. Q. What assignment do you refer to?
A. The assignment of 1869.
Q. Was there any assignment before that time?
A. No; not to me.
49. Q. Was there an assignment to you in 1869?
A. There was.
50. Q. Do you remember the date?
A. I think it was the 20th of October; I could refer to the assignment for the date.
51. Q. Have you any other way of remembering except by the assignment?
A. I can't think of any other way—trust my memory with anything.
52. Q. Have you the original assignment?
A. I don't think I have it.
1556 53. Q. Where is it, or was it the last you knew?
A. I sent it to New York with other papers; don't remember the date; it was some time in the winter; at least, I gave it to Mr. Campbell.

54. Q. Have you tried to get it since you were subpœnaed?

A. I spoke of all the papers; I supposed Mr. Campbell would bring them all up.

55. Q. Did you speak to Mr. Campbell since you were subpœnaed about the papers?

A. Not to him personally.

56. Q. To whom?

A. I sent him a message saying that the papers would be needed.

57. Q. How long since you saw the original of the '69 assignment?

A. I think it must have been when he took them all last winter.

58. Q. Was it a month ago or two months?

A. It may have been two months ago or more.

59. Q. When you said "last winter" did you mean '77 and '78 or 1876–7?

A. '77 and '78.

60. Q. Do you remember examining this assignment about the time of sending or giving the papers to Mr. Campbell?

A. I hadn't time to examine them—my time was quite limited.

61. Q. What is your best recollection as to whether or not you examined this assignment?

A. I am quite sure I didn't examine any of them—at least read them.

62. Q. How long should you say it was since you examined this '69 assignment?

(Mr. Williams objects to this course of examination, for the reason it is encumbering the record with frivolous and immaterial matter.)

A. I don't recollect just how long.

63. Q. Make a rough estimate of how long—one year or two?

1557 A. It may be three or four years, but I would not trust myself to say how long.

64. Q. Is your memory very distinct in general?

A. Not unless there is some very decided association.

65. Q. Are you sure that the assignment didn't take place on the 23d of October, 1869, and not on the 20th?

A. I don't remember any change.

66. Q. Do you remember that it was dated on the 20th?

A. I have always so understood it from reading it.

67. Q. What did you mean by "change," in your last answer but one?

A. I meant that I couldn't change the testimony as given; I said it was about the 20th.

68. Q. "About the 20th," you mean that it was the 20th?

A. I think it is so stated in the assignment.

69. Q. How is it you remember it is so stated when you don't recollect of having read the assignment in three or four years?

A. In looking over the case the past few weeks, my eyes have fallen on the date so often that I would naturally remember it.

70. Q. What do you mean by "case"—the bill of complaint?

A. The bill of complaint.

71. Q. Is that the only source from which your memory has been refreshed?

A. I have heard the date mentioned.

72. Q. By whom?

A. I have heard it read—can't say more than two or three times read.

73. Q. Who read it?

A. I have read it.

74. Q. Who read it aloud to you?

A. I think I heard Mr. Norton read over the article in the daily papers.

75. Q. Is that the only source from which your memory has been refreshed, aside from the bill?

1558 A. I think it is.

76. Q. Has Mr. Norton made any statement to you in regard to the date of the '69 assignment?

A. I don't think of any.

77. Q. Did he read over the bill to you, or that part of it relating to the '69 assignment?

A. I read that myself.

78. Q. As I understand you, the only way you have refreshed your memory is by reading the bill of complaint and hearing Mr. Norton read the article in the paper?

A. Do you mean just now? I have always understood it to be so.

79. Q. Have you refreshed your memory on the subject in any other way than by the two indicated?

A. Whenever I have occasion to remember a date I refer to the papers; unless it is within two or three days I don't trust to my memory; I don't know of any other way.

80. Q. Won't you please find the part of the amended bill you refer to as refreshing your memory on this point?

(Witness handed printed copy of bill.)

A. (Witness points out the 12th page and 45th folio of amended bill.)

81. Q. Do you recollect whether the bill of complaint states positively that the assignment was made on the 20th of October—either the original or amended bill?

A. I suppose it does.

82. Q. Please look at it and see if it does not state on or about the 20th of October.

A. (Witness looking at the bill.) It does.

83. Q. Will you swear positively that you recollect that the assignment was made on the 20th of October, 1869?

A. Only as I refer to papers; I never trusted my memory with the date.

84. Q. Will you swear positively that it was not made later than the 23d day of October, 1869?

1559 A. I cannot.

85. Q. How did you pay Mr. Norton for assigning to you in 1869?

A. In no particular way.

86. Q. Did you pay him anything?

A. No, sir.

87. Q. Whom did you first assign to after the patent came to your ownership?

A. I think the first assignment was to Secombe.

88. Q. About what time?

A. I think it was about 1870.

89. Q. Is this Secombe W. W. Secombe, of New York City?

A. W. W. Secombe, of New York.

90. Q. How did he pay you for it?

A. By paying expenses, and in other ways.

91. Q. What other ways, please?

A. I think the assignment specifies.

92. Q. In any other ways than those specified in the assignment
A. I think not.
93. Q. When did he reassign to you, if ever—about when?
A. It may be in 1871, if I recollect.
94. Q. Is the reassignment set up in the bill of complaint, do you know?
A. I am not sure.
95. Q. Where is the reassignment?
A. I don't know where it is.
96. Q. What was done with it, the last you knew of it?
A. I don't remember just what.
97. Q. What did you pay Mr. Secombe for reassigning?
A. Nothing.
98. Q. When did you next assign the patent or any interest in it?
A. I think the next was to C. C. Campbell.
99. Q. In January, 1877?
A. It was about time—I refer to the assignment.
1560 100. Q. Between the time of the original assignment to you by Mr. Norton, and your assignment to Mr. Campbell, in January, 1877, did you make any assignment to anybody else but W. W. Secombe?
A. I think not.
101. Q. Have you any doubt about it?
A. I don't remember of any.
102. Q. Would you remember if any had been made?
A. I think I would.
103. Q. The certified copy of the assignment by Mr. Norton to you recites the consideration of one hundred dollars; did you pay Mr. Norton $100 at the time of that assignment?
A. I don't remember that I did.
104. Q. What is your best recollection on the subject?
A. I don't think that I did at that time; I have no recollection of it.
105. Q. Did you give him any other consideration?
A. I don't think of any other.
106. Q. Have you ever assigned any interest to Mr. Norton since the original assignment to you?
A. I think not.
107. Q. Did you ever make any agreement with him as to what should be done with any sums that might be recovered?
A. I think not.
108. Q. Did you ever make him any promise on that subject?
A. No, sir, I never have.
109. Q. Do you know whether or not Mr. Norton executed an instrument on or about the 23d of October, 1869, which purported to assign one-third of the patent to Charles Eddy as trustee, for himself, Jacob Shavor, and Albert C. Corse?
A. I do not know.
110. Q. Did you ever know?
A. I don't know of any, at least I can't think of any.
111. Q. Was it at Mr. Norton's request that you assigned to Mr. Secombe?
1561 A. Not at his request, I think.
112. Q. How came you to assign to Mr. Secombe?
A. I think in order to obtain his help in managing the business.
113. Q. Did he come and offer to take the patent?

A. I can't exactly state—I don't remember about the details of it.

114. Q. What did Mr. Norton have to do with that assignment, if anything?

A. He showed how the assignment should be drawn up.

115. Q. Did he advise the assignment?

A. I shouldn't have done anything of the kind without asking his advice.

116. Q. Do you follow his advice on this matter?

A. Not entirely.

117. Q. How about the assignment to Mr. Campbell; was that at Mr. Norton's request?

A. It was by his advice.

Cross-examination by Mr. WILLIAMS:

118. Q. Is Mr. Campbell prosecuting this suit with your knowledge and consent?

A. He is.

119. Q. Referring to folio 62, page 16, of the amended bill of complaint, please state what it says as to the date of Mr. Norton's assignment to you?

(Objected to by Mr. Clarke, that it is not proper to refresh the witness' memory by such a document, the correctness of which she isn't shown to know anything about.)

A. It states that the assignment was made on the 20th day of October, 1869.

Redirect examination by Mr. CLARKE:

120. Q. Do you recollect ever reading that passage in folio 62 that Mr. Williams has referred to?

1562 A. I think I have read it before.

121. Q. Do you recollect doing so?

A. I never read it separately—I have read it, as I have read the whole all through.

122. Q. Did you ever compare that part of the bill with the original assignment by Mr. Norton to you, to see if the statement in the bill was correct?

A. I don't remember—I don't think I have.

Recross-examination by Mr. WILLIAMS:

123. Q. Do you remember when you executed your assignment to Secombe, that he gave you an instrument of writing?

A. I presume he did; I don't know.

124. Q. Can you remember whose name or names were inserted in that agreement you made about one-twelfth of the proceeds, after the assignment to Mr. Campbell?

A. I don't remember the names.

HELEN M. INGALLS.

Subscribed and sworn to before me this 5th day of February, 1878.

IRVING BROWNE,
Special Examiner.

FEBRUARY *5th*, 1878.

Same counsel present.

Rev. Dr. GEORGE C. BALDWIN, called as a witness for the defendant, being duly sworn, testifies as follows:

1. Q. What is your name, age, residence, and occupation?

1563 A. George C. Baldwin; I am past 60 years of age; reside Troy, N. Y., and am a preacher of the Gospel.

2. Q. Do you know Marcus P. Norton, Jacob Shavor, and Albert Corse, and did you know them between 1864 and 1869?

A. I did know them between those times, and I know the survivo now.

3. Q. Do you know whether or not they were in business relation with one another in regard to a patent that was issued to Mr. Norton i 1863 for improvement in Post-Office stamps?

A. I only know what they told me, and what I understood from wha they told me.

4. Q. Did Mr. Norton during that time make any representations to you as to the ownership of the patent?

A. He did.

5. Q. Please state what they were, using Mr. Norton's language if you recollect it, or the substance thereof, if you do not recollect it, and stating as accurately as you can the time and place.

(Objected to as not competent to give Norton's declarations in evidence in this case.)

A. I cannot remember the words; I am distinct in my memory, however, that between 1865 and 1869 I had many conversations with Mr. Norton, both in this city and in Washington, in regard to this matter, and that from all his representations to me I understood distinctly that he was the inventor of this Post-Office stamp, but that he had assigned it to Corse and Shavor, who were my particular friends, and because of that he requested my influence at Washington in order to procure proper remuneration for it.

6. Q. Did he ever say anything to you or claim to you during those times to the effect that Shavor and Corse had reassigned to him?

A. Oh, no!

7. Q. Do you recollect, when he was present, either of them claimed ownership?

1564 A. Not specifically; it was an understood thing, as far as I was concerned, of which I never had a suspicion or doubt.

8. Q. Mention as many circumstances as you can which fix this matter in your recollection.

A. Well, sir, because of that understanding which I had from all three of these parties, such as I have stated, viz, that Mr. Norton was the inventor, but for reasons satisfactory to himself he had assigned it to my particular friends, in whose fortunes I had an interest such as I couldn't have in Mr. Norton's; he, Mr. Norton himself, asked me, on that ground —because they were my particular friends—who, if they obtained this large sum of money, could aid me so efficiently in my work as their pastor, and as a minister of the Gospel, to aid him at Washington in procuring it; in compliance with his request and advice, I went to Washington twice—I am not sure but it was three times, I know it was twice —and there made these identical representations to Schuyler Colfax, who was my cousin, and to John A. Griswold, in the House—in Congress; I did so to apologize to those gentlemen for my interference in a thing of this kind, which was out of my line.

9. Q. You are a doctor of divinity, are you not?

A. I am.

10. Q. If you think of anything further in the matter, state it.

A. I remember this distinctly: that I got the impression from all, that while Mr. Norton had assigned this legally to these gentlemen, still he was to have a share of the proceeds, with reference to which I

distinctly remember that he, Mr. Norton, said to me it would make them all three rich.

Cross-examination by Mr. WILLIAMS:

11. Q. State, if you know, for what reasons Mr. Norton assigned this patent to Shavor and Corse.

(Objected to as not within the scope of the direct examination.)

1565 A. I have no knowledge at all; never had, to my recollection.

GEO. C. BALDWIN.

Subscribed and sworn to before me, this 5th day of February, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned to February 6th, 1878, at 9.30 o'c. a. m.

FEBRUARY 6*th*, 1878—at 9.30 a. m.

Met pursuant to adjournment:
Same counsel present.
Adjourned to February 7th, 1878, at 9.30 o'c. a. m.

FEBRUARY 7*th*, 1878—9.30 a. m.

Met pursuant to adjournment.
Same counsel present.

JEREMIAH D. GREEN, called as a witness on the part of the defendant, and being duly sworn, testifies as follows:

2. Q. What is your name, age, residence and occupation?

A. My name is Jeremiah D. Green; my age is 66 years; residence Troy; at present my occupation is solicitor of patents, expert in patent cases and solicitor of claims.

2. Q. Do you know Marcus P. Norton and Albert C. Corse, and did you know Jacob Shavor before he died?

A. Yes.

3. Q. When did you first become ocquainted with Mr. Norton?

A. I think it was in the year 1857; it might have been somewhat earlier.

1566 4. Q. What was his business then and since?

A. I think he was practicing law, and that he started the publication of some mechanical work about the first time I became acquainted with him, and since that time I have known him as a practicing lawyer and solicitor of patents—I think the largest portion of the time here in Troy.

5. Q. Have you had an opportunity of seeing and inspecting legal documents drawn up by Mr. Norton since you knew him?

A. I have seen a good many of his documents from 1861 or 1862 up to the present time.

6. Q. Can you make any estimate of how many?

A. I could not.

7. Q. Is it a large number?

A. I couldn't say whether it is fifty or a hundred; it might possibly be less, but I should say that I had at least seen fifty.

8. Q. Look at the document which I now produce, and which is marked Deft's Ex., No. 126 (Campbell), and which purports to be an affidavit and reassignment by Shavor and Corse to Marcus P. Norton of a patent for an improvement in post-office stamps, granted to Mr. Nor-

ton April 14th, 1863, and assigned by him to Shavor and Corse about the 20th of April, 1863, and state whether you have ever seen any of Mr. Norton's legal documents in which the leaves are fastened together as they are in that exhibit?

A. I have seen some of his documents fastened with metallic fastening; I think I never saw one of his legal documents the leaves of which were all pasted together and fastened with metallic fastening before this.

9. Q. State whether you have ever seen any in which the leaves were pasted together?

A. I think not, with the exception of a document I saw in the Patent Office; a letter was attached by glutine matter to the document which purported to be a caveat.

10. Q. What caveat was that?

1567 A. That was a caveat of Norton's in relation to a printing machine and post office rating and canceling stamp, as near as I now remember.

11. Q. Filed about what time?

A. My impression is it was filed, or purported to be filed, in 1855 or thereabouts; this document was shown to me by the Commissioner of Patents.

12. Q. Do you recollect whether that was one of the documents in regard to which Mr. Norton, when tried in the Patent Office, was found guilty of surreptitiously inserting paper into the files, which did not properly belong there?

(Objected to as immaterial, and as assuming facts of which there is no evidence.)

A. I was so informed, and afterwards saw the endorsement upon the document referred to by the Commissioner; I was not present at the examination by the commission when the examination was had, but was furnished with a printed copy of the report of the commission; such report was furnished me by the Commissioner of Patents; I was requested by the Commissioner to go before this commission and testify, but declined to do so.

(Answer objected to by Mr. Williams, because the evidence is not competent, and because it is irresponsive to the question.)

13. Q. What connection, if any, have you had with Norton, Shavor and Corse in reference to the patent of April 14, 1863, for an improvement in post-office stamps?

A. In the early part of the year 1869, by the request of Shavor and Corse, I examined several patents for improvement in postmarking and canceling hand stamps, and at the request of Mr. Norton I called at his office and obtained, I think, copies of two patents; afterwards, in the spring of that year, I went to Washington to make further examination in relation to such patents, and called on Mr. Norton at his

1568 hotel, and conversed with him in relation to the patent of April 13, 1863, and the reissue thereon granted to Shavor and Corse in August, 1864, after which I returned home, reported to Shavor and Corse substantially the result of my examination, and of the interview with Mr. Norton at the hotel in Washington; after that, during the summer, or early part of the fall of the same year, I returned to Washington for the purpose of seeing the Postmaster-General and others, in relation to the postmarking and canceling stamps used by the government.

14. Q. Did you ever have, prior to 1869, any conversation with Mr. Norton as to the ownership of that patent?

A. Only indirectly; I had a conversation with Mr. Norton in relation to the bill before Congress for compensation for the use of the post-office stamp by the government.

15. Q. About what time was that?

A. I think it was in 1867 or 1868; I won't now be positive.

16. Q. In Washington?

A. In Washington.

17. Q. What, if anything, did Mr. Norton say as to the ownership of the patent?

(Objected to by Mr. Williams, that it is not competent to give Norton's declarations in evidence in this case.)

A. I can't give the exact words, but in substance the bill before Congress was for the relief of Shavor and Corse, and that they, Shavor and Corse, owned the patent; at that time, I think, I had not seen the patent of Norton's or either of them, to examine their contents.

18. Q. Did Mr. Norton ever make to you any other declarations as to ownership?

(Same objection.)

A. I think he did, at the hotel in Washington in the spring of
1569 1869; I think he stated that Shavor and Corse owned the patent by assignment; I now refer to the patent of 1863, and the reissue of August, 1864.

19. Q. Did he ever make any claim to the ownership of the patent himself?

(Same objection.)

A. Not to my knowledge, until I met him in the latter part of the summer or early part of September; I think it was in the latter part of the summer of 1869; he then claimed to own it by a reassignment from Shavor and Corse to him.

20. Q. State how you came to have conenction with the stamp matter, in general terms, and what your connection was.

A. I think in the winter of 1869 I met Mr. Norton in the street and asked him in relation to the bill that had been before Congress, for compensation for the use of the post-marking and canceling-stamp; he informed me that it was not settled, and in the course of the conversation I suggested that I would aid him or them in the bill before Congress for a fair compensation, to come out of any sum or sums that might be obtained; he said I should have a handsome thing if I would aid in the matter before Congress, and invited me to come to his office and examine the patent-, stating that the title was in Shavor and Corse to the patent of 1863; I then called on Mr. Shavor and Mr. Corse to ascertain their relation with Norton in these patents; I visited Mr. Norton's office; he handed me copies of the patent of 1859, 1862, I think, 1863, whether there were three or four patents, I don't now remember; I took these patents and went to Mr. Ransford and Mr. Corse; we had an appointment so that the three met at Mr. Shavor's house, I think; we had a consultation about the matter there; they told me that they would give me a percentage which would well pay me for my trouble, if I would aid or obtain compensation for the use of the post-marking and canceling-stamp, either from Congress or from the
1570 Government or through the Court of Claims; about that time Mr. Norton left for Washington; it looked to me—the case looked to me like a favorable one. I stated to Shavor and Corse that I would take hold of the matter and see what I could do; soon after that I went to Washington, as before stated.

(Answer objected to by Mr. Williams so far as it relates to the declarations of persons named therein.)

21. Q. Did Mr. Shavor ever put you in possession of any letters from Mr. Norton to himself on this matter?

A. Yes, sir; both letters from Norton to Shavor, & to Corse.

22. Q. Have you any of them with you?

A. I have a few of them.

23. Q. Please let me see what you have.

A. I wish to state that these letters I can't part with only temporarily. I will exhibit them, but want them returned as soon as possible.

(Witness hands papers to counsel.)

24. Q. Look at the first of them, which purports to be a letter from Marcus P. Norton to Jacob Shavor, dated May 17, 1864, and state in whose handwriting it is, if you know.

A. (Witness examining paper.) I should say that this was Mr. Norton's handwriting; the signature is his, without doubt.

25. Q. Have you ever seen Mr. Norton write?

A. Yes, sir.

26. Q. Is this one of the letters given you by Mr. Shavor?

A. Yes, sir.

(Letter offered in evidence, and marked Def't's Ex., No. 127 (Green). I. B., ex'r. Feb. 7, 1878.)

1571 27. Q. Look at the paper now produced, and that purports to be a letter from M. P. Norton to Jacob Shavor, dated June 11, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) I think it is Mr. Norton's handwriting, Marcus P.'s; the signature is his.

28. Q. Is that one of the letters received from Mr. Shavor?

A. It is one of the letters I received from Mr. Shavor, and it is marked by him; all the letters I received from Mr. Shavor were numbered by him, either in ink or pencil.

(Letter offered in evidence, and marked Def't's Ex. No. 128 (Green), A. & B. I. B., ex'r. Feb. 7, 1878.)

29. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Rev. Dr. Baldwin, dated June 22, 1866, and state in whose handwriting it is.

A. (Witness examining paper.) This is Norton's handwriting, and signed by him.

30. Q. Where did you get that letter?

A. I got this from Mr. Shavor.

(Letter offered in evidence, and marked Def't's Ex. No. 129 (Green). I. B., ex'r. Feb. 7, 1878.)

31. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to Dear Shavor, dated January 2, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Mr. Norton's handwriting, and signed by him, Marcus P. Norton.)

32. Q. Is that one received from Mr. Shavor?

A. Yes, sir.

(Letter offered in evidence, and marked Def't's Ex. No. 130 (Green), A & B. I. B., ex'r. Feb. 7, 1878.)

1572 33. Q. Look at the paper now produced, and which purports to be a letter from Marcus P. Norton to Jacob Shavor, dated April 21, 1867, and state in whose handwriting it is.

A. (Witness examining paper.) In Mr. Norton's handwriting, and signed by him.

34. Q. It was received from Mr. Shavor?

A. It was.

(Letter offered in evidence, and marked Def't's Ex. No. 131, A B & C (Green). I. B., ex'r. Feb. 7, 1878.)

Adjourned to 1.30 p. m.

1.30 p. m. Met pursuant to adjournment. Same counsel present.

Direct examination of witness resumed:

35. Q. Look at the paper now produced, and which purports to be a letter from Marcus P. Norton to Jacob Savor, dated June 27, 1868, and state in whose handwriting it is, and how you came by it.

A. (Witness examining paper.) In Mr. Norton's handwriting, and signed by him. I received it from Mr. Shavor.

(Letter offered in evidence, and marked Def't's Ex. No. 132, A B & C (Green). I. B., ex'r. Feb. 7, 1878.)

36. Q. Look at the paper now produced, and that purports to be a letter from Marcus P. Norton to A. C. Corse, dated March 15, 1869, and state in whose handwriting it is.

A. (Witness exam'ing paper.) It is written by Marcus P. Norton and signed by him. I received it from Mr. Shavor.

(Letter offered in evidence and marked Def't's Ex. No. 133 (Green). I. B., ex'r. Feb. 7, 1878.)

1573 Cross-examination by Mr. WILLIAMS:

37. Q. When did Mr. Shavor give you these letters you have produced?

A. I can't say whether it was in 1871 or 1872.

38. Q. Have you had them in your possession ever since?

A. Yes, sir; since he gave them to me they have not been out of my possession until now, except a few letters and telegrams that I left for a few days with the Attorney General in the Post-Office Department.

39. Q. Are these letters that you have now produced all that you have received from Mr. Shavor?

A. No, sir.

40. Q. Do you know how the attorney for the defendant obtained the other letters for Mr. Shavor that he has introduced in evidence?

A. I do not know.

41. Q. Are you employed for the defendant in this case?

A. I am not.

42. Q. Are you employed by anybody, or have you an arrangement with anybody to assist in the defense of this case?

A. I think not, sir.

43. Q. Have you not been assisting the United States district attorney in preparing the defense of this case?

A. No, sir; I gave him some points about the matter, voluntarily on my part.

44. Q. Haven't you been in New York City advising with him about the matter?

A. I have been in New York on other business, and a few times called to see him.

45. Q. What was your object in giving information or advice to the district attorney in this suit?

A. Because I thought the parties who brought the suit had not a legitimate title to the patent on which the suit was brought.

1574 46. Q. Who do you think has the legitimate title?

A. I think the legitimate title is in Shavor and Corse.

47. Q. Have you had any consultations with Shavor and Corse since this suit was commenced?

A. Yes, sir; I have.

48. Q. You spoke of a consultation with Shavor, Corse, and Ransford, in the winter of 1869; do you mean the winter of 1868–9, or 1869–70?

A. It was in the year 1869, and after January, or it might have been in the latter part of January; my impression now is it was in February or March, but it was in one of those three months.

49. Q. Look at that paper which purports to be an assignment from Helen Ingalls to Christopher C. Campbell, in the handwriting of Marcus P. Norton, and state if the papers in that instrument are not pasted together, and fastened with metallic fastenings?

A. (Witness examining paper.) This paper, written by Mr. Norton—I should judge his handwriting—is fastened together with metallic fastenings; the certificate of W. H. Doolittle, acting commissioner, is fastened to a piece of paper adjoining the first sheet by glutinous matter; the leaves or sheets composing the instrument appear to be held together only by the metallic fastenings, as I am enabled to pass a knife between each sheet, and between the metallic fastenings.

50. Q. Will you swear that the sheets or half sheets composing this assignment are not pasted together, or that there is no paste between them at the top?

A. The outside part of a sheet seems to be turned over the top, and the metallic fastenings passed through that and the balance of the sheets or parts of sheets; to this back sheet, the edge of which is turned over, is fastened the certificate by some glutinous matter; I am able to run my knife blade without cutting paper, or apparently any glu-
1575 tinous matter, between each of the sheets and the metallic fasten-
ings, and by prying it by the knife blade between the sheets forming the instrument I do not discover the existence of glutinous matter adhering the sheets together; if there is any glutinous matter it must be in close proximity to the metallic fastenings, except where I have before stated.

51. Q. You say you have seen at least fifty documents made by Mr. Norton; did you always notice when you saw a document of his how it was fastened together?

A. Probably not always, sir; the usual practice has been metallic fastening or tape.

52. Q. If you have not always observed the fastening of the papers, how can you swear that you have never seen one, with a single exception, that was pasted together?

A. Because I think it a very unusual thing to paste sheets of paper together in an instrument, and I would be very likely to notice an instrument done up or put together in that way.

53. Q. Could you tell whether the assignment to Campbell was pasted or not if you had not tried it with your knife?

A. I think I could; from the fact that if it was pasted together, it would be much stiffer than this, as, where the sheets come together at the top.

54. Q. You have not been accustomed, have you, to try the papers of Mr. Norton in that way to see if they were pasted together or not?

A. I think I never did until now, but I will say that I think I have quite a number of documents in the Shavor papers, assignments and other documents, and my impression is that none of them are fastened

together by glutine; there may be some with the outside wrapper attached by glutine, but I am not positive as to that even.

55. Q. Have you not noticed in the papers made by Mr. Norton that it is his general custom, where there are several sheets, to turn the top of the outside sheet or covering over the tops of the other
1576 sheets, and fasten it on the inside, as you say the assignment to Campbell is fastened?

A. I don't remember now of seeing any other document that was fastened or put together precisely in the manner that is, to wit, pasting a certificate over the fastening at the head of an instrument; I will say that I think there are some of his instruments having cover or cover-sheet turned over at the top and fastened by metallic fastenings or tape; I think I have three or four—perhaps five—of that character among the Shavor papers, but I cannot say what number.

56. Q. Isn't that the way the Campbell assignment is made?

A. (Witness looking at paper.) It is, with the exception of the certificate pasted on the top; and also that this is white, and those I have are covered with buff or something of that color paper.

57. Q. How did you ascertain that the sheets of Def't's Ex. No. 126 were basted together?

A. By the stiffness of the top and the ridge or crease, that a hard substance would make when turned over; I will add, that if it is possible I am mistaken, if you will show me the exhibit I will correct myself.

58. Q. Is not the instrument made with a buff cover, the top of which is turned over the ends of the sheets, where they are fastened together and fastened on the inside?

A. I think it is.

Redirect examination by Mr. CLARKE:

59. Q. Just look at Def't's Ex. No. 126, and state whether you are quite accurate in stating that the buff cover is itself folded over, or if you are sure on that point?

A. (Witness looking at paper.) I find the outside a separate piece of paper attached to the back of the cover, and turned over in front, each side fastened with glutine and the metallic fastenings; the cover
1577 or buff paper does not appear to extend up and turn over; if it does, it is covered by the separate piece which laps over the whole.

J. D. GREEN.

Subscribed and sworn to before me this 7th day of February, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned to February 8th, 1878, at 10 o'c.

FEBRUARY *8th*, 1878, 10 o'c. a. m.

Met pursuant to adjournment; same counsel present.

Adjourned to 2 o'c. p. m.

2 o'c. p. m. Met pursuant to adjournment; same counsel present.

JOHN T. LAMPORT, called as a witness on the part of the defendant, and, being duly sworn, testifies as follows:

1. Q. What is your name, age, residence and occupation?

A. My name is John T. Lamport; I am 68 years of age; I reside in the city of Troy, N. Y., and am a lawyer by occupation and practice.

2. Q: Are you a commissioner for the circuit court of the United States for this district?

A. I am, for the northern district of New York.

3. Q. And have been so how long?

A. About 15 years.

4. Q. Have you during your professional life, and as commissioner, had an opportunity of inspecting a large number of legal documents?

A. I have, quite a large number; I was admitted to practice in the courts of this * in 1831.

1578 5. Q. Can you state what the custom is when legal documents consist of several sheets, as to spreading matter out, so that signatures shall not be separated by a break in the sheets?

A. If I understand the question correctly, so far as my knowledge extends, the practice is to have some portion of the instrument to be signed, or executed, on the same sheet as that on which the signatures are to be affixed.

6. Q. Look at the document which I now produce, and which is def't's Ex. No. 126 (Campbell), and which purports to be a reassignment of a patent by Jacob Shavor and Albert C. Corse to Marcus P. Norton, and describe how the sheets are fastened together.

A. (Witness examining document.) The sheets which were originally separate are now fastened together by means of metallic devices, in an unusually permanent and secure manner.

7. Q. Are they not fastened also by paste, or something of that sort?

A. I am unable to state from my examination whether there is paste used or not; there is, though, on fastening the wrapper; I would add, though, that upon a further and closer examination there is paste or mucilage used in fastening the sheets together.

8. Q. Is there not also an extra strip of paper pasted over the top of the instrument in addition to the cover?

A. (Witness examining paper) There is an additional strip of paper or cap pasted over the tops of the sheets forming the instrument.

9. Q. How many metallic devices for fastening are there?

A. (Witness examining them.) There are five in sight, calling the central one.

10. Q. Did you ever see a legal instrument before this fastened in the manner that that one is?

A. I don't remember that I ever have so thoroughly fastened.

11. Q. Do you know Marcus P. Norton, the complainant's solicitor here?

1579 A. I do.

12. Q. Have you had an opportunity of observing how documents drawn by him have been fastened? and, if so, state what opportunities you have had.

A. I have had to a considerable extent opportunities of knowing how papers prepared by him have been fastened; I have occupied an office in the same building with him for several years, and was engaged in many legal proceedings in which he was interested, either personally or as counsel, and have seen many instruments prepared by him or under his supervision.

13. Q. State whether the method of fastening Ex. No. 126 coincides with Mr. Norton's customary method of fastening legal documents.

A. I have no very definite idea of any peculiar method he had of fastening his papers; I remember well that documents from his office were nicely got up and well secured as a general thing.

* Word "State" erased in red in original.

14. Q. You do not, however, as I understand, remember any of his documents that were fastened in the manner that this is?

A. I think I do remember of other documents that were prepared by him, that were fastened by the same kind of devices that this is; but I do not remember of any that were so securely fastened as this appears to be.

15. Q. Do you remember of any in which the sheets were fastened both by paste and metallic devices?

A. I do not now remember of any such instrument, and yet I may have seen some; I cannot now call to mind any instrument that was so fastened, and yet I may have seen such.

16. Q. Look at the signature "John T. Lamport" on the 11th page of that exhibit, and state whether that is your signature?

A. (Witness examining it.) I have no doubt of it at all, sir; it is.

17. Q. Have you any recollection that the matter which pre-
1580 cedes the 11th page in that exhibit was the matter that was subscribed and sworn to before you on the 23d of February, 1864?

(Objected to by Mr. Williams, that it is not competent for the witness to give any evidence tending to contradict his certificate, or impeach his act as commissioner, in taking the acknowledgment to the instrument.)

A. I have no recollection upon the subject now.

18. Q. Do you recollect witnessing the execution of that instrument, considered as a deed, and not as a' affidavit; that is, do you recollect of either seeing Jacob Shavor and Albert C. Corse sign, seal and deliver the instrument, or acknowledge their signatures and their seals, and of seeing them deliver the instrument as a deed?

(Same objection.)

A. I have no other recollection on that subject than that derived from my signature on the instrument as the officer I then was and am still.

19. Q. Does that signature indicate anything to your mind as to the execution of the instrument considered as a deed?

A. It does not.

20. Q. Does it indicate anything more to you than that some affidavit was taken on the day named?

A. It does not indicate anything other than that at present. (Witness examining paper.) I observe that seals are appended to the signatures to the instrument, which if they were then upon the instrument must have indicated to my mind that the instrument was more than simply an affidavit, for the reason that it was exceedingly unusual, if I ever saw seals attached to signatures to an affidavit merely.

21. Q. You do not remember whether the seals were then attached?

A. I do not; don't know whether they were or not.

1581 22. Q. If that instrument had been acknowledged by the assignors before you as a deed, state what the form of your certificate would have been.

A. It would have embodied the statement that the parties executing the paper were severally known to me, or identified to my satisfaction to be the persons described in and who executed the instrument, and that they also acknowledged before me the execution of the same; that would be substantially the form, if the persons appeared before me; if the execution was proven by a subscribing witness the form would vary.

23. Q. That being so, state whether you have any reason to suppose that that instrument was ever acknowledged by Shavor and Corse as a deed before you?

A. It may have been so executed before me as a deed, and I may have signed the instrument, as I did, at the instance of Mr. Norton, if he was present, knowing him to be a lawyer and more familiar with the execution of papers relating to patents than I then was or now am—what I mean by that is, that I should have deferred to him as a man knowing more about his own business than I did.

24. Q. Barring possibilities, have you any reason to suppose that that instrument as a deed was so acknowledged?

A. I have no recollection on the subject.

25. Q. In all your experience, do you recollect of having seen a legal document which was at once an affidavit and a deed of assignment?

A. I do not recollect that I ever did.

26. Q. Is not such a thing so unusual that if you had seen it, knowing it to be such, you would probably remember it?

A. I might not, if it was presented to me by a lawyer; as to probabilities I can hardly state.

Cross-examination by Mr. WILLIAMS:

27. Q. On pages 11 and 12 of the instrument referred to there
1582 appears to be a certificate purporting to be signed by you; will you please state whether it is your genuine signature that is appended to it?

A. (Witness examining paper.) It is.

28. Q. On page 13 there appears to be an affidavit, to which your signature is attached; is that also your genuine signature?

A. (Witness examing paper.) It is.

29. Q. Do you remember the circumstances under which this certificate and affidavit were made?

A. I do not now, sir.

30. Q. You cannot recall what was said to you at the time, or who was present when this certificate and affidavit were made, which appear to be dated some years after the instrument was executed, can you?

A. I cannot; I have received no prompting from any one, and it doesn't occur to me now what the circumstances were.

31. Q. Looking at the signatures appended to the instrument in question, their relations to each other, and to the seals which appear at the end of said signatures, would it not be your judgment that the names were written so that the seals could be placed where they are, and that the instrument was signed and sealed at the same time?

(Objected to by Mr. Clarke, that it is incompetent to ask the witness's judgment or opinion on that point.)

A. The signatures of the persons whose names are appended to the instrument are so written and placed on the paper that they were made after the seals were attached, or so uniformly made as to leave space enough to attach the seals; the signatures I am quite sure must have been made to the paper before it was sworn to or certified by me; the seals may then have been attached to it or may not; I cannot say.

32. Q. Suppose a deed to have been made fourteen years ago,
1583 consisting of several sheets of paper, and several years subsequent to its execution a question should be made as to its genuineness, or as to whether or not the sheets then composing the deed were originally parts of it, and the holder should put a cap over the tops of the sheets, or put in any additional fastenings, so as to make the deed perfectly secure, not in any other way interfering with the instrument, would there be anything unusual or extraordinary in that, and have you not known old instruments of writing to be treated in such or a similar way in your practice?

A. I think that the fact of attaching additional securities to the top of the sheets or additional fastenings to the instrument itself, under the circumstances described in the question, would not be regarded as extraordinary or suspicious. I have had occasion several times during my practice to patch up and endeavor to preserve old documents, and in so doing have pasted papers on or otherwise secured them.

33. Q. Referring to the years 1864, 1865, and along there, did Mr. Norton have a large and lucrative practice as a lawyer in this city?

A. Previous to the period spoken of and during those years I think Mr. Norton had a large practice in the United States courts; it was supposed to be a lucrative one. I think he was doing more business in those courts than all the other lawyers in Troy.

Redirect examination by Mr. CLARKE:

34. Q. When you say that the signatures and the seals to this document are so uniformly made as to leave space enough to attach the seals, do you mean merely that, as matter of fact, they were so made, or that they were so made with design to leave space for the seals?

A. I mean merely to say that they were in fact so made. I know nothing of the design. I don't mean to be understood now as
1584 saying that I know that the seals were not there, but I do mean to say that I have no doubt but that the signatures were there when sworn to before me.

35. Q. Look at the certificate on the 11th and 12th page subscribed by you and state whether you understand that to be anything more than an interpretation in words of what your signature to the jurat of the affidavit legally imports, supposing that what precedes the jurat was attached thereto at the time the oath was taken.

(Same objection as to question 17.)

A. I suppose it does not import anything more; it merely expresses in words what the signature was legally designed to represent.

36. Q. And what the signature legally imports you have explained in your direct examination?

A. I think so; yes.

37. Q. Look at the word "acknowledged," interlined on the 8th line from the bottom on the 11th page, and state whether the interlineation was made by you, and just what idea you attach to the word "acknowledged" in that connection.

(Same objection by Mr. Williams.)

A. (Witness examining paper). The interlineation of the words "or acknowledged" in the place spoken of in the question were interlined by me—are in my handwriting; they either subscribed the affidavits in my presence or they acknowledged that they had subscribed it; that's the idea, I think, conveyed by them by the words "or acknowledged."

38. Q. Look at the word "executed," preceding the interlineation, and state whether it means in that connection anything more than an affidavit had been subscribed and sworn to.

(Same objection as to question 17.)

1585 A. I do not know now what idea I had at the time I signed and swore to the affidavit in which the word "executed" is written; I suppose I must have then thought that it was the acknowledgment of the signatures to an affidavit simply.

39. Q. Do you recollect positively that the circumstances connected with the taking of the affidavit, your certificate of taking which is on page 11, were fresher in your memory in 1870 than they are now?

A. I do not recollect that they were.

40. Q. Is it your custom to, or do you, frequently swear people whom you know to papers which you yourself do not read over?

A. That custom is almost universal with me. I never read them over unless at request of parties.

JOHN T. LAMPORT.

Subscribed and sworn to before me this 8th day of February, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned to February 9th, 1878, at 10 o'c. a. m.

FEBRUARY *9th*, 1878—10 o'c. a m.

Met pursuant to adjournment. Same counsel present.

JAMES BOLTON, Jr., called as a witness on the part of the defendant, and, being duly sworn, testifies as follows:

By Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is James Bolton, jr.; age, 22 years; reside in Troy, and am a law student.

1586 2. Q. State whether you have examined Def't's Ex., No. 126, (Campbell), with reference to the number of words on each line, and on each page?

A. I have.

3. Q. Have you tabulated the results?

A. I have. I have made a table showing the number of lines on each page, the number of words on each line, and also the average number of words on each page.

4. Q. What is the row of figures running across the top, from 1, 2, 3, up to 13?

A. The number of the pages.

5. Q. What is the column running down the page, on the left-hand side, from 1, 2, 3, up to 29?

A. The number of lines on a page.

6. Q. What are the figures in each of the other perpendicular columns; what do they denote?

A. They denote the number of words on the line of each page, corresponding with the numbers on the top and on the left-hand side of the page. I have, uniformly, when a word was divided, counted each part as one word on the line on which it was written; and also, when the letters U and S occurred, I counted each one a word; also the middle letter of a name.

7. Q. Are the results given in this paper correct?

A. I believe they are.

8. Q. State how many words you found on each page?

A. (Witness examining table.) On the first page, 235; on the second, 239; on the third, 239; on the fourth, 241; on the fifth, 235; on the sixth, 236; on the seventh, 260; on the eighth, 237; on the ninth, 254; on the 10th, 265; on the 11th, 198; on the 12th, 182; and on the thirteenth, 195.

Paper offered in evidence, and marked Def't's Ex. No. 134 (Bolton). I. B., ex'r. Feb. 9, 1878.

Cross-examination by Mr. WILLIAMS:

9. Q. Page 10 of this exhibit is the one preceding the signatures, is it not?

1587 A. (Witness looking at Def't's Ex. No. 126.) It is.

10. Q. There are five more words on that page than there is on the seventh page, according to your computation?

A. (Witness examining table.) Yes, sir.

11. Q. The 11th, 12th, & 13th pages contain the certificate and affidavit of Mr. Lamport, do they not?

A. Yes, sir.

JAMES BOLTON, JR.

Subscribed and sworn to before me this 9th day of February, 1878.

IRVING BROWNE,
Special Examiner.

FEBRUARY 9TH, 1878.

Same counsel present.

Dr. R. H. WARD, called as a witness on the part of the defendant, and being duly sworn, testifies as follows:

By Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. R. H. Ward; age, 41 years; reside in Troy; and am a physician.

2. Q. State what qualifications you have, if any, as an expert in handwriting and the use of the microscope?

A. I have made a specialty of study with the microscope for over twenty years, and frequently in the examination of handwriting.

3. Q. State whether you have examined Def't's Ex. No. 126 (Campbell), which purports to be a reassignment of a patent by Jacob Shavor and Albert C. Corse to Marcus P. Norton?

1588 A. I have.

4. Q. How many different sorts of paper did you find in that exhibit, excluding the cover?

A. Two.

5. Q. Point out the differences between the two sorts of paper, and indicate what parts of the instrument are of one sort of the paper and what of the other.

A. The first four leaves, being pages one to eight inclusive, and the last leaf, containing page thirteen, seem to be of similar paper; the two leaves containing pages nine, ten, eleven, and twelve, seem to be different; the paper being of a different texture and different shade.

6. Q. What shades are the two sorts of paper?

A. (Witness examining paper.) The leaves first mentioned are of a decidedly lighter shade than the others.

7. Q. Is there any difference in respect to the ruling?

A. (Witness examining paper.) They are ruled to match; the lines ruled to write on are less conspicuous on the sheets last mentioned—pages nine to twelve inclusive—and the border lines of red and blue on those pages are of a decidedly different tint.

8. Q. Are they fainter than they are on the other pages?

A. Yes.

9. Q. Can you state whether the first brown leaf—pages nine and ten—had been folded before it was written on?

A. (Witness examining paper.) It had.

10. Q. Point out how you arrive at that conclusion?

A. By the running of the ink along the creases made by the folding.

11. Q. What causes the ink to run there?

A. The greater absorbing power of the paper, where its hardness of finish has been destroyed by bending.

1589 12. Q. Do you find that any other leaves have been written on after they were folded, and, if so, which?

A. I do not notice it on any preceding page. It shows on the following pages—eleven, twelve, and thirteen.

13. Q. Have you any doubt as to the certainty of your conclusion that the paper had been written on before it was folded?

A. Not the slightest.

14. Q. Look at the jurat on page eleven, and describe any peculiarities you may see in that.

A. (Witness examining paper.) The most striking peculiarity is that a considerable part of it has been very clumsily and conspicuously retouched.

15. Q. In how many places is the jurat retouched, as you say?

A. Nearly all the capitals and long high letters, and a smaller proportion of the small letters.

16. Q. Can you state whether the retouching was done by the same person who wrote the body of the instrument preceding the jurat?

A. I should judge it was.

17. Q. That is your opinion as an expert?

A. It is.

18. Q. What differences can you point out in the handwriting of the jurat as it was before retouching as compared with the handwriting of the body of the instrument?

A. It was written a little smoother and neater, and the ink seems to have flowed more evenly; there is a quieter style about it, less heavy lines and bold curves.

19. Q. Is it your opinion that it was written at the same time, by the same person, with the same ink and pen, as the body of the instrument?

A. I should judge that some of these conditions were different.

20. Q. You mean that it was written either by a different person, or at a different time, or by a different ink or pen?

A. Yes.

1590 21. Q. Did you notice the retouching of letters in the body of the instrument?

A. I have.

22. Q. Where does it appear most frequently?

A. I have noticed it most on the last few pages.

23. Q. What is the proportion, as compared with other pages, should you say?

A. I am not able to give the proportion, but only that it struck me as most conspicuous on the last page or two.

24. Q. How was the retouching done—should you say that it was done merely to perfect letters that, at the first writing, were, for some reason, indistinct or incomplete?

A. I don't see any case where it seems designed to change the sense or the words.

25. Q. Do you see any evidence of an intention to make the page looked botched, as compared with the jurat.

(Objected to by Mr. Williams as leading, as asking the judgment of the witness.)

A. (Witness examining paper.) I should say that there was no effort at concealment about the changes, and that they didn't seem to indicate their motive specifically at all.

26. Q. Are they made in such a way as to be consistent with the supposition that they were made so as to perfect imperfect letters?

A. They are often made to top up short letters, or to add open loops

to those which were originally written with a flat loop which ran together; I have given one example in detail; it would be a question whether they were imperfect; some would call such letters imperfect, and some would not.

27. Q. Look at the signature, Jacob Shavor, and point out any peculiarities you see in that.

A. (Witness examining signature.) Its general likeness to the signature of Albert C. Corse is a little notable. There are two points that strike me as singular in its own writing. It was evidently writ-
1591 ten after the signature of Albert C. Corse, and the "o" of Jacob was cramped and crowded carefully into an unduly small space, to avoid crossing the "b" of Albert; also the "v" of Shavor has been scratched, as if it had been originally written too close at the top, or written an "o" by mistake, and afterwards changed.

28. Q. Look at the "a" in Jacob, and state if that is written naturally.

A. (Witness examining it.) It is written awkwardly, not smoothly; still I think it is, as it was originally written. I am not acquainted with the signature of the writer to compare it.

29. Q. Look at the handwriting on the fifty cents stamp on page 10 and state whether it is the same or different from the handwriting of the body of the instrument.

A. (Witness examining.) I think it is the same.

30. Q. The whole of it?

A. Yes.

31. Q. How about the handwriting on the five cents stamps that precede the fifty cents stamp?

A. (Witness examining.) I should judge that they were the same.

32. Q. Can you take the leaves of that instrument apart at the top?

A. I suppose it could be done.

33. Q. How?

A. By removing the metal clasps, after which it would be necessary to use steam, or hot water, or other means to soften any material by which they may be fastened.

34. Q. Will you please to unfasten them?

(Objected to by Mr. Williams to any mutilation or change of this exhibit after its introduction in evidence.)

On this objection of complainant deft's counsel waives the opening of the paper.

1592 Cross examination by Mr. WILLIAMS:

35. Q. I understand you to say that there is more or less of what you call retouching on all the pages of this instrument?

A. So far as I know.

36. Q. Have you observed in the words "United States Commissioner for the northern district of New York, Troy, N. Y.," appended to the signature of John T. Lanport, on page 11, the same evidence of retouching as in some other parts of the instrument?

A. (Witness examining paper.) The writing is like that of the jurat, and it is somewhat similarly retouched, though not so much.

37. Q. Do you observe any evidences of retouching in the certificate and affidavit following the words to which I have referred?

A. (Witness examining.) Yes.

38. Q. Are you acquainted with the handwriting of Jacob Shavor?

A. I am not.

39. Q. Are you acquainted with the handwriting of Marcus P. Norton?

A. Yes.

40. Q. Will you indicate, in your answer, by reading from the paper a few of the words where the whitish paper and the darker paper connect, so that we may know in the printed document where they are to be found?

A. (Witness taking paper.) The white paper closes with the words, "matters appertaining to said Norton's profession, to wit, that of a practicing lawyer," and recommences, at the beginning of the affidavit of Lamport, signed on April 18th, 1870, and beginning with the words, "City of Troy, county of Rensselaer."

41. Q. All that is intermediate, as I understand you, in your judgment, is on the same kind of paper?

1593 A. That is my opinion.

42. Q. The difference between the two kinds of paper consists, in so far as color is concerned, in the fact that the sheets I have above spoken of as intermediate have somewhat of a yellower tint than the others; is it not?

A. It is less white than the others; possibly yellower, would be as good a description as could be given in one word; but it is sometimes difficult to name slight differences in color precisely.

43. Q. What makes you think, doctor, that Mr. Shavor's name was written after that of Mr. Corse was written?

A. Because in the instance stated the letters avoid those of the lower name, instead of being avoided by them or crossed by them.

44. Q. Do you see any evidences there that those signatures are in the same handwriting as the body of the instrument?

A. I do not.

45. Q. State the nature of the seals which are appended to those signatures.

A. It would require some mutilation to get at the exact character of them. They are round red discs, stuck to the paper, and checked by a stamp, showing the impression on the other side of the paper.

46. Q. State the color of the covering on that document.

A. (Witness examining paper.) I should call it a kind of buff or cream color.

47. Q. Does the lapse of time have any effect upon the appearance of writing paper?

A. Yes.

48. Q. What effect do you think it has?

A. It varies greatly with the character of the paper; old paper generally looks duller and dingier than new.

49. Q. Does the lapse of time have any effect upon the writing on paper?

1594 A. It also varies with the ink used. Most inks become grayer and less sharply marked in color by time.

50. Q. Look at the signatures and the seals upon that instrument, and their relative positions to each other, and state whether or not, in your opinion, the names were so written as to leave a space to affix the seals on the paper after the signatures?

A. (Witness examining them.) I should say that the space is divided between the signature and the seals, as if the seals were either on or intended to be put on at the time of writing the names.

51. Q. You have already stated, I believe, but I will repeat the question in another form: Is not the reassignment—to wit, is not that part of the instrument which constitutes the reassignment of the patent—on the same kind of paper that the signatures of the makers, the seals, and the jurat of the officer are?

A. So far as I see, it is.

R. H. WARD.

Subscribed and sworn to before me this 9th day of February, 1878.

IRVING BROWNE,
Special Examiner.

And I further certify that the witnesses above named were, and each of them was, at the time of his examination, of full lawful age and of sound mind, and that said witnesses were, and each of them was, carefully examined, and cautioned, and sworn to testify the whole truth, and that their and each of their depositions were by me reduced to writing in the presence of said witnesses and of each of them, and they subscribed their names thereto in my presence.

And I further certify that I am not of counsel or attorney for
1595 either of the parties on the said depositions and caption hereto named, or in any way interested in the event of said cause.

In witness whereof I have hereunto subscribed my name this 11th day of February, 1878.

IRVING BROWNE,
Special Examiner.

At a stated term of the U. S. circuit court for the southern district of New York, held at the city of New York on the 2d day of February, 1878.

Present, Hon. Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES. } In equity.

On reading and filing the subjoined consent, and on motion of Stewart L. Woodford, U. S. attorney, and of counsel for the defendant, it is ordered that Nelson K. Hopkins, esq., of Buffalo, New York, be, and he is hereby, appointed a special examiner of this court, to take the testimony at Buffalo, New York, under the 67th equity rule, as amended, of John Powers, and of such other competent witnesses as may be brought before him on the part of the defendant; and it is further ordered that A. J. Falls, esq., of Washington, D. C., be, and he is hereby, appointed a special examiner of this court, to take the testimony at Washing-
1596 ton, D. C., under the 67th equity rule, as amended, of such competent witnesses as may be brought before him on the part of the defendant herein, or on the part of the complainant herein.

(Signed) HOYT H. WHEELER.

Consent is hereby given that an order may be made in the terms of the above draft.

Troy, New York, February 1, 1878.

GEO. H. WILLIAMS,
Of Counsel for Complainant.
STEWART L. WOODFORD,
U. S. Att'y, and Def't's Sol.

A copy.

JOHN I. DAVENPORT, *Clerk.*

United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
ag'st
THOMAS L. JAMES.

In pursuance of an order of which the annexed is a certified copy, whereby I was appointed special examiner to take the testimony at Buffalo, New York, under the 67th equity rule, as amended, of John Powers, and of such other competent witnesses as might be brought before me on the part of the defendant in the above-entitled cause, do hereby certify that I attended at my office in Buffalo, New York, at the times named in the annexed depositions, and was attended by Mr. Marcus P. Norton, of counsel for the complainant, and Mr. Samuel B.
1597 Clark, assistant U. S. attorney, of counsel for the defendant.

That the witnesses, John Powers and Samuel N. Anthony, on the part of the defendant, were duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of said witnesses was reduced to writing by Fred. Greiner, a disinterested person, in my presence, and in the presence of said witnesses, respectively, and that the questions and answers were read over to said witnesses respectively, and that they subscribed their names to their respective depositions, and that annexed hereto are said depositions, which contain all the testimony taken by me under said order.

And I further certify that the signatures to the jurats at the end of each deposition was written by me.

And I further certify that Fred. Greiner and myself are not of counsel nor attorney to either of the parties in this suit, nor interested in the event of this cause, and that Defendant's Exhibits Nos. 135 and 136 were duly filed and put in evidence during the taking of said depositions, and are enclosed by me with said depositions.

This form of certificate has been read over by me to the respective counsel, and is in form and substance satisfactory to each of them.

In witness whereof I have hereunto set my hand this 16th day of February, 1878.

NELSON K. HOPKINS,
Special Examiner.

1598 United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
ag'st
THOMAS L. JAMES.

Proofs for final hearing taken for and on behalf of the defendant herein, at the city of Buffalo, New York, before N. K. Hopkins, esq., special examiner appointed for the purpose, on the 14th day of February, 1878, 10 a. m.

Present, pursuant to notice, Marcus P. Norton, Esq., solicitor and counsel for complainant, and Samuel B. Clark, assistant U. S. attorney, for the defendant.

JOHN POWERS, a witness called on behalf of the defendant, being by me first duly sworn, testified as follows.

Direct examination by Mr. CLARK:

Q. 1. What is your name, age, residence, and occupation?

A. Name is John Powers; age, fifty-three years; reside in Buffalo, New York; am employed in post-office at Buffalo as head clerk of mailing department.

Q. 2. How long have you been so employed?

A. I have had that position over twenty-five years; have been in the office longer than that.

Q. 3. What sort of an instrument was used for the postmarking of letters and the cancellation of postage-stamps when you first became head clerk of the mailing department?

1599 I don't think there was any postage-stamps in use then; that was over twenty-five years ago; letters had to be paid in money.

Q. 4. As soon as postage-stamps were introduced, what sort of an instrument was used for the purposes indicated in my last question?

A. The first I recollect was an iron instrument with a wooden handle, about three inches and a half long; I guess it was about five-eighths of an inch in diameter at the base, where it struck the stamp; the length of the whole instrument was three and a half inches. That was an instrument for the cancellation of postage-stamps. For postmarking they had a stamp with Buffalo, N. Y., and the day and the month on the acting face of it.

Q. 5. Were the two stamps of the same shape?

A. They were not of the same size. The stamp for cancelling postage-stamps was smaller than the stamp for postmarking, but they were of the same general shape; they were both hand instruments, composed of wood and iron or steel; the iron parts cylindrical shape.

Q. 6. What was the configuration of the face of the cancellation stamp?

A. It was cut so there appeared bars across it, and the bars made parallel ink lines on the postage-stamp.

Q. 7. These being separate instruments, they of course required two operations to cancel and postmark, and it was necessary to go over the letters twice—the letters that had postage stamps on, I mean?

A. Yes.

Q. 8. Was an instrument ever adopted so constructed that by going over the letters once and by one operation the postage-stamps could be canceled and the letters postmarked?

A. There was.

Q. 8½. How was this instrument made?

A. It was by uniting the canceler with the postmarking stamp.

Q. 9. How were they united?

1600 A. I took these instruments over to the shop of a worker in iron, and told him I wanted them fastened together, and it was done at the shop; I do not know whether they were soldered or how they were fastened together.

Q. 10. Did the handles of both stamps continue to be attached to them?

A. No; the handle of the cancelling stamp was taken off.

Q. 11. At whose shop was this work done?

A. The man's name was Bangasser.

Q. 12. Where is this first combined stamp?

A. I have it here.

Q. 13. Please produce it.

(Witness produces instrument called for by question.)

Q. 14. This smaller cylinder attached to the side of the larger one is the cancellation device, I understand?

A. Yes, it is.

Q. 15. Was this instrument put in use in the Buffalo post-office?

A. It was.

Q. 16. How long did it continue to be used—how many months or years?

A. I can't say exactly, but I should think two or three years.

Q. 17. Did the cancellation device ever break off or in any way become separated from the postmarking device?

A. No.

Q. 18. What change, if any, has taken place in this instrument since first combined?

A. None except the wear.

Q. 19. Did this instrument accomplish the desired end of cancelling and postmarking at one blow?

(Objected to by complainant's counsel, first, as leading; second, suggesting to the witness the answer desired by examining counsel.)

1601 A. It did.

Q. 20. Supposing that the cancellation device were separate, would the post-marking device then be like the instrument you have described as being in use for post-marking before the combination was made?

A. It would be the same.

(Instrument offered in evidence and marked Defendant's Exhibit, one hundred and thirty-five (Powers), N. K. H., examiner, Feb. 14th, 1878.)

Q. 21. Whose idea was it of making this combination?

(Objected to by complainant's counsel. First, it is not in the province of the witness to determine the question; second, that is a question solely within the province of the court upon the evidence produced.)

A. It was mine.

Q. 22. Who was postmaster at the time this combination was made?

A. Israel T. Hatch.

Q. 23. When did his term of office begin and end?

A. It began in November, 1859, and ended in April, 1861.

Q. 23½. Did you speak with Mr. Hatch in regard to making this combination?

(Objected to by complainant's counsel on the ground of its being improper to enquire of this witness concerning any conversation of the character indicated by the question, unless it first appear that Mr. Hatch is now living.)

A. I did.

Q. 24. Is that fact distinct in your recollection?

A. It is.

(Same objection to last question and answer as last above stated.)

1602 Q. 25. At what part of Mr. Hatch's term of office was the combination made?

A. In 1860, in the summer.

Q. 26. You recollect, do you, that it was warm weather or summer when the combination was made?

A. That is my recollection.

Q. 27. Did you ever know of such a combination being made before you had it done at Mr. Bangasser's shop?

(Objected to by complainant's counsel as being immaterial whether the witness did or did not know of the matter inquired about in the question.)

A. I did not.

Q. 28. Do you believe yourself to be the first inventor of this combination?

A I do.

Q. 29. Why did you not get the combination patented?

A. I never thought of it; I did not think I could get a patent on so simple a thing.

Cross examination by MARCUS P. NORTON, complainant's counsel:

Q. 30. You have been in the Buffalo post-office in the capacity of clerk for twenty-five years and upwards, have you?

A. I have.

Q. 31. In what year did postage-stamps for the payment of postage on letters go into use in the postal service of the United States?

(Objected to by defendant's counsel on the ground that it is not within the scope of anything asked on the direct examination.)

A. I don't recollect.

Q. 32. Do you recollect that they ever went into use for that purpose?

A. I know they went into use for that purpose.

1603 Q. 33. When did they go into use for that purpose?

(Objected to by defendant's counsel on the same ground as before, and also that witness has already answered the question.)

A. I don't recollect.

Q. 34. Give your earliest and best recollection of the matter inquired about in the last question.

(Objected to by defendant's counsel on same ground as last above.)

A. I should think it was about 1849 or 1850.

Q. 35. In your answer to question 4 of your direct examination, you have described two separate and distinct instruments, namely, one for post-marking the letter envelope with the name of the post-office, month, and day of the month, and the other for the purpose of cancelling postage-stamps on the letter envelope; where and of whom were those instruments obtained?

A. They were furnished by and obtained from the Post-Office Department at Washington.

Q. 36. Did you ever use those instruments in the condition they came from the Post-Office Department, in the Buffalo post-office?

(Objected to by defendant's counsel, on the ground that it is not within the scope of the direct examination.)

A. I have no doubt I have, but I don't recollect any particular instance.

Q. 37. Since you have been in the Buffalo post-office, have you ever been connected with the department for post-marking letters and for the cancellation of postage stamps?

A. Yes.

Q. 38. When, how, and for what length of time?

A. As long as I have been head clerk of the mailing department, it came partly under my charge.

1604 Q. 39. In that post-office, have you yourself labored at the business of post-marking letters?

A. No.

Q. Have you at the business of cancelling postage-stamps on mail matter?

A. No.

Q. 40. Referring to the instruments described in your answer to ques-

tion No. 4 of your examination-in-chief, how many operations were required to post-mark a letter, and to cancel the postage-stamp thereon?

A. Two, if they used both instruments.

Q. 41. When a postage-stamp was upon a letter or other mail matter, were those two instruments used?

A. Not always.

Q. 42. To post mark a letter, how many operations were required at that time?

A. It never required but one to post-mark.

Q. 43. How many operations were required at that time to cancel a postage-stamp by the instrument you described in your answer-in-chief to question No. 4?

A. One.

Q. 44. To post-mark a letter and to cancel the postage stamp thereon by the instrument referred to in your answer to question No. 4 of your direct examination, two separate and distinct operations and two separate and distinct blows were required, were they not?

A. They were.

Q. 45. How long were those instruments used in the Buffalo post-office as separate and distinct instruments?

A. I cannot say.

Q. 46. State your best recollection on that subject.

A. I have no recollection of the time either of those instruments was received from the Post-Office Department at Washington.

1605 Q. 47. Look at defendant's Exhibit No. 135 (Powers) I now hand you, and state who made the post-marking device, and also who made the postage-cancelling device, if you know.

A. I don't know.

Q. 48. Do you know where they came from to the Buffalo post-office?

A. They came from Washington—the Post-Office Department, I presume, for they always came from there; you may leave off "for they always came from there."

Q. 49. Question No. 21 enquires of you as follows: "Whose idea was it of making this combination?" Your answer was, "It was mine." What do you mean to be understood by the term "idea," as used in that question and answer?

A. I mean that it was my thought.

Q. 50. What do you mean to have the court understand by the use of the word "thought," as used in your last answer?

A. I mean that it was my idea to have them united.

Q. 51. Is that all?

A. I mean the idea occurred to me to have them united.

Q. 52. You have now given your best answers to the last previous questions upon the subject matters therein enquired about, have you?

A. I guess so.

Q. 53. Do you know whether you have or not?

(Objected to by defendant's counsel as frivolous.)

A. Yes.

Q. 54. Which is it?

A. I have.

Q. 55. In answer to question No. 22 of your examination in chief, you mentioned the name of Israel T. Hatch. Do you know where Mr. Hatch now is?

A. He is dead; he has been dead for about a year and a half.

Adjourned until 2½ p. m.

1606 FEBRUARY 14*th*, 1878, at 2½ p. m.

Counsel appear pursuant to adjournment, and the further cross-examination of the witness Powers postponed for the present, in order that Samuel N. Anthony may be examined.

SAMUEL N. ANTHONY having been examined, the further examination of Mr. Powers was adjourned until February 15th, 1878, at 10 a. m.

FEBRUARY 15*th*, 1878, at 10 a. m.

Same counsel present, and the examination of Mr. POWERS continued.

Q. 56. In your answer to question No. 23 of your examination in chief, you say that Postmaster Israel T. Hatch's term of office expired in April, 1861; who was postmaster next succeeding Mr. Hatch, at Buffalo?

A. A. M. Clapp.

Q. 57. How long did he continue in office?

A. About six years.

Q. 58. Who was assistant postmaster under Mr. Clapp?

A. Thomas Blossom.

Q. 59. Who was assistant postmaster under Mr. Hatch?

A. James H. See.

Q. 60. Name the clerks employed in post-marking mail matter and in cancelling the postage stamps upon the same during the term of office of Mr. Hatch?

A. Henry Smith, Michael Wolf, and I think there was another by the name of Martin Schenkelburger.

Q. 61. Where are those persons now, do you know?

A. Henry Smith is in the post-office, Michael Wolf is in the city, and I understand Schenkelburger is here.

1607 Q. 62. Name the post-marking and post-cancelling clerks employed during the term of office of Mr. Clapp.

A. Henry Smith, Michael Wolf about four months, John Weimer and Louis Eckel during the latter part of the time.

Q. 63. You have named all of the persons employed in that office for the purposes indicated in the last several questions?

A. I think I have; all I can recollect, except Louis Filner, whom I now recall.

Q. 64. Mr. Blossom was assistant postmaster at Buffalo during the years 1864, 1865, 1866, and 1867, was he not?

A. He was all of those years except 1867, and he was part of the year 1867; I will except 1867, on reflection, and part of 1866.

Q. 65. Were you upon personal and intimate acquaintance and relation with Mr. Blossom during his term of office?

A. I was.

Q. 66. Did you or do you now know that Mr. Thomas Blossom, while assistant postmaster at Buffalo, signed a paper or a certificate in the following words and figures, that is to say: "This is to certify that we, the undersigned postmasters, at and for the respective places designated under our said respective signatures, have in use in our said post-offices, whereof we are deputy postmasters, the double post-marking and postage-cancelling stamp known as Norton's Patent or Improvement, and furnished to us by the Post-Office Department at Washington, by means of which the post-mark is given on the envelope and the postage-stamp canceled at the same time and blow of the instrument.

"We have carefully read the printed copy affidavit of C. Smith, pages

6 and 7 of House of Representatives Document No. 27, 38th Congress, 2d session; also printed copy letter of Abram Wakeman, dated January 3, 1863, pages 4 and 5, same document; also printed letter from
1608 the post-office at Washington City, D. C., dated on the 18th day of March, 1864, page 6 of same document; also printed copy of affidavit of General John A. Dix, pages 1 and 2 of House of Representatives Ex. Document No. 27, part 2d; also printed copy affidavit of E. Hoole, pages 3 and 4, same document.

"And as to the matter of economy in time and labor, and as to the matter of the more perfect cancellation of the postage-stamps and the post-marking upon the envelope of the letter, each named and set forth in the aforesaid printed papers, in Ex. Documents Nos. 27 and 27, part 2d, we fully concur, as experience in our respective offices has fully proven.

"We believe the said instrument to be and to answer all the purposes claimed for it.

"We are satisfied that it is a labor-saving instrument, and that by its use the post-mark is made upon the letter envelope in a more intelligible manner, while at the same time the postage-stamp is more perfectly and permanently canceled than by any other known device."

A. I don't recollect of ever hearing of it before now.

Q. 67. In answer to question number twenty-nine of your examination in-chief, you state in substance that you never thought to obtain a patent upon Exhibit number one hundred and thirty-five, offered in evidence by defendant's counsel February 14th, 1878, and that you did not think you could get a patent on so simple a thing; at what time did you come to the conclusions stated by you in that answer?

A. I think it was several years after, when I heard some one had got a patent for it; then I was surprised at a patent being granted for it.

Q. 68. In what year were you so much surprised as indicated by your last answer?

A. I don't know in what year it was.

Q. 69. Give your best recollections of the time, of the place,
1609 and of the circumstances under which you seem to have been overwhelmed by surprise at the granting of a patent upon the device in question.

A. I should think it was about three or four years after Defendant's Exhibit 135 was made. It was here in Buffalo. I don't recollect any particular circumstances.

Q. 70. You have stated that you had heard that a patent had been granted upon the instrument in question. When did you hear of that and of whom?

A. I have answered part of that question before—as to when I heard it. I don't remember of whom.

Q. 71. State the year in which you heard about the patent referred to in the last question.

A. I don't remember the year.

Q. 72. Was it while Mr. Thomas Blossom was assistant postmaster in this city?

(Objected to by defendant's counsel as immaterial and on the ground that is not within the scope of the direct examination.)

A. I cannot say, but I think it is quite likely.

Q. 73. Give your best recollections about the matter.

(Same objection.)

A. I have given my best recollection.

Q. 74. State what those recollections were which you state in your last answer you have given before.

(Same objection, and on the further ground that the witness has answered.)

A. My best recollection now is, that it was while Mr. Blossom was assistant postmaster at Buffalo.

Q. 75. Did you ever have conference or consultation with Mr. Jay Hyatt, a patent attorney in this city, with reference to device shown by Defendant's Exhibit No. 135?

A. I had a little conversation with him about it once.

Q. 76. When was that?

1610 A. I should think it was about five or six years ago.

Q. 77. State that conversation as near as you can recollect it.

(Same objection.)

A. There was something in the newspapers about this patent obtained by parties in Troy. Mr. Hyatt boarded where I did. I don't recollect exactly what I said to him, but I told him I got up such a stamp here a long time before, and I asked him if there was any chance for me to make anything out of it then. He said no, there was not; that I was too late; that I should have had it patented before. This is the substance of our conversation.

Q. 78. In your answer to question number twenty-eight of your direct examination you state that you "believe yourself to be the first inventor of this combination," the quotation being taken from that question. Upon what fact do you state a belief of that character?

A. Because I never heard of anything of the kind before.

Q. 79. In answer to question number twenty-five of your examination-in-chief you state in substance that it was in the summer of the year 1860 that the combination shown in Defendant's Exhibit No. 135 was made. How is it and by what means is it that you were enabled to state that as the time?

A. I said summer, because it was warm weather, but it might have been spring or early in the fall of 1860, and 1860 was the only summer that Mr. Hatch was postmaster at Buffalo.

Q. 80. Do you remember anything about an order from the Postmaster-General, dated on or about the 25th day of July, 1860, requiring postmasters to put postmark on the letter, and to cancel the postage stamp by a separate instrument?

A. I remember there was such an order. I don't remember the exact time, but it was about that time.

1611 Q. 81. Previous to that order was Defendant's Exhibit No. 135 constructed?

A. I think not.

Q. 82. How long after the promulgation of that order did the postmaster continue to use in this post-office the single postmarking stamp, and also the single stamp for canceling the postage stamps—I mean the clerks employed by the postmaster for that purpose?

A. I can't say exactly, but I think it was only a short time.

Q. 83. Did you at any time inform the Postmaster-General at Washington that you had made the instrument represented by Defendant's Exhibit No. 135?

A. I have no recollection of it.

Q. 84. Did you at any time inform Mr. A. M. Clapp, while he was postmaster at this city, that you had made the device represented by Defendant's Exhibit No. 135?

A. I have no recollection of ever having done so.

6 and 7 of House of Representatives Document No. 27, 38th Congress, 2d session; also printed copy letter of Abram Wakeman, dated January 3, 1863, pages 4 and 5, same document; also printed letter from
1608 the post-office at Washington City, D. C., dated on the 18th day of March, 1861, page 6 of same document; also printed copy of affidavit of General John A. Dix, pages 1 and 2 of House of Representatives Ex. Document No. 27, part 2d; also printed copy affidavit of E. Hoole, pages 3 and 4, same document.

"And as to the matter of economy in time and labor, and as to the matter of the more perfect cancellation of the postage-stamps and the post-marking upon the envelope of the letter, each named and set forth in the aforesaid printed papers, in Ex. Documents Nos. 27 and 27, part 2d, we fully concur, as experience in our respective offices has fully proven.

"We believe the said instrument to be and to answer all the purposes claimed for it.

"We are satisfied that it is a labor-saving instrument, and that by its use the post-mark is made upon the letter envelope in a more intelligible manner, while at the same time the postage-stamp is more perfectly and permanently canceled than by any other known device."

A. I don't recollect of ever hearing of it before now.

Q. 67. In answer to question number twenty-nine of your examination-in-chief, you state in substance that you never thought to obtain a patent upon Exhibit number one hundred and thirty-five, offered in evidence by defendant's counsel February 14th, 1878, and that you did not think you could get a patent on so simple a thing; at what time did you come to the conclusions stated by you in that answer?

A. I think it was several years after, when I heard some one had got a patent for it; then I was surprised at a patent being granted for it.

Q. 68. In what year were you so much surprised as indicated by your last answer?

A. I don't know in what year it was.

Q. 69. Give your best recollections of the time, of the place,
1609 and of the circumstances under which you seem to have been overwhelmed by surprise at the granting of a patent upon the device in question.

A. I should think it was about three or four years after Defendant's Exhibit 135 was made. It was here in Buffalo. I don't recollect any particular circumstances.

Q. 70. You have stated that you had heard that a patent had been granted upon the instrument in question. When did you hear of that and of whom?

A. I have answered part of that question before—as to when I heard it. I don't remember of whom.

Q. 71. State the year in which you heard about the patent referred to in the last question.

A. I don't remember the year.

Q. 72. Was it while Mr. Thomas Blossom was assistant postmaster in this city?

(Objected to by defendant's counsel as immaterial and on the ground that is not within the scope of the direct examination.)

A. I cannot say, but I think it is quite likely.

Q. 73. Give your best recollections about the matter.

(Same objection.)

A. I have given my best recollection.

Q. 74. State what those recollections were which you state in your last answer you have given before.

(Same objection, and on the further ground that the witness has answered.)

A. My best recollection now is, that it was while Mr. Blossom was assistant postmaster at Buffalo.

Q. 75. Did you ever have conference or consultation with Mr. Jay Hyatt, a patent attorney in this city, with reference to device shown by Defendant's Exhibit No. 135?

A. I had a little conversation with him about it once.

Q. 76. When was that?

1610 A. I should think it was about five or six years ago.

Q. 77. State that conversation as near as you can recollect it.

(Same objection.)

A. There was something in the newspapers about this patent obtained by parties in Troy. Mr. Hyatt boarded where I did. I don't recollect exactly what I said to him, but I told him I got up such a stamp here a long time before, and I asked him if there was any chance for me to make anything out of it then. He said no, there was not; that I was too late; that I should have had it patented before. This is the substance of our conversation.

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A. I have no recollection of it.

Q. 84. Did you at any time inform Mr. A. M. Clapp, while he was postmaster at this city, that you had made the device represented by Defendant's Exhibit No. 135?

A. I have no recollection of ever having done so.

Q. 85. Did you at any time, while Mr. Thomas Blossom was assistant postmaster at this city, inform him that you had made the instrument represented by Defendant's Exhibit No. 135?

A. I have no recollection of ever having done so.

Q. 86. How many instruments like, or substantially like, Defendant's Exhibit No. 135 did you ever make, or cause to be made?

A. Only that one.

Q. 87. I understand you say, on your direct examination, that Defendant's Exhibit No. 135 has been used in the post-office at this city. Is that so?

A. It is.

Q. 88. At what time was the use of Defendant's Exhibit No. 135 discontinued at the Buffalo post-office?

A. I don't remember the exact time, but it was when we received some of the same kind from Washington.

1612 Q. 89. From the Post Office Department at Washington?

A. Yes.

Q. 90. What time was that?

A. I cannot say. I don't recollect; but I should think it was in 1863 or 1864. I don't remember exactly.

Q. 91. Please describe the construction (if you can) of the instrument received from the Post Office Department for postmarking the letter on the envelope and canceling the postage-stamp simultaneously and by one blow of the instrument?

A. The postmarking stamp had a piece of brass on the side of it, with a hole in the brass for putting a cork or rubber in for the canceling of the postage-stamp.

Q. 92. How long was that used in the Buffalo post-office?

A. They discontinued the use of it in 1865.

Q. 93. How many such devices were used in that office at one time?

A. I think only one, but I won't be certain.

Q. 94. Have you ever seen in use in that office an instrument consisting of an upright handle with a bar at right angles with its lower end, and having on the lower side of that bar a postmarking and a postage canceling device?

A. Yes. I think that is the kind they use now.

Q. 95. The handle is fastened to the upper surface of the cross-bar, is it not?

A. Yes.

Q. 96. The acting surface of the postmarking device and the acting surface of the canceling device are each below the cross-bar, while the cross-bar intervenes between the handle and the postmarking and postage cancelling device; are they not, and does it not?

A. The acting surface of the postmarking and cancelling device are each below the cross-bar, and I think the cross-bar intervenes between the handle and the postmarking and postage-cancelling device.

1613 Q. 97. Referring to the instrument described in your last answer, you may state, if you please, the time when it first went into use in the post-office at Buffalo.

A. I can't recollect that.

Q. 98. Is substantially the same instrument now in use in that post-office?

A. I think that is the kind they are using now in that office.

Q. 99. Since the use of Defendant's Exhibit No. 135 was discontinued in the post-office at Buffalo, where has that instrument been between that and the present time?

A. In the post-office all the while.

Q. 100. When was it last taken from that office?

A. Yesterday, when it was brought here.

Q. 101. After the discontinuing of the use of that instrument at the post-office in this city, when was your attention first directed to it for any purpose?

A. At the time I had that conversation with Mr. Hyatt.

Q. 102. When was your attention next directed to it, for any purpose?

A. Last summer. I think in July.

Q. 103. On what occasion was that?

A. Upon seeing a statement in the newspaper that parties had sued the postmaster at New York for a large sum, for the use of a similar instrument.

Q. 104. What was there peculiar about the statement you saw in the newspaper which directed your attention to Defendant's Exhibit No. 135, which had long previous to that time been discarded and rejected by the Buffalo post-office?

A. It stated that they had sued him for $30,000, or $30,000 a year.

Q. 105. Is that all?

A. I thought it was wrong to make the postmaster pay any such sum, and I would help him out if I could.

Q. 106. Was that all you "thought" at that time on that subject?

1614 A. That was all the reason I wrote the postmaster at New York about it.

Q. 107. Now, Mr. Powers, when you saw that statement of $30,000 a year, or so, being asked by the complainant in his suit against the postmaster at New York City, did your soul have any hungering or thirsting after that $30,000 a year, or any part of it, or did you have any desire for any part or portion of it? This question is put with due respect to the witness.

(Objected to by defendant's counsel as immaterial.)

A. I had no desire for any part of the New York postmaster's money.

Q. 108. Had you any desire, as indicated by the last question, for any money from the United States, or anybody else, growing out of the instrument in question?

(Same objection.)

A. I had no desire for anybody's money that was not fairly due me.

Q. 109. You may say what your thoughts and feelings were at the time you first saw this $30,000 newspaper advertisement, when taken in connection with Defendant's Exhibit No. 135.

(Same objection.)

A. I thought I ought to inform the postmaster at New York about this stamp, as it might be of some benefit to him. I had no expectation of making any money out of it.

Q. 110. You were anxious to serve the postmaster at New York in this matter, were you not?

A. Yes; I thought it was my duty to do so.

Q. 111. Had you had a patent at that time on Defendant's Exhibit No. 135, what would you have considered to be your duty to the postmaster in New York?

(Same objection.)

1615 *A.* I dont know exactly.

Q. 112. Not having a patent at that time on Defendant's Exhibit No. 135, and feeling your duty pressing heavily upon you, you vol-

untarily wrote a letter to Postmaster James about this matter, did you not?

A. I did.

Q. 113. Had you had a patent at the time you wrote that letter, would you have written a letter of the character you did write?

A. Probably not; if I had had a patent no one else would have had one for the same thing, and, therefore, there would have been no such suit; that is my opinion.

Q. 114. You mean by that, do you not, that the suit would have been in your name instead of Mr. Campbell, the present complainant?

A. No; I don't mean anything of the sort.

Q. 115. What do you mean?

A. I mean I don't know what I should have done.

Q. 116. About how long was it after Jay Hyatt, a patent attorney in this city, advised you that you could not obtain a patent on Defendant's Exhibit No. 135, that you seemed to have had so much regard for your conscience, and also as to your duty, that you gave unasked-for information to the postmaster at New York?

(Objected to by defendant's counsel as assuming something not in evidence in regard to Mr. Hyatt, and as immaterial.)

A. I think from the time I had the conversation with Mr. Hyatt till I wrote the postmaster at New York was about five years.

Q. 117. Is your answer to question No. 77 of your cross-examination a correct answer, and such as you intended at the time you gave it?

A. I believe it to be correct, and I do not wish to change it.

1616 Q. 118. In what year was it that you had the conversation and consultation with Mr. Jay Hyatt, referred to in your last answer, and as stated in your answer to question No. 77?

A. The conversation I had with him was five or six years ago; I cannot remember the year.

Q. 119. Where was that conversation?

(Same objection.)

A. At our boarding-house on Swan street.

Q. 120. Did you ask Mr. Hyatt at that time, or at any other time, anything about obtaining a patent for you on that instrument which has now become Defendant's Exhibit No. 135?

(Same objection.)

A. I don't think I did; I don't think I ever asked him to get a patent.

Q. 121. Did you ask him if a patent could be obtained for you on that instrument?

(Same objection.)

A. I don't think I did. I don't recollect. I might have asked him.

Q. 122. You say that Mr. Hyatt advised you that it was too late for you to make any money out of it. What do you think he had reference to when he gave you that advice?

(Objected to by defendant's counsel as assuming something the witness has not said, and that it is immaterial.)

A. I thought by it that he meant it was too late to get a patent.

Q. 123. What was your object or purpose in having that consultation with Mr. Hyatt?

(Objected to by defendant's counsel as assuming that the witness had a consultation in a legal sense, and as immaterial.)

A. The conversation occurred incidentally at the boarding-house.

1617 Q. 124. Who first brought on that conversation?

(Objected to as immaterial.)

A. I cannot say.

Q. 125. Give your best recollection about it?

A. According to my recollection Mr. Hyatt was talking to some one else about the Troy patent, and that was what led me to speak of it to him; I think that was it.

Q. 126. Have you not already testified that what led you to speak to Mr. Hyatt about this matter "was something in the newspapers about this patent obtained by parties in Troy"?

(Same objection.)

A. That is the article they were talking about.

Q. 127. Did you understand the last question?

(Same objection.)

A. I think so.

Q. 128. Then why did you not answer that question squarely, fairly, and without evasion?

(Same objection, and because for the manifest purpose of irritating the witness, it assumes that the witness answered crookedly, unfairly, and evasively.)

A. I thought the answer I gave covered both.

Q. 129. Both of what?

(Same objection.)

A. Of both questions—the one he asked, and the one he referred to.

Q. 130. In my question in which I charge you with evasion in answering, I referred to no previous question whatever, but simply inquired of you whether you had or had not testified to a certain matter which I distinctly stated in the question, and I now give you the opportunity to correct that answer, or to further answer it, if you desire, and the
1618 examiner will now read that question and your answer to it, which is No. 126.

(Same objection, and because it assumes that there is something that needs correction.)

A. I will correct that answer and further answer, that I have so testified. That article in the newspaper was what Hyatt and the other man were talking about that led to my speaking to Mr. Hyatt about it.

Q. 131. Did I ask you to state anything about any article in any newspaper in question No. 126?

A. It seems not.

Q. 132. Then why did you force into your last answer but one anything about a newspaper article being discussed between third parties, in which you at the time first took no part, as you testified? You will please answer this question without any reference to any suggestions of defendant's counsel made by way of objections.

(Objected to as immaterial and because the last answer but one was in reply to a question asking the witness for any explanation he might choose to give, and also because it assumes that the witness forced something into his answer.)

A. It was in explanation of my answer to the question where the examining counsel accused me of evading.

Q. 133. That explanation as stated in your last answer you gave simply and only as the reasons why you did not give in the first instance the proper answer which you afterwards did give to question No. 126. Do I understand you correctly?

(Objected to as immaterial and because it assumes that the witness in the first instance gave an improper answer.)

A. I think you do.

1619 Q. 134. At the time you had this conversation with Mr. Hy-

att, did he advise you to obtain a patent on the instrument represented by Defendant's Exhibit No. 135?

(Objected to as immaterial.)

A. He did not.

Q. 135. Did he on that occasion advise you in words, or in substance, that you could not obtain a patent upon it?

(Same objection.)

A. I think he did in substance, for he said I was too late, or words to that effect.

Q. 136. Did he on that occasion assign any reasons why in his opinion you could not obtain a patent on that instrument?

(Same objection.)

A. I don't think he did; I don't recollect of his giving any.

Q. 137. Did he on that occasion assign to you any reason or reasons why, in his opinion, you were "too late" to obtain a patent on that instrument?

(Same objection.)

A. I don't recollect that he did.

Q. 138. Did you on that occasion inquire of Mr. Hyatt why, in his opinion, you could not obtain a patent upon that instrument?

(Same objection.)

A. I don't recollect that I did.

Q. 139. Did you on that occasion ask him why it was he thought you were "too late" to obtain a patent on that instument?

(Same objection.)

1620 A. I don't recollect that I did.

Q. 140. Is Mr. Hyatt living or is he dead?

(Same objection.)

A. He is dead.

Q. 141. What was his reputation as a patent lawyer and patent agent in this city while in practice here?

(Same objection.)

A. Good, as far as I know.

Q. 142. If you know, how many years was he engaged in the practice of his profession in this city?

A. I don't know.

Q. 143. Should you think it was ten years before his d ath.

A. I think six or eight years and perhaps more.

Q. 144. Did you ever exhibit to him the instrument now represented by Defendant's Exhibit No. 135?

(Same objection.)

A. No, I never showed it to him so far as I remember.

Q. 145. At the time you voluntarily wrote to the postmaster at New York, in the summer of 1877, a letter upon the subject matter of Defendant's Exhibit No. 135, did you state to him that the use of that instrument had long before that time been discontinued in the Buffalo post-office?

(Same objection.)

A. I did not.

Q. 146. Did you in that letter state to him in words, or in substance, that that instrument had been abandoned by you years before
1621 then, and that you had not only not obtained a patent on it but had not even made an effort, or attempted an effort, to obtain a patent on that instrument?

(Same objection.)

A. I did not write anything of the sort to him.

Q. 147. The conditions named in the last two questions are substantially correct, are they not?

(Same objection.)

A. Yes.

Q. 148. You are now employed by the United States in the postal service, are you not?

(Same objection.)

A. I am employed by the postmaster at Buffalo in the United States post-office.

Q. 149. What is your official capacity, if any, in the Buffalo post-office?

(Same objection.)

A. I am what they call head clerk in the mailing department, and have been such over twenty-five years.

Q. 150. Are you not in the service of the United States by virtue of your employment by the postmaster of the United States for the post-office at Buffalo?

(Same objection.)

A. Yes, I suppose I am.

Q. 151. What salary is paid you by the government for services rendered at the Buffalo post-office?

(Same objection.)

A. Seventeen hundred dollars a year.

Q. 152. Have you had any conversation since the commence-
1622 ment of this suit against Mr. James, the postmaster at New York, with the postmaster at this city about this suit?

(Same objection.)

A. Yes, I have had a little conversation with him about it.

Q. 153. Who commenced that conversation, you or the postmaster at Buffalo?

(Same objection.)

A. I think I did the first time.

Q. 154. Who did the second or any other time?

(Same objection.)

A. I think the postmaster commenced it the second time. I only remember those two conversations.

Q. 155. Since the commencement of this suit in which you are being examined as a witness, have you had any correspondence with the Postmaster-General, or with any officer or person connected with the Post-Office Department at Washington?

(Same objection.)

A. Not individually; I have written for the postmaster several letters, but nothing concerning this suit or any matter connected with it.

Q. 156. In your direct examination you state about somebody in Troy having a patent upon what you call substantially the same instrument in kind or character as Defendant's Exhibit No. 135; have you ever seen or corresponded with that person, to whom you refer as somebody in Troy, upon the subject matter of your direct and cross examination in this case?

(Same objection.)

A. Never saw him that I know of, and never corresponded with him.

Adjourned until February 16th, 1878, at 10 a. m.

1623 FEBRUARY 16TH, 1878—at 10 a. m.

Same counsel present, and the further cross-examination of Mr. Powers continued:

Q. 157. If I understand you correctly, Defendant's Exhibit No. 135 was made under your instructions in the latter part of the year 1860, or after the order of the Postmaster-General in July of that year; is that so?

A. It was after an order of that kind; I don't know the date of the order, but the order and instrument was made in 1860.

Q. 158. How much and what part of Defendant's Exhibit No. 135 was made by you or under your instructions at the time you mention in your last answer?

A. Merely uniting the postmarking and the canceling stamp.

Q. 159. By means of what?

A. I don't know what kind of work it is exactly, but I would say it was soldered or brazed or welded together; the instrument itself will show.

Q. 160. At the time you had the post-office postage-stamp cancelling device attached to the side of the post-office postmarking stamp did you consider that you had made an invention of any kind?

(Objected to as immaterial.)

A. No; I did not think of it as an invention as I recollect.

Q. 161. When, if ever, did you discover any invention in Defendant's Exhibit No. 135?

A. I never considered it much of an invention.

Q. 162. Last question repeated and the same is read to the witness.

A. I think at the time I had a talk with Mr. Hyatt was when I discovered that it was an invention.

Q. 163. This Exhibit No. 135 of the defendant has been under
1624 your control, and in the post-office in this city until the commencement of you examination in this cause, has it not?

A. It has been in the post office all that time, but I don't know as it has been specially under my control.

Q. 164. Since the use of this exhibit was discontinued in the Buffalo post-office, and since its abandonment by you, who has had charge or control of it to the present time?

A. I don't know that any one had particular charge of it up to the time of my conversation with Mr. Hyatt; then I hunted it up, and have kept it ever since.

Q. 165. Where have you kept it?

A. In a drawer in the post-office.

Q. 166. And in that drawer it has been ever since until you produced it here?

A. Not in the same drawer; in that drawer or some other drawer.

Q. 167. During your examination yesterday I understood you to say that since the commencement of this suit against Postmaster James you had had two separate interviews and conversations with the present United States postmaster at this city about the subject matter pending in that suit; am I correct in that?

A. That is correct.

Q. 168. Will you state the name of the present postmaster at Buffalo?

A. Isaac M. Shermerhorn.

Q. 169. If I understood you correctly yesterday, the first conversation with him was first brought about by yourself; am I correct in that?

A. That is correct.

Q. 170. You may state that conversation as near as you now remember it.

(Objected to as hearsay and as immaterial.)

A. It was just after this notice in the newspaper about the $30,000 suit last July; I think I mentioned to him of the article I had
1625 seen in the paper, and showed him Defendant's Exhibit No. 135, and told him that I got that exhibit up in 1860; he said, in reply to that, I think, you did, did you; I don't remember what else was said; some one came along and wanted to see him, and they went into his private room.

Q. 171. State the second conversation you had with him, when it was, where, and by whom was it first brought about?

A. It was in the post-office; I think last week; I got a paper out of his room which had a notice of this suit in it, saying that the postmaster in New York was sued for $150,000 for using a combined postmarking and cancelling stamp, and when I took the paper back he said that was a big suit, or an important suit, and I said, yes; that I believe was all the conversation at that time, but there was another conversation which I remember now that I did not remember yesterday, when asked about the conversation I had had with the present postmaster here; at that time the postmaster asked me if I had written to the postmaster at New York about Defendant's Exhibit No. 135, and I told him I had; and then again the day before yesterday, after I had been over here in the morning, he commenced a conversation about the matter, and he said, laughingly, that the post-offices would not be worth having if the postmaster at New York got beat.

Q. 172. To what did the postmaster refer in this conversation when he said that post-offices would not be worth having if Postmaster James got beat?

A. He referred to this suit.

Q. 173. Did he express any apprehensions that he might be called upon in a similar manner as Mr. James has been called upon, to render strict obedience to the Constitution of the United States, in which it declares that private property should not be taken for public use without a just and adequate compensation therefor?

A. He did not; he did not say anything further on the subject.

1626 Q. 174. What do you think he had reference to when he told you that post offices would not be worth having if this suit were to prevail against Mr. James, postmaster at New York?

A. He said it in such a laughing way that I thought he did not have any apprehension at all.

Q. 175. What do you think was the cause of his anxiety when he asked you if you had written the postmaster at New York about this matter?

(Objected to as immaterial, and as assuming that Mr. Schermerhorn had some anxiety.)

A. I don't know.

Q. 176. When did you last write the postmaster at New York on this subject?

A. I never wrote him but once on this subject, and that was last July.

Q. 177. What did you write him?

(Objected to as immaterial, and that it calls for the contents of an instrument in writing.)

A. I cut a notice out of the newspaper of this suit and pasted it on a sheet of letter-paper, and then I made three impressions with Exhibit

No. 135 under the notice; then I stated that the stamp that made those impressions was invented and in use in the post-office in this city in 1860.

Q. 178. What was your object in thus volunteering supposed information, and tendering your services to the postmaster at New York in this matter?

A. I supposed it was wrong to make him pay for the use of the patent that he was sued on, and I thought that it might be of some use to him to know that Exhibit No. 135 was in use in this post-office in 1860.

Q. 179. What led you to think that the use of Exhibit No. 135 in the post-office at Buffalo, when that use long years before had been discontinued, and you had abandoned your stamp enterprise, Exhibit No. 135, could be of the least possible use to Mr. James?

1627 A. I was led to think so, because it is the same combination, as I believed, as that for which a patent was obtained afterwards, and on which this suit is brought.

Q. 180. What is the date of that patent upon which this suit is brought?

A. I don't know the date of it—never knew it; I have been informed recently that it was in January, 1863.

Q. 181. And to whom granted?

A. I don't know.

Q. 182. Suppose you had had this patent, and Mr. James had gored your ox by infringing it, would you then regard it to be wrong to ask him to settle with you for that wrongful act?

A. I don't know whether I should or not in such a case.

Q. 183. When were you first informed that your services would be necessary as a witness in this case?

A. I think it was last Tuesday.

Q. 184. Were you subpœnaed in writing, and your fees tendered you?

A. Neither.

JOHN POWERS.

Subscribed and sworn to this 16th day of February, 1878.

NELSON K. HOPKINS,
Special Examiner.

February 14th, 1878, at 2½ p. m., same counsel present.

SAMUEL N. ANTHONY, a witness called on behalf of the defendant, being by me first duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. 1. What is your name, age, residence, and occupation?

1628 A. My name is Samuel N. Anthony; I was sixty years old last May; I reside at Geneva, Ontario County, N. Y.; I am police justice.

Q. 2. Were you ever employed in the post-office at Geneva, New York; if so, when and in what capacity?

A. I went into the post-office in the spring of 1861; I was head clerk; I was eight years head clerk, and four years postmaster.

Q. 3. Was an instrument by which letters were postmarked on the envelope, apart from the postage stamp, and the postage stamp cancelled at one blow, used while you were in the office?

(Objected to by complainant's counsel, as leading in its character. Second, as framing the answer desired by the counsel from the witness.)

A. I used the postmarker and canceller on one handle, which completed the entire work at one blow.

(In view of the answer given to question, the objection is withdrawn.)

Q. 4. Did any of the postmark appear on the postage stamp?

A. No, not when properly used.

Q. 5. Where is the first instrument of that kind that was used at Geneva?

A. It is in my possession.

Q. 6. Please produce it.

(Witness produces instrument called for by question.)

Q. 7. Please describe how that instrument is made; what was its original elements?

A. The canceller that is brazed on the side of the postmarking device was originally on a handle by itself; the handle was taken off, and the iron brazed on the side of the postmarker.

1629 Q. 8. Did the canceller ever break off?

A. No, sir.

Q. 9. The instrument as it now appears is as originally made, is it?

A. It is, except wear and tear.

Q. 10. Was that instrument put in use in the Geneva post-office; if so, how long was it used?

A. It was used there until we received a union stamp from the government.

Q. 11. About how long was it used, should you say?

A. I should think about three years; I can't tell the time we received one from the government, but think it was in 1864.

Q. 12. Who did the work of combining the post-marker with the canceller?

A. Dr. Wm. F. Eddington brazed the canceller to the post-marker.

Q. 13. Under whose directions?

A. Under mine.

Q. 14. Where did you get the idea?

A. I don't know whether it came from above or below; to explain: I had not sufficient help in the office; I had to do all the mailing; there was more than I could get through with comfortably in time for the mails; on this day, having a larger mail than usual, and feeling it impossible to get through in time for the mail, the post-marking stamp was standing on the table by me, I reached for the canceller, set it up by the side of the post-marker, and the thought struck me the canceller should be brazed on the side and save half my work; I took the handle off the canceller and ran across the street to Dr. Eddington's office and told him to braze it on the side of the post-marker, which he did.

Q 15. What day was this?

A. It was in 1861, soon after I went into the office; I cannot tell the day of the month.

Q. 16. What part of the year did you first go into the office?

1630 A. In May or June, 1861; I cannot tell which; in the first year of Lincoln's administration.

Q. 17. Did you ever see or know of a combined instrument before the one which was made under your direction?

(Objected to by complainant's counsel on the ground that it is wholly immaterial whether he had or had not known or seen an instrument of the kind contemplated by the question previous to the one the witness made for himself about midsummer, 1861.)

A. Not of that kind for the purposes of post-marking and cancelling at one blow.

Q. 18. Do you believe yourself to be an independent inventor of that combination?

(Objected to by complainant's counsel on the ground that it is wholly immaterial as to what he believes or does not believe on the subject inquired about.)

A. I believe that I was the first inventor; I had never seen or heard of one.

(The instrument offered in evidence and marked Defendant's Exhibit one hundred and thirty-six (Anthony), N. K. H., ex'r., Feb. 14th, 1878.)

Cross examination by Mr. NORTON:

Q. 19. About how large is Geneva in population?

A. About seven thousand.

Q. 20. The devices you have described, when so combined as to be used by one handle, for the purpose of putting the post-mark on the letter and the cancellation of the postage-stamp thereon by one blow, saves full one-half the labor in post-marking and cancelling, does it not?

(Objected to by defendant's counsel on the ground that it is not within the scope of the direct examination.)

1631 A. It does.

Q. 21. Do you know what kind of a device is now in use in the Geneva post office for the purposes of post-marking letters and for the cancellation of postage-stamps thereon?

(Same objection.)

A. I do.

Q. 22. State the same as near as you can.

(Same objection.)

A. There is an iron bar that is horizontal with the face of the stamp; the post-marker and canceller are fastened to that bar, the post-marker being at one end and the canceller at the other; the canceller is a tube filled with rubber, with which the postage-stamp is cancelled; the handle is in the center of the cross-bar; the handle is on the upper part of the cross-bar, and the post-marker and canceller are fastened on the under side of the bar.

Q 23. You say that Defendant's Exhibit No. 136 has been in use in the Geneva post-office?

A. I do.

Q. 24. When was that use discontinued?

A. I think it was in 1864 that the use of that was discontinued; it was at the time we received a union stamp from the government.

Q. 25. How many devices like Defendant's Exhibit No. 136 did you use in the Geneva post-office while you were there?

A. Defendant's Exhibit No. 136 was the only one until we received the new one from the Post-Office Department.

Q. 26. Where did you obtain the post-marker and the postage-cancelling device found in Defendant's Exhibit No. 136, in 1861, at the time when you said you had them brazed together?

A. They were in the office on separate handles when I went there.

1632 Q. 27. Your alleged invention consisted in the brazing of the two devices together so as to perform the functions you have described?

A. Yes.

Q. 28. Did you ever apply for a patent on the device shown by Defendant's Exhibit No. 136 (Anthony)?

A. I did not.

Q. 29. Did you ever communicate to the Postmaster-General, or any officer of the Post-Office Department, the fact of your alleged invention represented by Defendant's Exhibit No. 136 (Anthony)?

A. I never did.

Q. 30. Is Defendant's Exhibit No. 136, which I now hand you, the only device of that kind you ever made or caused to be made?

A. That is the only one.

S. N. ANTHONY.

Subscribed and sworn to before me this 14th day of February, 1878.

NELSON K. HOPKINS,
Special Examiner.

1633 At a stated term of the circuit court of the United States for the southern district of New York, held at the city of New York, on the 4th day of March, 1878:

Present, Hon. Samuel Blatchford, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES. } In equity.

On reading and filing the subjoined consent, and on motion of Stewart L. Woodford, U. S. attorney and defendant's solicitor herein, it is ordered, that C. P. Taft, esq., of Cincinnati, Ohio, be and he hereby is appointed a special examiner of this court, under the 67th equity rule, as amended, for the purpose of taking the testimony at said Cincinnati of such competent witnesses as may be brought before him on the behalf of the defendant herein.

(Signed) SAM'L BLATCHFORD.

Consent is hereby given that an order of court in the terms of the above draft may be made.

Dated Cleveland, Ohio, February 28, 1878.

[L. S.] STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol. C.
MARCUS P. NORTON,
Solicitor for Complainant.

A copy. JOHN I. DAVENPORT, *Clerk.*

1634 United States circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES. } No.

Examination of witnesses on behalf of respondent, under the 67th rule in equity, as amended, before Charles P. Taft, special examiner, on Monday, March 11th, 1878.

Present, Marcus P. Norton, esq., on behalf of complainant, and Samuel B. Clarke, esq., on behalf of respondent.

JOHN RUPP, a witness produced on behalf of respondent, being first

duly sworn, deposes and says, in answer to interrogatories to him propounded by Mr. Clarke for defendant, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Rupp; age, fifty years; residence, No. 8 Miami street, Cincinnati, Ohio; occupation, canceling clerk in Cincinnati post-office.

(Counsel for complainant desiring to take a preliminary objection to the examination of this witness in this cause, puts to the witness the following question:)

Q. 2. Are you in the employ of the United States, and are you paid by the United States for services rendered by you in the Cincinnati post office?

A. I have been in employ of the United States since the 1st of
1635 January, 1864, and have been paid by them for services rendered in the Cincinnati post-office since that time.

(In view of the answer given by the witness to a preliminary question put to him by complainant's counsel, counsel objects to the examination of this witness in this cause by the defendant's counsel, on the ground that the witness is an interested witness, in that the United States, by its Attorney-General, defend this defendant in the employment of counsel and in the payment from the Treasury of the United States of all the expenses attending that defense.)

Q. 3. (By Mr. CLARKE.) You say that you have been employed in the Cincinnati post-office since the 1st of January, 1864. Do you know how letters were postmarked and postage stamps were canceled in that office and at that time?

A. I was employed since the 1st of January, 1864; when I came there I found the stamp made of steel, with a piece of wood attached to the handle of the stamp, with which I could cancel the stamp and put the post-mark on at one stroke; * we had two of them kind of stamps. Mr. Peter Hunt was using one, and I was using one of these stamps. He was the maker of this wood attachment to the stamp. My stamp had been used four years, and the wood was wearing off a little, and I went to work and made a new one on the same principle, like the old one was, which was made by Mr. Peter Hunt; and I used this till the fall of 1865, when the government furnished us with some new stamps. I made a little sketch on a piece of paper, which I will furnish, to show how the whole attachment was constructed.

(Complainant's counsel objects to all that part of the answer commencing with the words "We had two" (see *), as not responsive to the question, and as voluntary evidence on the part of the witness.)

1636 Q. 4. How was this steel stamp, having a wood attachment, used? In what way, and by what material, was the impression made?

(Objected to as immaterial.)

A. This is a kind of a queer question. The steel stamp was used by putting a piece of wood to the lower part of the handle, and fastened with strings to the handle, leaving a little space between the stamp and the canceller. By preventing from slipping up this attachment, a little piece of wood was cut out of the handle to keep it in its place. This attachment was made out of boxwood.

Q. 5. What countryman are you?

A. German.

Q. 6 and 7. In your answer before the last, where you said, "By preventing from slipping up this attachment," I suppose you meant, "In order to prevent this attachment from slipping up." Is that right?

(This question objected to by counsel for complainant, on the

grounds—first, it's improper and incompetent for defendant's counsel to ask the witness, by a leading question, to explain a former answer already on the record, which, being in writing, will explain itself, and also give the court some light as to the intelligence of the witness; second, as being leading. That the quotation last made by the defendant's counsel is an improper quotation, as no such language is used by the witness in answer to the question 4.)

A. It was my intention to say, in order to prevent the attachment from slipping up.

Q. 8. What substance was used with this stamp to make the impression?

A. We used cancelling ink made out of Prussian blue, sweet oil and turpentine.

Q. 9. About how large was the steel stamp with the wood attachment?

1637 A. It was about, with the handle, six inches in length; the steel stamp was about one inch in width, and the attachment about three-quarters of an inch.

Q. 10. You say there was a little space between the cancel and the steel stamp. What's that for?

A. There was a space about one-third of an inch, so that the stamp could be canceled by itself, and the postmark kept separate.

Q. 11. How was this piece of boxwood attached? Describe fully.

A. This piece of boxwood was attached to the lower part of the handle. One piece was cut out of the side, and the other made a joint with a handle and then was fastened by fine cordage.

Q. 12. You mean, do you not, that there was a cleft cut in the handle, into which the end of the boxwood attachment fitted, and the attachment was thereby prevented from slipping up when the instrument was used?

(This question objected to by complainant's counsel on the following grounds:

1st. As a reflection on this court that it has not sufficient intelligence to understand the last answer of the witness.

2d. Not only as leading, but as instructing the witness as to the precise answer counsel desires the witness to give.

3d. As an effort on the part of the counsel to cram the witness.

4th. If the witness shall answer the question, it will not be his testimony, but the testimony of examining counsel.)

A. That was my intention to say—the very manner in which the attachment was fixed.

Q. 13. Did the cordage hold the canceler and steel stamp securely together?

(This question objected to as leading by counsel of complainant.)

1638 A. The canceller was fastened to the handle of the steel stamp.

Q. 14. What I want to know is, whether or not the cordage which you have spoken of held the canceler and the steel stamp together firmly and securely?

(This question objected to by complainant's counsel:

1st. As having been put to the witness and answered in question 13 and the answer thereto.

2d. As being immaterial as to what the defendant's counsel wants or does not want to know, after the witness has already answered the same question.)

A. The cordage held the steel stamp and the canceler securely, by

wrapping the cordage very tight around the lower part of the handle and the attachment.

Q. 15. How long did you say that this instrument made by you continued to be used?

A. It was used from fifteen to sixteen months.

Q. 16. Can you make a drawing of the instrument you have described, having a boxwood canceler attached to the lower part of the handle of a postmarking stamp by means of fine cordage, the canceler and postmarking stamp being about a third of an inch apart, and the end of the canceler fitting into a cleft in the wood of the handle so as to prevent slipping?

(This question objected to by counsel for complainant:

1st. Improper and immaterial.

2d. The so-called instrument must itself be produced before any evidence can be given concerning it, instead of the imaginations and hieroglyphics of the witness.)

A. Yes; I think I can make a little sketch.

matter when you say that Peter Hunt was the maker of this wooden attachment to the stamp?

A. All the knowledge I have was what he told me when I entered the service. *He told me he used it very nearly four years.

(Counsel for complainant objects to all that part of the answer
1643 after the star (*), as improper, and not responsive to the question, and 2nd, as having been volunteered on the part of the witness questioned.)

Q. 35. Did you understand the last question at the time you made the answer you did *do* it?

A. I understood it so far as to what Peter Hunt told me and other men in office told me.

Q. 36. You are not inquired of as to what Peter Hunt or anybody else told you, for that would be illegitimate and improper for you to state as a witness on the stand. I again ask you if you have any personal knowledge. I mean by that, any knowledge you may have aside from what anybody may have told you about the matter now under inquiry?

A. I have no knowledge outside, except from Peter Hunt and some men employed in the office told me.

Q. 37. In your same answer to question three you state these words: "My stamp had been used four years." Of your own knowledge, independent of anything that anybody may have said to you, do you know that that stamp, which you swear you used in 1864, had been used in that post-office for a period of four (4) years previous to that time?

A. In reference to this I have to state that I had to believe what the men I was working with told me, that the stamp was four years in use.

Q. 38. All you know about it then, is what some persons in the post-office told you in 1864?

A. Yes, sir; that is all.

Q. 39. Where is Mr. F. Mayer, who was postmaster in this city in the year 1865?

A. He lives in Cincinnati, on Dayton street; I can't state the number of the house.

Q. 40. Did you, in the year 1865, in the post-office in this city, know a person by the name of Chas. Ballance?

A. Yes, sir; I do; he was my partner in the cancelling department, when Mr. Hunt was turned out by a change of the postmaster.

1644 Q. 41. What year was Mr. Hunt "turned out," and what part of the year?

A. It was in 1864, I can't state exactly the part; I think in April or May; I can't tell.

Q. 42. What were Mr. Ballance's duties in that office in November, 1865?

A. He was canceling clerk.

Q. 43. Was he not the head stamping clerk in that office at that time?

A. We both were alike; we both had the same duty till in the fall I made the canceling ink and took the lead; but we were both paid the same salary.

Q. 44. Where is Mr. Ballance now?

A. He is dead.

Q. 45. And how long has he been dead?

A. Some over five years.

Q. 46. Was he a clerk in the post-office at the time of his death?

A. Yes, sir; he only was sick three days.

Q. 47. Did he occupy the same position at the time of his death as he did in 1865?

A. Yes, sir; he did.

Q. 48. What are your present duties in that post-office?

A. Canceling letters.

Q. 49. Are you the head stamping clerk there, and have been for how long?

A. Since fall of 1865.

Q. 50. Have you had any associate head stampers since the death of Mr. Ballance?

A. Not that I know of.

Recess in taking depositions is now taken by agreement of counsel, 2 p. m., March 11, 1878, to be resumed at 3 p. m. of same day.

Taking of depositions resumed, according to the agreement of counsel, at 3 p. m. Q. 51. In your same answer to question three, in direct examination, you state as follows: "I went to

1647 A. 57. A represents the handle, B the cross-piece of iron, C the postmarking stamp, D the canceler, made out of a piece of brass tube with a cork in it.

Q. 58. Is the stamp, I mean the postmarking and the postage-stamp cancelling instrument, described by you in the last answer, now in use in the post-office in this city?

A. No, sir; them stamps had only day and month, and now we put in the hour of the day, and we took off the cork and brass tube, and put on a steel canceler, in place of the brass tube and cork.

Q. 59. When did you do that?

A. About four or five years ago.

Q. 60. What was the purpose in doing that?

A. Because steel lasts so much longer, and cork wore out about every two days.

Q. 61. That was the only reason for the change, was it?

A. Yes, sir.

Q. 62. The instruments with the change still continued to postmark the letter on the envelope, and at the same time cancel the postage-stamp by one blow or operation of the instrument, did it not?

A. Yes, sir; it did.

Q. 63. Which made the most distinct and perfect cancellation of the postage-stamp, the cork or the steel canceler, so far as you know?

A. Cork will cancel it better, but steel is the nicer work.

Q. 64. Which, in your opinion, would last the longer for a postage-stamp canceler, cork or wood?

A. Wood would last longer, by my own experience. I did put some wood in this brass tube, in place of the cork, and it lasted longer and worked well.

Q. 65. Which, in your judgment, would last longer, wood or steel, for a postage-stamp canceler?

A. I don't think there would be much difference; good hard wood would last just as long as steel.

1648 Q. 66. Which, in your opinion, from your experience, would perform the work best, and make a more successful cancellation of the postage-stamp, steel or wood?

A. I think steel.

Q. 67. Since 1865, an instrument having a cross bar with the handle attached to the upper surface, and a postmarker attached to one end of the lower surface of the cross-bar and a postage canceling device at the other end of the cross bar and on its under surface, and until now during each intervening year have been used in the post-office in this city, have they not?

A. Yes, sir; they have been used.

Q. 68. Is an instrument of that description now in use in that post-office for postmarking letters on the envelope and at the same time canceling the postage-stamp in ink by one blow or operation of the instrument?

A. Yes, sir.

Q. 69. Being head stamping clerk in the Cincinnati post office at this time, and having been such for several years past, suppose you were furnished with a canceling instrument with a series of knife blades upon its acting surface, with sharp edges to cut the postage stamp and at the same time go through the envelope and through its contents, what is your opinion of the value of such a contrivance as that?

A. I think it would be a very good thing. I saw it once done by men who brought it to Cincinnati to try.

Q. 70. How long ago was that?

A. I can't give the correct time.

Q. 71. What was the result of that trial?

A. It worked pretty well, by taking off the postage stamp that was full of little holes, and could not be used again.

Q. 72. How long was that use continued in the office?

A. It was only a few letters were tried with it.

Q. 73. Why not more?

1649 A. That is what I can't tell; the postmaster had the control over it.

Q. 74. Have you seen that device since that time?

A. No. I could not tell you where it is.

Q. 75. Do you really and sincerely believe that an instrument with sharp edged knives, that will cut through the postage stamp, through the envelope, through the letter and the contents enclosed therein, such as checks, drafts, notes, photographs, kid gloves, pocket handkerchiefs, and such like is "a good thing?" I ask you to make answer to this question from your experience in the post-office in this city for the last twelve years.

A. I don't think it would be a good thing; it may be good for stamping circulars and plain papers and for nothing else, especially not for hard subjects.

Q. 76. Then, I understand you to say that it would be of no use in a post-office, but injurious and damaging when used in the postal service upon letters and other mailable matter having postage-stamps thereon?

A. I don't think it would be good by any means.

Q. 77. You think it would be damaging and injurious to the service?

Q. Yes, sir; I think so.

Q. 78. Have you any doubt about it?

A. Not the least.

Q. 79. Do you know what has become of the instrument which you say Peter Hunt used in the Cincinnati post office in the year when you first went into the post-office in 1864?

A. We laid it aside in the storeroom with old stamps. When we hunted for it the whole box was lost and I have not seen it since.

Q. 80. Is that the same condition concerning the one which you said you made and used in the latter part of the year 1864?

A. It was one of the same stamps with the new attachment to which I made.

Q. 81. Do you know what's become of it?

A. I cannot tell; it got lost with the other ones.

1650 Q. 82. Did you ever see an instrument of that kind previous to your going into the post office as a stamping clerk in 1864?

A. No, sir; I did not.

Q. 83. Did you know that on the 17th day of November, 1865, F. J. Mayer, postmaster, Cincinnati, Ohio, and Chas. Ballance, stamping clerk in the Cincinnati post-office awhile, signed a certificate in the following words and figures, to wit: "This is to certify that we, the undersigned, postmasters at and for the respective places designated under our said respective signatures, have in use in our said post-offices, whereof we are deputy postmasters, the double marking and postage canceling stamp known as Norton's patent or improvement, and furnished to us by the Post-Office Department at Washington, by means of which the postmark is given on the envelope and the postage stamp canceled at the same time and blow of the instrument. We have carefully read the printed copy, affidavit of C. Smith, pages 6 and 7 of House of Represen-

tatives Document of No. 27, 38th Congress, 2d session; also printed copy, letter of Abram Wakeman, dated January 3d, 1863, pages 4 and 5 of same document; also printed letter from the post-office of Washington City, D. C., dated on the 18th day of March, 1864, page 6 of same document; also printed copy of affidavit of Gen. John A. Dix, pages 1 and 2, of House of Representatives Executive Document, No. 27, part 2d; also printed copy affidavit of E. Hoole, pages 3 and 4, same document. And as to the matter of economy in time and labor, and as to the matter of the more perfect cancellation of the postage-stamp and the postmarking on the envelope of the letter, each named and set forth in the aforesaid named and printed papers in said executive documents, Nos. 27 and 27, part 2d, we fully concur, as experience in our respective offices has fully proven. We believe the said instrument to be and to answer all the purposes claimed for it. We are satisfied that
1651 it is a labor-saving instrument, that by its use the postmark is made upon the letter envelope in a more intelligible manner, while, at the same time, the postage-stamp is more perfectly and permanently canceled than by any other known device"?

(Objected to by counsel for defendant as assuming that such certificate was made; and 2d, as immaterial. 3d, as not within the scope of the direct examination. 4th, because the original paper should be produced or its absence accounted for before any questions based on it are in order.)

A. I was not there at the time, but I heard the next day that they signed a paper on account of the stamps. That is all I know about it.

Q. 84. You've heard the description stated in the above question concerning the utility, value, and importance in and to the postal service, of the instrument now in use in the post-office in this city. Do you believe that to be a fair statement as to those matters?

(Objected to as assuming the existence of the certificate referred to; 2d, as immaterial. 3d, as not within the scope of the direct examination.)

A. I believe it is fair, so much of it as I heard read.

Q. 85. You heard question "83" read to you by the examiner, did you not?

A. Yes, I heard you read it.

Q. 86. Just before answering the last question you said something about hearing something said concerning the certificate about the time it was made by parties in the post-office. Please state those words again and as near as you did state them, just before you last answered them?

(Objected to by counsel for defendant, 1st, as immaterial; 2d, as asking for hearsay. 3d, as assuming the fact, and as misstating the words of the witness.)

1652 A. I misunderstood the whole thing in reference to the last question. My partner told me that he was signing those papers for the man that had the patent.

Q. 87. Now please explain what you mean when you say "I misunderstood the whole thing about the last question."

A. I thought this was in reference to the question before, whether I knew anything about those stamps.

Q. 88. During your direct examination, you frequently used the word "cleft." Do you know the meaning of that word?

A. My meaning is that it is a kind of curve.

Q. 89. You have frequently used the word "partner." What do you mean by that word?

A. We use this word, generally, when two men work together.

Q. 90. Mr. Ballance was your partner in the post-office in 1865, was he not?

A. Yes, sir; he was.

Q. 91. How many times have you and the defendant's counsel had interviews together concerning the subject matter of your evidence in this cause, previous to your coming to the stand as a witness?

A. Only once.

JOHN RUPP.

Subscribed in my presence, and sworn to before me, this 11th day of March, 1878.

CHAS. P. TAFT,
Special Examiner.

Adjourned to 9.30, March 12, 1878, Tuesday, by agreement of counsel.

Met pursuant to adjournment, and taking of depositions resumed at 9.30 a. m., March 12, 1878.

Present, same counsel as before.

WM. GEILFUS, a witness produced on behalf of defendant, 1653 being first duly sworn, deposes and says, in answer to interrogatories to him propounded by S. B. CLARKE for defendant, as follows:

Q. 1. What is your name, age, residence, and occupation, and what countryman are you?

A. Name, Wm. Geilfus; age, fifty-six years old; residence, Walnut street, 586, Cincinnati, Ohio; occupation, post-office clerk; countryman, a German.

Q. 2. How long have you been employed in the post-office?

A. Since about 1852; since about the middle of Filmore's administration.

Q. 3. Are you still employed in the post-office?

A. Yes, sir.

(Complainant's counsel objects to further examination of this witness, as a witness in this cause, upon the same ground and for the same reasons stated, as objections to the examination of the witness John Rupp, a person produced as a witness on the part of defendant, and examined yesterday.)

Q. 4. Give a full description of the manner in which letters were post-marked, and postage stamps were canceled in the Cincinnati post-office prior to 1863, if you know?

(Objected to by complainant's counsel, as incompetent and improper at this stage of the examination, no foundation for the inquiry having been first made.)

A. The stamps that were fixed on the letters were canceled with the post-marking stamp that had the inscription of Cincinnati, the month and day of the month; this manner of canceling was before 1860. In the beginning of the summer of 1860 we received an order from Washington to put this Cincinnati stamp, I mean the post-marking stamp, not on the postage stamp, but on the envelope, and cancel the postage stamp with what we call the dummy; this dummy is a separate 1654 cancelling stamp, without inscription or any letters on it; the dummy had parallel bars on its acting face. We received the order on a Friday, but what Friday I cannot tell; the stampers, that is, the men who hold the stamps, had to handle the letters twice, first with the Cincinnati and next with the dummy. The Monday following this

Friday which I mentioned, I cannot recollect the dates, but can the days, when I came to the office, Mr. Peter Hunt, the canceling clerk, told me that he had fixed an arrangement by which to save half of this labor. He had cut out a wooden attachment in the place of the dummy, and fastened it to the handle with strings tied around it; I believe that wood was hickory wood; that was in 1860; in the fall of the same year a gentleman from Troy, New York, was brought in by Dr. Vattier, postmaster, with the remark that this gentleman, I don't know his name, would stop Mr. Hunt from using his arrangement. Mr. Hunt's remark to me about this was, all Hell couldn't stop him from using that contrivance. This was the last I saw or heard of that man; he never molested Mr. Hunt after that; but Mr. Hunt continued to use that contrivance a long time afterwards. We used that contrivance until the Department furnished us with a new double stamp. I can't tell the year it was. It may have been the year 1862, 1863, or 1865, I can't tell what year. It was about that time.

What I mean by the wooden attachment, in place of the dummy being attached to the handle, is, that it was attached to the handle of the post-marking stamp by means of cord.

Q. 5. Did you see Peter Hunt's device, consisting of a wooden attachment, connected to the post-marking stamp by twine, on that Monday?

A. Yes, sir.

Q. 6. Describe in detail the post-marking stamp to which this piece of hickory wood was attached, giving dimensions and materials as well as you can.

1655 A. The handle of the stamp was wood, about six or seven inches high, I mean the whole stamp was six or seven inches high, including handle and all; the handle was large enough for a man's hand to grasp it conveniently so as to work it with ease; at the lower end of the handle there was a brass band to keep it from splitting; the balance was iron or steel, I can't tell which; on the acting face of this steel or iron was engraved a circle which would print a circle on the envelope, and within that circle was engraved Cincinnati, O., and in the centre of the circle was a square mortice in which we inserted printing type for the month and day of the month, and those type were held in from the outside of the post-marking stamp by means of a set screw. These letters I refer to were raised letters and were printing type.

Q. 7. Describe now in detail how the canceler, made of hickory wood, was attached to this post-marking stamp which you have described, and what the shape and size of this canceler was, and what configuration was on its acting face.

A. The piece of hickory was, say, from three-quarters to an inch in diameter; about three inches long; the bottom was round, and the attachment slanted to the handle. The handle is round, and in order to fasten the attachment to it he had to cut off some of the handle so as to make a flat surface on a part of it at the place where the attachment was tied to it. This was attached in that manner by strings wound around the two, holding them firmly together. There were parallel bars on its face; I'm not perfectly certain, but I think there were parallel bars on its acting surface.

Q. 8. With what material was this instrument used to make the impression of cancellation and of post-marking?

A. It was some kind of printing ink.

Q. 9. Who was postmaster at the time Peter Hunt made this contrivance which you have described?

A. Doctor J. L. Vattier.

Q. 10. How do you fix the year 1860 as the year in which Peter Hunt made that contrivance?

1656 A. It was the year before Doctor Vattier went out of office; Doctor Vattier went out in the spring of 1861, and this was in 1860.

Q. 11. Did you see this contrivance actually used from time to time in the Cincinnati post-office, from the time when Peter Hunt first made it, down to the time when the Post-Office Department began to furnish double stamps?

A. Yes, sir.

Cross-examination of the witness by MARCUS P. NORTON, counsel for complainant:

Q. 12. Do you know, of your own personal knowledge, where Peter Hunt obtained the instrument described by you on your direct examination? and in answering please do not state anything that you heard any one say about of it, but simply your personal knowledge of it.

A. I don't know anything about it except it was furnished by the postmaster. The old dummy was also furnished by the postmaster; but I didn't see Peter Hunt make the combined instrument which I have described.

Q. 13. After the first combined instrument which you saw in the Cincinnati post-office in the year 1860, and described by you on your direct examination, were there any changes or alterations made in that by Peter Hunt or anybody else after 1860?

A. As far as I know there were improvements made, but I don't know in what they consisted or who made them.

Q. 14. In what part of the year 1860 did you first see the combined instrument described by you on your direct examination?

A. It was three or four days after we received the order from Washington.

Q. 15. What time was the order received, and what was that order, referred to in your answer?

A. As I stated before, either in the spring or summer; in the 1657 warm season some time, I can't say exactly when. I have described that order on my direct examination.

Q. 16. Should it hereafter appear in evidence that the order referred to in the last answer was dated the 23d day of July, 1860, and that that order was signed by Hon. Joseph Holt, Postmaster-General, or by Hon. Horatio King, First Assistant Postmaster-General, then what would you have to say as to the time you first saw in the Cincinnati post-office the combined instrument described by you on your direct examination?

(Objected to by counsel for defendant as improper to put such a supposition to a witness.)

A. 'Twas after the date of the order in Washington, whatever that may have been, and after the postmaster here had received that order and announced it to the clerks; precisely when the order was received, I can't tell any more definitely than I have already stated.

Q. 17. Do you know what has become of that first combined instrument described by you on your direct examination, which, you say, you saw Peter Hunt have in the Cincinnati post-office during the year 1860, and precisely when in that year you do not remember?

A. No, sir; I don't know where it is; it's used up, thrown away; I don't know anything about it.

Q. 18. I understood you to say that John Rupp, a witness examined yesterday, made some changes or improvements upon the combined in-

strument which you say you saw Hunt have in the Cincinnati post-office; is that correct?

A. I think he did, but what they were I can't say.

Q. 19. What has become of the instrument which you say John Rupp had in the post-office at Cincinnati?

A. I couldn't tell.

1658 Q. 20. In what year was it that you saw Rupp have the combined instrument in the Cincinnati post-office?

A. I cannot tell, but it was in the beginning of his first year's service after he came into the post-office.

Q. 21. When did you last see that combined instrument?

A. I cannot tell, I cannot fix the date.

Q. 22. When was the use of that instrument discontinued in the Cincinnati post-office?

A. It was discontinued at the time we received the new double stamps from Washington. After an interval that I can't state, Mr. Hunt used it again for a short time, and then it was permanently laid aside, so far as I know.

Q. 23. You say, on this examination, if I understand you correctly, that Peter Hunt made several changes and alterations in the combined stamp described by you on your direct examination, and that such changes were made after you first saw it. Do you know in what those changes consisted?

A. I did not say Peter Hunt made the changes; but Peter Hunt or John Rupp, I can't tell which, made those changes. There were improvements made, or changes, but I don't know whether it was John Rupp or Peter Hunt that made them.

Q. 24. Do you know where that combined instrument which you say was changed and improved upon after you first saw it, either by John Rupp or Peter Hunt, which you do not remember, now is?

A. Don't know anything about it.

Q. 25. When did you last see this combined or changed device of which you speak on your cross-examination?

A. I don't remember the date.

Q. 26. Can you state the year in which the Post-Office Department furnished the Cincinnati post-office with the combined post-marking and postage-stamp canceling instrument?

A. No, sir; I couldn't state it only by a circumstantial method

1659 Q. 27. You have spoken on your direct examination about a Troy man coming to the Cincinnati post-office, and who saw the then postmaster and Peter Hunt; you have said Peter Hunt said something about hell on that occasion; do you know the name of that Troy man?

A. No, sir.

Q. 28. Do you know what year he was there?

A. I think in the fall of 1860.

Q. 29. Do you know whether he was there in the fall of 1860 or not?

A. No, sir.

Q. 30. Was that person the counsel now conducting this cross-examination?

A. I cannot tell.

Redirect examination by Mr. CLARK, counsel for defendant:

Q. 31. In what did the changes or improvements consist that were made by John Rupp or Peter Hunt?

A. I do not recollect.

Q. 32. Did they make the instrument substantially different from what you have described the one to have been that was first made by Peter Hunt?

(Objected to by counsel for complainant. 1st. That the witness has already answered by saying, I do not recollect what those changes or improvements were. 2d. This witness is not a competent witness to testify as to what is or what is not an equivalent. 3d. He's not a competent witness to testify as to what is or what is not a substantial difference.)

A. 32. I'm not a judge of mechanics; the changes consisted in
1660 the shape of the attachment, as I recollect, and one of them used different kind of wood I think.

Recross-examination:

Q. 33. Do you know what is meant by the terms "substantially different"?

A. I understand about substantially different that they changed the whole contrivance.

Q. 34. Do you know of anything you have stated on your cross-examination that you desire to change, alter, or modify?

A. Not that I recollect.

Q. 35. How did you happen to become a witness in this cause?

A. I don't know what to say to that question.

Q. Did the postmaster or assistant postmaster at Cincinnati post-office direct or request you to come here to be examined as a witness in this cause?

A. Not the postmaster nor his assistant told me personally to appear here. One of the clerks, Mr. Hansman, told me that I was wanted here as a witness yesterday evening about four o'clock; the same did John Rupp and this gentleman here, Mr. Clarke.

Deposition being read over to the witness, he states, with reference to question "18" and answer as follows:

I don't think it was the instrument used by Mr. Hunt that Mr. Rupp changed, but it was his own, *i. e.*, the one that he used.

(Question by Mr. Norton here asked.)

Q. 37. You mean whatever changes were made on those two instruments were either made by Hunt on his own instrument, or by Rupp on his own instrument, do you not, in your explanation as a correction of your former testimony?

1661 A. Yes, I think that's the way it was.

WM. GEILFUS.

Sworn to before me and subscribed in my presence, this 12th day of March, 1878.

CHAS. P. TAFT,
Special Examiner.

Taking of depositions adjourned to 9.30 a. m., Wednesday, March 1878.

WEDNESDAY, *March* 13—9.30 a. m.

Taking of depositions adjourned sine die by agreement of counsel.

NITED STATES OF AMERICA,
State of Ohio, County of Hamilton, ss:

I, Chas. P. Taft, a notary public within and for said county, appointed

by special order of court, a certified copy of which is hereto annexed, to act as special examiner, under the 67th rule in equity as amended, in the cause stated in the caption, do hereby certify that the foregoing examination was held at my office, Nos. 65 & 66 Johnston Buildings, Cincinnati, Ohio, on the 11th, 12th, and 13th days of March, A. D. 1878; the adjournments being made at the times in said depositions stated.

I further certify that, at the said time and place, I was attended by John Rupp and William Geilfus, witnesses produced on behalf of respondent; that the said witnesses were, previous to the commencement of their respective depositions, by me severally examined, cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth; and the said depositions hereinbefore appearing were reduced to writing by C. H. Avery, a disinterested party, in the presence
1662 of counsel for both parties, who assented thereto, and read over to said witnesses respectively, and were thereupon by them respectively, subscribed, and were at the same time severally authenticated by my signature.

I further certify that I am not of counsel, nor attorney nor relative of either of the parties to this cause, nor in any manner interested in the result of the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, this 13th day of March, 1878.

[L. S.] CHAS. P. TAFT,
N. P., Special Examiner.

1663 *Testimony taken orally on behalf of the defendant.*

Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, UNITED STATES POSTmaster, New York.

Before JOHN A. SHIELDS, Esq., an examiner of this court, under the 67th equity rule, as amended.

NEW YORK, *January 3d*, 1878.

Present, Mr. George H. Williams and Mr. Marcus P. Norton, of counsel for complainant; Mr. Samuel B. Clarke, U. S. ass't attorney, counsel for defendant.

ANTHONY YEOMAN, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. Anthony Yeoman; 45 years of age; 112 Sullivan street; general superintendent of the New York post-office.

2. Q. How long have you been employed in the New York post-office?

A. About twenty-four years.

3. Q. What work did you do when you first came into the office?

A. Stamped letters.

1664 4. Q. How long did you continue the stamping?
A. I think about five years.
5. Q. What did you do then?
A. I went to making mails on the South letter table.
6. Q. How long did you continue at that?
A. Two or three years.
7. Q. What did you do next?
A. I had charge of bagging the South mail.
8. Q. How long?
A. About three or four years at that.
9. Q. What year was it that you ceased to have charge of bagging?
A. I should judge about 1865, or somewheres in that neighborhood.
10. Q. Have you had, during all the time that you have been in the post-office, an opportunity of knowing, and do you know, what instruments have been used in the office while you have been employed therein, for the postmarking of letters and cancellation of postage-stamps?
A. I think I do know, and that I have had the opportunity to know.
11. Q. Describe, in detail, the sort of instrument that was used for the purpose when you first went into the office.
A. It was a single stamp, with the postmark, which put the postmark on the postage-stamp and cancelled the stamp at the same time, by the postmark.
12. Q. Was the instrument a hand stamp?
A. It was.
13. Q. Did it postmark the letter and cancel the stamp at one blow?
A. It put a postmark on the postage-stamp and cancelled the stamp at one blow.
14. Q. Did the postmark appear wholly on the postage-stamp?
A. The postmark was somewhat larger than the postage-stamp; the rim and portions of it would naturally come on the letter.
1665 15. Q. What is the postmark?
A. New York, day of the month, and month.
16. Q. What shape?
A. Round.
17. Q. Was it an ink mark that was made on the postage-stamp and envelope?
A. It was.
18. Q. Did anything else appear on the postage-stamp and envelope except the ink mark?
A. It did not.
19. Q. Of what parts was the instrument made up?
A. Wooden handle, the stump made of iron or steel, I don't know which; that is about all; I think there might have been there a brass ring to keep the handle from splitting; also loose type designating months and days, which are held in their place by a finger screw on the side of the stamp.
20. Q. How was the—what you call the stamp—attached to the handle?
A. I think it had one of these spindles; it had a prong, I should call it, drove right into the handle.
21. Q. Of what shape and size was the ring which you call the stamp?
A. It was of cylinder shape; the size, I should judge, about an inch or an inch and a quarter in diameter; about two inches high up to the point where it joined to the handle.

22. Q. How long did this instrument continue to be used?

A. I think it was discontinued in 1860, as near as my recollection goes.

23. Q. Who was postmaster when it was discontinued to be used?

A. I think John A. Dix.

24. Q. What was the reason for discontinuing the use of this instrument?

A. There was an order received from the Post-Office Department at Washington, ordering the postmark to be put on the letter or envelope, and the postage-stamp to be cancelled with some other method.

1666 (The last answer is objected to by complainant's counsel, as the order has not been produced, which is the best evidence.)

25. Q. Without stating what the contents of the order were, I understand you to mean that it was in consequence of an order from the Post-Office Department that the instrument ceased to be used; is that so?

(Objected to as above, and because it is leading. Question withdrawn.)

Q. 26. Without stating the contents of any paper, state why the instrument you have described ceased to be used.

(Same objection.)

A. In consequence of an order received from the Post-Office Department.

(Same objection as to the answer.)

27. Q. Describe what sort of an instrument was used after this order was received.

(Complainant's counsel objects to any evidence by this witness showing or tending to show the use of the instrument described in letters patent No. 38175, dated April 14th, 1863, and issued to Marcus P. Norton, prior to his application for that patent, upon the ground that the allegations of the answer are too general and indefinite, and do not sufficiently describe such evidence to entitle the defendant to introduce it.)

A. The first that we used was a canceller soldered on the side of the postmarking hand stamp.

28. Q. What was the shape of this canceller?

A. It was round or cylinder shape.

29. Q. Of what material was it composed?

A. Iron or steel, I don't know which.

30. Q. What configuration did its acting face have?

1667 A. I think it was in the shape of rings; I suppose that is what you call it.

31. Q. Was the cancelling cylinder of the same size, diameter, and height as the postmarking cylinder?

(Objected to as leading.)

A. It was considerable smaller.

32. Q. In both diameter and height?

A. Both diameter and height.

33. Q. Was any change made in the postmarking instrument other than the soldering of the cancelling to the side of the postmarking cylinder?

(Same objection.)

A. There was not.

34. Q. Fix the date as accurately as you can when this combined postmarking and cancelling instrument was first used.

A. As near as I can recollect, it was in 1860.

35. Q. Do you remember what part of the year—summer, winter, fall, or spring?

A. I do not.

36. Q. How long did a combined instrument of the kind you have described continue to be used in the New York post-office?

A. Three or four days; perhaps a week.

37. Q. What change, if any, was made?

A. There was a postmark—the cross bar with a cork attached as a canceller.

38. Q. How was the handle attached to the cross-bar, and where?

A. Right in the center of the cross-bar connected by this prong to the handle.

39. Q. What was the shape of the cross bar?

A. It was iron; I should judge about two inches long, half an inch wide, and an eighth of an inch thick.

40. Q. How was the cork canceller attached to the cross-bar?

A. It was screwed on one end, the screw running underneath right through the cross-bar.

1668 41. Q. What was the shape of the acting face of the cork?

A. Round.

42. Q. Was it cut across, or in any way figured?

A. They had different devices; sometimes a cross, star, and other devices.

43. Q. Was any change made in the postmarking cylinder, and how was it attached?

A. There was; it was made smaller than the old style, and screwed on the other end of the cross-bar.

44. Q. Was there any other change than in the size of the postmarking cylinder?

A. Not that I am aware of, at that time.

45. Q. What change was there, if any, in the whole instrument at any time subsequent to the time when it was made with a cork canceller and cross-bar connected to the postmarking cylinder?

A. There has been several alterations; the bar was made longer than the postmark and canceller, have more space between them, as it gave a better impression or appearance on the letters, also the different hours of the day; there was, also, a change made that the postmark cylinder was combined in one solid piece with the bar; that is about all.

46. Q. Was any other substance than cork used for cancellation?

A. There was; there was rubber.

47. Q. Secured to the cross-bar in the same way?

A. Secured to the cross-bar in the same way.

48. Q. Between the year 1860, when the first instrument that you have any knowledge of was discarded, and the year 1864, was any other instrument used for the purpose of cancelling postage-stamps on letters and postmarking the letters on the envelope, wholly apart from the postage-stamp, than substantially the instruments which you have described in the New York post-office?

(Objected to as asking for the judgment of the witness instead for a description of the instruments used.)

1669 A. I think not.

49. Q. Was an instrument having the cancelling cylinder soldered to the side of the postmarking cylinder, in the manner you have described, or an instrument having the postmarking cylinder attached to the cross-bar and a cancelling cork or cancelling rubber attached to the cross-bar, in the manner you have described, used uninterruptedly in the New York post-office between and including the years 1860 and 1864?

(Objected to as leading.)

A. This is the only stamp I know of that has been used during those years.

50. Q. Well, were the instruments referred to used at the time indicated?

A. They were.

51. Q. Were they used without interruption?

A. They were.

52. Q. Look at the instrument which I now produce, and state what changes would have to be made in it in order that it might be like the instrument which was used in the New York post-office when you were first employed there

A. By taking the cross-bar away and putting a prong at the end of the postmarking cylinder, and putting it into the handle; the postmarking cylinder is somewhat smaller.

(Defendant's counsel offers in evidence the instrument mentioned in 52 Q., and the same is marked Defendant's Exhibit No. 3, J. A. S., ex'r., Jan. 3, 1878.)

53. Q. State what changes would have to be made in order that it might be like the instrument used in 1860, in which the cancelling cylinder was soldered to the postmarking cylinder?

A. The same alteration as in the previous answer—an iron canceller soldered to the postmarking cylinder.

1670 54. Q. What changes would have to be made in order that it might be like the instrument which took the place of the one in which the cancelling cylinder was soldered to the side of the postmarking cylinder?

A. None whatever.

55. Q. Do you mean that the instrument is ready for use as it stands?

A. No; it would have to have a cork canceller attached. In the previous answer I forgot to state that it was just the same as this with the exception of the cork canceller.

Cross-examination:

54 & 56. X Q. You commenced as a stamper in the New York post-office about 1853?

A. Yes, sir.

55, 56, & 57. X Q. You continued to be a stamper, you say, for about five years?

A. I did.

56. X Q. During the year 1860, and up to 1864, you were engaged in putting up and bagging the mails—the South mail, as I understand?

A. Yes, sir.

57. X Q. What you know about the adoption and use of stamps during that time was what you chiefly learned from others in the office, was it not?

A. From what I learned from my personal and daily observation.

58. Q. Did you have anything to do with the stamping of letters at that time?

A. I used often to help stamp.

59. X Q. When the postmark was put upon the postage-stamp was it not useless to indicate where the letter was mailed after the postage-stamp was removed?

(Counsel for defendant objects on the ground that the question goes beyond the range of the direct examination.)

A. In a great many cases it was.

1671 60. X Q. Was it not always the case?

A. Not in all cases, because you could get some idea of what the postmark was, even if the stamp was off.

61. X Q. Was not the postmark, when put upon the postage-stamp, generally a feeble or faint impression on account of the color of the postage stamp?

(Same objection.)

A. As a general thing, yes, at that time.

62. X Q. Why was the use of the instrument, soldered as you have described, abandoned after the use of a week or so?

A. For the reason that the solder would break, and it would have to be resoldered again, which caused a good deal of trouble and annoyance, when, I think at the suggestion of Mr. James Holbrook, the cross-bar and cork was substituted.

(Counsel for complainant objects to the last part of the answer as being irresponsive.)

63. X Q. Did you not understand, and was it not the understanding in the office, that this instrument with a cross-bar was the invention of Mr. Marcus P. Norton?

(Objected to on the ground that the "understanding" is not proper to be asked about in view of the scope of the direct examination.)

A. I did not so understand it.

64. X Q. Whose invention did you understand it to be?

A. James Holbrook; that was always my impression.

65. X Q. When and where did Mr. Holbrook have that stamp made?

(Same objection.)

1672 A. Mr. Holbrook suggested this idea to Mr. Charles Smith, then head stamper at the New York post-office, who had it made.

66. X Q. Who made it, and where was it made?

(Objected to on the same ground as before, and also as the witness should be first asked if he has personal knowledge who made it.)

A. I think it was made by a man of the name of Thomas Corbett, in William street, New York.

67. X Q. When was it made?

(Objected to on the same ground.)

A. About the year 1860.

68. X Q. Did you ever hear about that time in the post-office that Mr. Norton had invented such a stamp?

(Objected to as asking for hearsay evidence.)

A. Not at that time.

Adjourned to Friday, January 4th, at 12 m.

NEW YORK, *Friday, January* 4, 1878.

Met pursuant to adjournment.

Present, counsel as before.

Cross-examination of ANTHONY YEOMAN continued:

69. X Q. When was Mr. Abram Wakeman postmaster in New York?

A. I think it was about 1862 or 1863; I am not certain; somewhere about that neighborhood.

70. X Q. Do you remember that during that time a combined stamp was used in the New York post-office in which the postage canceller was a cutter?

1673 A. I cannot say as to the time whether it was that time or not; there was such a canceller used temporarily as an experiment.

71. X Q. In and about the years 1860, '61, or '62, was there not, by per-

sons in and about the New York post-office, experimenting more or less for the purpose of ascertaining what form or what materials in a combined instrument would produce the most satisfactory results?

A. There has not been a year up to the present time but what there has been an invention in postmarking instruments tried at the New York post-office, and every facility given the parties owning the same a fair trial, that the U. S. Government might benefit thereby.

72. X Q. Then it follows, does it not, that a good many inventions have been tried in the New York post-office which have been found to be useless and impracticable?

A. There has, a great many.

73. X Q. Why was the cutting canceller not used longer than it was in the N. Y. post office?

(Objected to on the ground that it is not within the scope of the direct examination.)

A. Because it not only cut through the stamp, but through the letter and contents of the envelope.

74. X Q. Was it regarded as useless on account of the injury which it did to the contents of the letters?

(Same objection.)

A. It was.

75. X Q. How many of the combined stamps did Mr. Charles Smith have made?

A. I cannot say; I would say at a guess that there was about six or eight stampers—it might have been that each stamper had two stamps—making altogether eight or sixteen stamps.

76. X Q. What makes you think that Mr. Holbrook suggested the idea of such combined stamps to Mr. Smith?

1674 A. I was present at the side of Mr. Smith when Mr. Holbrook talked to Mr. Smith in my presence and suggested the same.

77. X Q. State what was said by Mr. Holbrook and Mr. Smith at that time.

(Objected to as asking for hearsay evidence.)

A. Mr. Smith was using a stamp—a postmarking stamp with a canceller soldered on the side, which would continually break off and annoy him very much; Mr. Holbrook was passing by; if my recollection serves me right he had one or two letters which he was about to mail, and, as was his usual custom, he handed them to Mr. Smith to cancel the same; the question then arose about this difficulty of the soldered canceller breaking off; it was then suggested that a piece of iron, or that a cork, be tied and fastened to the postmarking cylinder.

78. X Q. Who made this suggestion?

A. Mr. Holbrook.

79. X Q. Can you give the date of that conversation?

A. It was in the year 1860; that is as near as I can get at it; I can't be more specific about it.

80. X Q. Where is Mr. James Holbrook now?

A. He is dead.

81. X Q. Where is Mr. Charles Smith?

A. He is dead, also.

82. X Q. State as near as you can about the time when these gentlemen died.

A. Mr. Smith died, to the best of my knowledge, in 1870; I think Mr. Holbrook died a little while before; it is mere guess-work relative to the time as to when these gentlemen died.

83. X Q. Was there any period of time between the discontinuance

of the single stamp and the use of the combined stamp when the postmarking and postage cancelling was done by separate instruments?

A. I don't recollect of any such case; it was talked about.

1675 84. X Q. You think, then, that on the very day that the single stamp, by which the postmarking was put upon the postage stamp, was discontinued, the combined stamp, by which the postmark was put upon the letter and the cancelling mark on the postage-stamp, was adopted and used?

A. I think the canceller soldered to the postmarking cylinder was immediately used after the discontinuance of the single stamp.

85. X Q. How long was the cutting canceller used?

A. Perhaps a week, or two weeks—I am not certain.

86. X Q. You say that Mr. Smith had eight or sixteen combined stamps made: what became of them?

A. I could not tell you.

87. X Q. What was done about these combined stamps in the N. Y. post-office afterwards; after Mr. Smith's were made?

A. Mr. Smith, as head of the stamp department, had the stamps made; he ordered all stamps during his time.

88. X Q. Then what do you mean by saying that Mr. Smith had eight or sixteen of these combined stamps made?

(Objected to on the ground that the witness has not stated positively the fact assumed.)

A. Mr. Smith being the head stamper, ordered all stamps made for the use of the distribution department of the N. Y. post-office; therefore, I think he must have ordered those.

89. X Q. When did you first hear in the New York post-office anything about Norton's stamp?

(Objected to on the ground that it is not within the scope of the direct examination, and is asking for hearsay evidence.)

A. I could not tell you the year.

90. X Q. Was it as early as 1860?

(Same objection.)

1676 A. It might be '60 or '61.

91. X Q. Are you aware that Mr. Charles Smith, on the 13th day of January, 1865, before Thomas Livey, commissioner of deeds in New York City, made an affidavit, in which he swore that the combined postmarking and postage cancelling stamp was put in the New York post-office for test or trial by Mr. Norton, in the year 1860, and that it was known as the improvement and invention of said Marcus P. Norton?

(Objected to on the ground that the question assumes that Mr. Smith did make such an affidavit, when no such fact is proved.)

A. I am not aware of any such fact.

92. X Q. Would not Mr. Smith, as head stamper, be likely to know more about it than you do?

A. He would.

93. X Q. Where did Mr. Smith have these combined stamps made, of which you have spoken?

A. I think at Mr. Thomas Corbett's shop.

Redirect examination:

Re-D. Q. 94. About how far from the stamping block was your post, when you were engaged in mailing and bagging the South mail?

A. The South table, where the letters were made up, the end of which was from five to ten feet from where Mr. Smith, the head stamper, stamped letters; it was my duty to take these letters, wrap them in brown paper at the South table, direct the packages myself, or have some

one assist me in directing them, after which I would carry them about forty or fifty feet, and place them in their proper bags.

ANTHONY YEOMAN.

Sworn to before me this 4th day of January, 1878.

JOHN A. SHIELDS,
Examiner.

1677 ALFRED RYER, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. Alfred Ryer; 52 years of age; 66 Second avenue, city; clerk in the N. Y. post-office.

2. Q. State how long you have been in the N. Y. post-office and in what capacities, and the years when you changed from doing one kind of work to another, if you did so.

A. I came into the office on the 1st of April, 1855, and remained in the stamping department about fifteen years; I can't tell exactly the date; I was then changed to the carriers' department, and remained there about one year, and since that time I have been in the foreign department.

3. Q. Look at Defendant's Exhibit No. 3, and state what change, if any, would have to be made in that instrument in order that it might be like the instrument that was used in the N. Y. post-office for the purpose of cancelling postage-stamps and postmarking letters in the year 1855, when you first went into the office?

A. The change would be made by taking off that cross bar and putting the postmarking stamp right on the handle.

4. Q. Do you mean that the postage-stamp was cancelled by the postmark?

A. The stamp was cancelled by the postmark.

5. Q. If any change was made in the instrument for cancelling and postmarking, describe such change, and state as nearly as you can when it took place.

(Counsel for complainant makes the same objection to this question as was made to Q. 27 to the witness Anthony Yeomans, and upon the same grounds.)

1678 A. There was a change made, and it was during the term of office of General Dix, in the year '59 or '60, I can't tell when; it was soon after he came in office; the change was made in the first place by using either a cork fastened to the stamp—to this plain stamp—and also by soldering a piece of iron on the side to use as a cancelling stamp.

6. Q. Why was this change made, if you know?

A. I think it was from an order from the Postmaster-General on account of some difficulty about a letter—about the date of a letter; the cause was because the date could not be identified; the date was put on the stamp, and it didn't show plain on the stamp, and the order was made to keep the date separate from the stamp.

(Answer objected to because the order is the best evidence.)

7. Q. Describe any subsequent change to the one you have already described.

(Same objection as to Q. 5.)

A. The next change was by adopting the cross-bar, by putting a piece of iron across the handle, as in Exhibit No. 3.

8. Q. Was the cross-bar adopted while Mr. Dix was postmaster?

A. Yes, sir.

9. Q. How long after the time when the canceller was a piece of cork tied on to the postmarking cylinder, and when the cancelling instrument was soldered to the side of the postmarking cylinder?

A. The cork was used only long enough to have the stamps altered, and the iron canceller was soldered on as soon as they could be got ready; that is, I wish to say when it was adopted, to have an extra piece put on, we sent two or three away at a time to be altered, and while they were getting altered we used the corks.

10. Q. Were the iron cancellers fastened in any other way than by soldering at that time—by riveting, for instance?

1679 A. I don't remember of their ever being riveted on; I think they were soldered.

11. Q. How long was it after you first got the soldered cancellers before the cross-bar was adopted?

A. I can't state exactly, but I think it was in one month; very shortly after they were adopted.

12. Q. What sort of a canceller was used after the cross-bar was adopted?

A. The first one used was iron, which came with the stamp; but we found they didn't work well, so we took them off and put on the corks.

13. Q. Did you ever use anything besides cork?

A. Rubber.

14. Q. Did you ever use a canceller of iron having knife edges intended to cut the postage-stamp?

A. We did.

15. Q. How long, should you say?

A. About two or three weeks.

16. Q. While those were being used, were there also used in the office an ordinary instrument having a cork canceller attached to the cross-bar?

A. There was; yes, sir,

Adjourned to Monday, January 7, 1878, at 12 o'clock m.

NEW YORK, *Monday, January* 7, 1878.

Met pursuant to adjournment.

Present, counsel as before.

Continuation of the examination of the witness ALFRED RYER; continued:

17. Q. How long did an instrument having a cross bar with the postmarking cylinder at one end, and a cork or rubber canceller at
1680 the other end, continue to be used after its first introduction in the post-office?

A. They used them as long as I remained in the stamping department; they used them for ten years at least, as long as I remained in the stamping department.

18. Q. Were instruments of several different patterns used simultaneously at any one time since the canceller was soldered to the side of the postmarker?

A. There have been many different patterns brought in the office for experiments.

19. Q. Look at Defendant's Exhibit No. 5, and state whether that is similar to the first combined instrument that was used in 1860.

A. That is the instrument exactly.

20. Q. Look at Defendant's Exhibit No. 4, and state whether that is

similar to the instrument that was used before the introduction of the combined instrument.

A. It is.

21. Q. Look at Defendant's Exhibit No. 1, and state whether that is similar to the first combined instrument in which a cross-bar was used.

A. It is the same.

22. Q. After instruments like Exhibit No. 1 were introduced, state whether instruments like Exhibit No. 5 continued to be used for any length of time simultaneously with instruments like Exhibit No. 1.

A. No, sir; after No. 1 was introduced, we did not use No. 5.

23. Q. Was there any interval of time between the use of Exhibit No. 1 and the use of Exhibit No. 5 in which neither were used?

A. I don't think there was.

Cross-examination by Mr. WILLIAMS:

24. X Q. According to your best knowledge, up to what time was the stamp with a cross-bar and cork canceller used?

1681 A. I think they were used as long as I remained in the distribution department, which was about ten years; I think they have been in use in that department until lately, but as I haven't been in that department, I wouldn't like to say positively.

25. X Q. Was the stamp like Defendant's Exhibit No. 4 used at any time for making two impressions, one the postmark upon the letter and the other to cancel the postage-stamp?

A. I don't think it was; that is my recollection.

26. X Q. Was there any time when one clerk put the postmark on the letter and another clerk cancelled the postage-stamp?

A. I think we tried that for a few days, but they found that it took so many men that they stopped it.

27. X Q. How long was the old stamp, with the cork canceller tied to it, used in the office?

A. Long enough to have Defendant's Exhibit No. 5 made.

28. X Q. Was it one day or a week, longer or shorter?

A. I think it was about three or four days.

29. X Q. State why the use of the instrument with the canceller soldered on the postmarker was abandoned.

A. Because it came off very often, and the cross-bar was adopted in the office.

30. X Q. You have stated that you could not tell whether this was in 1859 or in 1860; do you know that it was not January, 1861?

A. It was soon after General Dix came into the office; I think that was in the latter part of 1859 or the early part of 1860.

31. X Q. Will you say that it was before the month of September, 1860?

A. I couldn't say positively.

32. X Q. When did you first hear of Norton's stamp in the post-office?

A. I think it was nearly one year after we were using them in the office.

1682 33. X Q. Do you not know that that combined stamp has been called in the New York post-office Norton's stamp?

(Objected to as immaterial, and as not within the scope of the direct examination.)

A. I never heard it called by that name.

34. X Q. What did you first hear about Norton's stamp? Give the date.

A. I couldn't give the date exactly; I heard some time after we used that stamp, it might have been nearly a year, that Mr. Norton had claimed the invention of the cross-bar.

35. X Q. When was the stamp with the cutter used in the N. Y. post-office?

A. It was during Mr. Wakeman's administration as postmaster.

36. X Q. How long was the cutter used?

A. I don't think it was used over a month or six weeks.

37. X Q. Why was its use abandoned?

(Objected to as immaterial, and not within the scope of the direct examination.)

A. Because it cut through the envelope, and destroyed or injured the letter.

38. X Q. Was it also found to injure the contents of letters if they contained any papers, photographs, or anything of that kind?

(Same objection.)

A. It would destroy them.

39. X Q. Are you entirely certain that while the cutter was used in the office, that any other kind of canceller was used at the same time?

A. Yes, sir; there was.

40. X Q. When this matter of a combined canceller was brought to the attention of the office, was there not more or less experimenting to ascertain the best form and materials for that sort of stamp?

A. There was; yes, sir.

1683 41. X Q. You have stated that several different patterns were introduced into the office for experimenting. Was it found that the stamp like Defendant's Exhibit No. 1 was the only useful and practicable instrument for postmarking and cancelling at the same time, and was that the reason for its continued use?

A. It was.

42. X Q. Who was head stamper in 1860 and 1861 in the N. Y. post-office?

A. Mr. Charles Smith.

41 & 43. X Q. When and with whom have you talked over this matter?

A. Within the last few weeks I have been questioned about it by Mr. Clarke, counsel for defendant, and I have had some conversation about it with Mr. George Young and Mr. John Gallagher.

42 & 44. X Q. Who was postmaster of New York when you first heard of Norton's patent?

A. I think it was Mr. William B. Taylor.

43 & 45. X Q. Stamps were used and changed in the office, were they not, according to the directions of the postmaster?

(Objected to as not within the scope of the direct examination.)

A. They were under the direction of the postmaster, at the request of the superintendents.

44 & 46. X Q. You have stated that the first stamp with the canceller soldered on was like Defendant's Exhibit No. 5. You do not wish to be understood as saying, do you, that the canceller was riveted to the postmarker?

A. The first ones made were not riveted; they might have had some afterwards that were riveted.

45 & 47. X Q. Will you swear that any of those cancellers that were used before the cross-bar had the canceller riveted on to the postmarker?

A. I wouldn't like to swear to it.

46. X Q. When did you first see Defendant's Exhibit No. 5?

1684 A. Since I came up here to-day, and not before.

47. X Q. How long is it since you have seen one of the stamps with the canceller soldered on?

A. I think I saw one about two or three weeks ago in Mr. Clarke's office.

Redirect examination:

48. ReD. Q. In your cross-examination you stated that there were a few days when one clerk put the postmark on the letter and another cancelled the postage-stamp. Was that before the introduction of instruments like Defendant's Exhibit No. 5?

A. It was before.

49. ReD. Q. In your cross-examination you stated that when this combined canceller was brought to the attention of the office, there was more or less experimenting to ascertain the best form or materials for that sort of stamp. Who was the first to suggest the idea of a cross-bar, and when was it suggested?

(Objected to as not arising out of the cross-examination, because the question, if admissible, should have been asked upon the direct examination, and for the same reasons I have stated in objecting to Q. 27 of Yeoman's testimony.)

A. Mr. Post was the first one to use the cross-bar, but I could not say positively that he was the one who suggested it; it was suggested at the time they were experimenting on the new stamps.

50. ReD. Q. Was that while stamps like Defendant's Exhibit No. 5 were in use?

A. Yes; No. 5 was in use at that time, I think.

51. ReD. Q. In your cross-examination you stated that the reason for the continued use of instruments like Defendant's Exhibit No. 1 was because that sort of instrument was found to be the only useful and practicable instrument for cancelling and postmarking at the

1685 same time. Do you mean by that that instruments like Defendant's Exhibit No. 5 were not useful?

(Objected to as leading.)

A. They were not as useful as No. 1.

52. ReD. Q. Were they in any sense useful and practicable?

A. Yes; they were partially so.

53. ReD. Q. Did they accomplish the purpose of postmarking the envelope and cancelling the postage-stamp at one blow, without increasing the number of clerks employed in the post office and without its being necessary to go over the letters twice—first to postmark them, and second to cancel the postage-stamp?

(Objected to as leading.)

A. They acted very well in some cases, but not, as a general thing, as well as No. 1.

54. ReD. Q. Did they accomplish the purpose stated in my last question?

A. They did in some instances, but not as a general thing.

55. ReD. Q. Do you mean that while instruments like Exhibit 5 were in use more clerks were employed for the purpose of cancelling and postmarking than had been employed before the introduction of the combined instrument?

(Objected to as leading.)

A. It did not require any more clerks.

56. ReD. Q. Was it then necessary to go over the letters twice, first to postmark and then to cancel?

A. It was not on all occasions.

57. ReD. Q. Was it generally necessary?

A. It was not.

58 ReD. Q. How often was it necessary, if ever?

A. Whenever the stamp failed to make a good impression.

59. ReD. Q. About how often was that?

A. That is a question I could not answer very well.

1686 60. ReD. Q. Have you any idea how many letters pa[illegible] through the stampers in a day?

A. I suppose ten or twelve thousand.

61. ReD. Q. Of those ten or twelve thousand, on how many of them was it necessary to repeat the impression? Make a rough estimate.

A. Well, I suppose one out of every ten or twelve.

62. ReD. Q. After the instruments with the cross-bar like Defendant's Exhibit No. 1 were introduced, was it then ever necessary to repeat the impression?

A. Very seldom.

63. ReD. Q. Was it sometimes necessary?

A. Yes, sir.

64. ReD. Q. Make a rough estimate of the number of letters passing through your hands during the day on which it was necessary to repeat the impression.

A. About two or three per cent.

Recross-examination:

65. Re X Q. You stated that the stamp with the canceller soldered on came apart very often when it was used; was it necessary when it was so broken to take it to the stamp-maker's to have it repaired or made over?

A. It was.

66. Re X Q. While these stamps were at the stamp-maker's to be repaired, how did you put upon the letters a separate postmark and cancelling mark on the postage-stamp?

A. There was seldom more than one that was broken at a time; while that was getting fixed we could use the good ones.

67. Re X Q. How many did you have in the office?

A. I think there was five stampers, and each man had a stamp.

68. Re X Q. So that when one stamp was broken, four clerks were compelled to do the work of five, were they?

1687 A. That would only be for a little while; the head of the stamp-department would take the stamp and have it fixed, and bring it back with him.

69. Re X Q. Where did Mr. Post get the stamp with the cross-bar that he used?

A. I am not positive, but I think he got it of Mr. Hoole, the man who made the stamps for the office.

70. Re X Q. I understand you to say that Mr. Post introduced and used the first stamp with a cross-bar that was used in the office?

A. Mr. Post was the first one that introduced it.

Redirect examination:

71. Re D. Q. Make a rough estimate of how often one of the soldered instruments would break.

A. Sometimes we would have them to come off twice a day, and then sometimes they would last very near a week without breaking.

14-356

TRANSCRIPT OF RECORD.

SUPR[illegible] TES.

Transcript of

CHRISTOPHER C. [illegible], CHARLES EDDY, HORACE T. CASWELL, AN[illegible] SAMUEL R. CLEXTON.

FILED OCTOBER 11, 1880.

No. ~~1098.~~ 767

SAMUEL R. CLEXTON, APPELLANT,

vs.

CHRISTOPHER C. CAMPBELL, ASSIGNEE, &c., THOMAS L. JAMES, HORACE T. CASWELL, CHARLES EDDY, AND CHARLES EDDY, AS TRUSTEE FOR H. T. CASWELL AND SAMUEL R. CLEXTON.

FILED NOVEMBER 11, 1880.

No. ~~1101.~~ 769

CHRISTOPHER C. CAMPBELL, ASSIGNEE, &c., APPELLANT,

vs.

THOMAS L. JAMES, CHARLES EDDY, HORACE T. CASWELL, AND SAMUEL R. CLEXTON.

FILED NOVEMBER 12, 1880.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

VOL. II.

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72. Re D. Q. Do you mean that all the five instruments would break in one day, or that only one or two would sometimes break in the same day?

A. Some days we would have only one or two out of the five; sometimes we then would run nearly a whole week without any breaking.

73. Re D. Q. Was the breaking as frequent after the stamps like Exhibit No. 5, with the soldered canceller, had been used for some time as it was at first?

(Objected to as leading.)

A. No; they did not break in the latter part as often as they did at first.

74. R. D. Q. How often at the latter part?

A. Very seldom.

75. Re D. Q. Do you know the reason why they didn't break at the latter part?

A. I don't know, without there was some other way of fastening them on.

1688 Recross-examination:

76. Re X Q. Was not the stamp with the canceller soldered on regarded by the stampers in the N. Y. post-office as a failure?

(Objected to on the ground that it is immaterial how the stampers regarded it, and because the question calls for hearsay evidence.)

A. They were considered not entirely as a failure.

Redirect examination:

77. Re D. Q. Was the soldered instrument regarded as a success after a method had been found of securing the canceller so that it came off very seldom, and before the cross-bar was introduced?

(Objected to as leading.)

A. It was considered the best stamp we had until the cross-bar was invented.

ALFRED RYER.

Sworn to before me this 7th day of Jan'y, 1878.

JOHN A. SHIELDS,
Examiner.

Hon. JOHN A. DIX, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. CLARKE:

Q. What is your name, age, residence, and occupation?

A. John A. Dix; 79 years of age; I reside in Suffolk County, N. Y.; I have retired from business.

2. Q. Please state what your occupation was between the years 1858 and 1862.

1689 A. I was postmaster of this city from the early part of '60 to the early part of January, 1861; from the early part of January, '61, to the 4th of March, 1861, I was Secretary of the Treasury of the United States; from the month of May, '61, to the close of the period mentioned in the question, 1862, I was major-general in the army.

3. Q. Describe, as accurately as you can the instrument which was in use in the post-office, when you first became postmaster, for the purpose of cancelling the postage stamps on letters.

A. I don't recollect what stamp was used when I first became post-

master; I am inclined to think that stamps were cancelled by the same instrument by which the dates are fixed to the letters.

4. Q. Please look at the instrument which I now produce, and state in what respect it differs, if in any, from the instrument which put the date on letters, and, according to your recollection, cancelled the postage stamp when you first became postmaster.

A. The instrument used was something like the one you have shown me, I should think; it is so long ago I don't remember the minute details of it.

(Counsel for defendant offers in evidence the instrument referred to in the last question, and the same is marked "Defendant's Exhibit No. 4, J. A. S., Ex'r, Jan. 7, 1878.")

5. Q. Is Exhibit No. 4 an instrument for putting the postmark on letters?

A. I suppose it is, or something like it.

7. Q. Was there any change made while you were postmaster in the nstrument by which the postage stamps are cancelled?

(Counsel for complainant renews the objection to this evidence made to Q. 27 of the testimony of the witness Yeomans, and on the same ground as therein stated.)

1690 A. My recollection is that we were forbidden by the Postmaster-General to use the stamp for affixing the date to the letters for the purpose of cancelling postage stamps; and in order to avoid using two stamps I invented a contrivance by which both operations might be performed by one instrument; it was by affixing on one side of the stamp, which was used for affixing dates, another stamp to cancel the postage stamp; I think they were soldered together very much like the instrument which I now hold in my hand.

(Defendant's counsel offers in evidence the instrument referred to in the last answer, and the same is marked "Defendant's Exhibit, No. 5, J. A. S., Ex'r, Jan. 7, 1878.")

7. Q. What was the purpose of combining them; why were a postmarking instrument and a stamp-cancelling instrument not used separately?

A. The object was to save both time and labor.

8. Q. Does Exhibit No. 5 cancel the postage stamp and postmark the letter by one blow of the hand?

A. Yes.

9. Q. Do you remember whether the canceller was riveted to the postmarker as well as soldered?

A. That I don't recollect.

10. Q. Did you put the instrument that you had thus invented into use in the New York post-office?

A. Yes; I put it into use immediately, I think.

11. Q. Was its working successful?

A. I think so.

12. Q. Did instruments like Exhibit No. 5 continue to be used in the post-office while you were postmaster?

A. I think they were for some time; by going into an explanation, I think I can make my answer more direct.

13. Q. Please give that explanation.

(Same objection as to Q. 6.)

A. It was my intention to procure a patent for my invention 1691 for the benefit of the United States; and I wrote to the Postmaster-General explaining what I had done, and I think also what I intended, and I received an answer from him or the Com-

missioner of Patents, I don't know which, saying that a patent had already been obtained to accomplish the same object—that is, affixing the date to letters, and cancelling the postage stamps by one instrument; I think, too, that the P. M. General gave me the name of the patentee as Mr. Norton, of Troy, N. Y., and that I wrote to him (Mr. Norton) on the subject; I think so; I think, too, that some arrangement was made, I can't recollect what, to use the stamp in the N. Y. post-office.

14. Q. You understood that at the time of your making this invention it had then already been patented; is that so?

A. No; I had no idea that a patent had been granted for any similar invention; I thought myself an original inventor.

15. Q. What I meant by my question was, whether the information you say you had received from the Commissioner of Patents, or the Postmaster-General, was to the effect that at the time of your inventing this contrivance it had already at that time been patented?

(Objected to as leading.)

A. Yes; I think that either the Postmaster-General or the Commissioner of Patents had informed me that Mr. Norton's invention had been patented in the previous year.

16. Q. Do you remember whether, while you were postmaster, an instrument like Defendant's Exhibit No. 1 was used in the post-office?

A. I have no recollection of this.

17. Q. Please look at the paper which I now produce, and state whether it is in your handwriting?

A. That is my letter; it was written by me.

18. Q. State what it is?

A. This appears to be a letter from me to Hon. Horatio King, First Assistant Postmaster General, dated 8th of August, 1860.

1692 (Defendant's counsel offers this letter in evidence, and the same is marked Defendant's Exhibit No. 6. J. A. S., Ex'r, Jan. 7, 1878.)

(Objected to by counsel for complainant as incompetent and immaterial.)

19. Q. Please look at the envelope which I now produce, and state whether it is the enclosed envelope referred to in Exhibit No. 6.

A. I have no doubt that it is.

20. Q. Were the postmarks and cancellation marks on this envelope at the time you wrote the Exhibit No. 6?

A. I have no doubt but that the impression on the envelope was produced by the instrument which I invented.

(Defendant's counsel offers the envelope in evidence, and the same is marked Defendant's Exhibit No. 7. J. A. S., Ex'r, Jan. 7, 1878.)

(Objected to as not sufficiently identified.)

21. Q. State whether Exhibit No. 5 is constructed according to the description that you gave in your letter, Exhibit No. 6.

A. I think it is quite like it; I should say that the only difference was the part of the instrument affixing the date to the letters and the part for cancelling the postage stamps were a little farther apart.

22. Q. Was any change made in the form of the combined instrument while you were postmaster?

A. I do not recollect any.

23. Q. Was the combined instrument which you invented used without any interruption in the post-office while you were postmaster?

A. I can't recollect distinctly, but I think we made an arrangement with Mr. Norton to use this stamp or to use his; my impression is that we

continued to use this stamp by an arrangement with Mr. Norton for some time.

1693 24. Q. Do you remember whether you did obtain any stamps from Mr. Norton while you were postmaster?

(Same objection as to Q. 6.)

A. I don't recollect distinctly whether we obtained stamps from him or continued to use this with his consent.

25. Q. Do you know how the stamps were constructed that were made according to the patent which was obtained, as you were informed by Mr. Norton, in 1859?

A. I don't recollect.

26. Q. Was it with reference to stamps made under that patent that you made the arrangement you have spoken of with Mr. Norton?

A. I think I have said that I don't recollect whether the arrangement with Mr. Norton was to use this stamp invented by me or stamps according to his patent of 1859.

27. Q. Do you recollect whether the arrangement related to one of the two stamps, either the one invented by you or the one alleged to have been patented by Mr. Norton in 1859?

A. I think I have answered that question; I don't recollect whether our arrangement with him was to use the stamp I invented or to use stamps made under his patent of 1859.

28. Q. Do you recollect of having any interview with Mr. Norton or with an agent of his?

A. I think I do recollect of having an interview with Mr. Norton or an agent of his.

29. Q. State as nearly as you can what took place at that interview?

A. I can't state distinctly more than I have already; we made some arrangement with him.

30. Q. Did he state anything with regard to his patent of 1859, anticipating your invention?

A. That I don't recollect.

Cross-examination by Mr. Williams deferred for the present until January 8, 1878, at 12 m.

Adjourned to Tuesday, January 8, 1878, at 12 m.

1694 NEW YORK, *January 8th*, 1878—12 o'clock m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of JOHN A. DIX:

31. X Q. Were the facts as to the introduction and use in the New York post-office of the combined postmark and postage canceller fresher in your mind in the year 1864 than they are at this time?

A. I can't say that they were.

32. X Q. Did you, on the 4th day of February, 1864, before G. E. Stilwell, a United States commissioner for the southern district of New York, make an affidavit concerning those matters?

A. I have no recollection of making the affidavit; I have no recollection of the circumstances.

33. X Q. Did you state in that affidavit as follows: "I found that said Norton was an older inventor of the said stamp and cancelling device than I was. He consented to my using the same in the New York office, with the view of giving it a thorough trial, without charge for such use"?

(Objected to on the ground, 1st. That it assumes that the witness did make the affidavit, whereas he has testified that he has no recollection of making it; 2d. Because if the witness made the affidavit it should be produced and shown to him before it can be proper for counsel to question him as to its contents; 3d. Because the question is not within the scope of the direct examination, and as incompetent and immaterial.)

A. I stated in answering a former question that I had no recollection of making this affidavit, but if I did, I used the words which Mr. Williams has read.

34 and 54. X Q. Did you in said affidavit say, referring to Mr. Norton, "I have no claim prior to his. I then believed and now believe the said invention was his, as the original and first inventor, and to be
1695 valuable and useful for the purposes aforesaid," referring to the use of the combined stamp?

(Same objection as before, and also because it is an improper way to refresh the memory of the witness by reading from a printed book, and showing said book to the witness, when there is no evidence of when said book was made or that the witness ever saw the book before, or that the contents of said book are true copies of any affidavit or statement.)

A. I will say, as I did in answer to the previous question, that if I made the affidavit, I have no doubt it contained the words which have been read.

55. X Q. If you did sign and swear to the affidavit as indicated by my first question, you have no doubt, of course, as to the correctness of the statements therein made?

(Same objection.)

A. I have no doubt of it; it accords with what I always said on the subject.

Redirect examination:

56. Re D. Q. Referring to the questions by Judge Williams, on the cross-examination when these questions were asked, was a printed book shown to you in which appeared the statements which you were asked about?

A. Yes.

57. Re D. Q. When did you first see that book?

A. I think I saw it yesterday for the first time.

58. Re D. Q. Under what circumstances did you see it; when and where?

A. It was handed to me by Judge Williams at the close of my examination yesterday.

59. Re D. Q. Does the alleged affidavit in that book, in regard to which you were questioned by Judge Williams, purport to be an original or a copy?

1696 A. I suppose it to be a printed copy of the original.

60. Re D. Q. Do you know whether it is true copy or not?

A. I do not.

61. Re D. Q. If it were shown to you that the patent of 1859, which you were informed had been issued to Mr. Norton, did not cover your invention, would you then have any reason to suppose that Mr. Norton was an older inventor than yourself?.

(Objected to as leading.)

A. I should answer it in this way, that I was informed by the Postmaster-General that my invention had been anticipated by a Mr. Nor-

ton; I should otherwise have considered myself an original inventor, or a first inventor.

62. Re D. Q. Was that information which you received from the Postmaster General merely that Mr. Norton had anticipated your invention, or also that it had been anticipated and patented by Mr. Norton?

A. I don't recollect that the Postmaster-General had said that it had been patented, but he said there was a prior invention, and cautioned me, I think, against the use of mine in the post-office in New York.

63. Re D. Q. Did you from any other source than the Postmaster-General receive information that this prior invention you speak of had been patented?

A. I am not sure that I did not receive from the Patent Office a communication confirming the information which I received from the Post-Office Department.

64. Re D. Q. What is your best recollection on that point?

A. My recollection is indistinct, but I have the impression that I communicated with the Patent Office as well as with the Post-Office Department.

65. Re D. Q. What impression, if any, have you had since 1860
1697 as to whether the alleged prior invention of Mr. Norton had or had not been patented before that date?

(Objected to as improper to call for the impression of the witness.)

A. I always had the impression that Mr. Norton's invention was of the year 1859, and I supposed it had been patented, as a matter of course.

66. Re D. Q. In that year?

A. Yes, in that year.

Recross-examination:

67. Re X Q. Were all the communications that you had on this subject with the departments in Washington to which you have referred in writing?

A. I think so.

68. Re X Q. What impression you have on the subject was derived from those communications, was it?

A. From those communications and from my conferences with Mr. Norton in regard to the uses of his invention.

69. Re X Q. Was the invention which Mr. Norton claimed as his put into use in the post office, New York, while you were postmaster?

(Objected to on the ground that it is not the proper place to ask such a question on this recross-examination, not being within the scope of the redirect examination.)

A. I think I stated yesterday that I could not state distinctly whether my invention was used for any length of time with his consent, or whether we procured some of his stamps; my invention was used for sometime with his consent.

70. Re X Q. When you say that your invention was used some time with his consent, do you mean to imply that after that his invention was used?

(Same objection as above.)

1698 A. I am not sure; I think I recommended to the Post-Office Department the purchase of some of his stamps.

71. Re X Q. Did I hand to you the book referred to yesterday, in the presence of the commissioner and counsel for the defendant, with a request that you would refresh your recollection on the subject?

A. Yes; I understood so.

Re-redirect:

Re-Re-D. 72. Q. Did you ever know a man of the name of Ransford, of Troy?

(Objected to as not proper on redirect examination.)

A. Yes; I recollect Mr. Ransford in connection with this matter, and I think he came to the post-office with Mr. Norton.

Re-Re-D. 73. Q. Did he claim any right or ownership of the Norton invention?

A. That I do not recollect.

Re-Re-D. 74. Q. Do you remember whether you ordered any of the Norton stamps?

A. I do not.

Re-Re-D. 75. Q. Do you remember whether you ordered of Mr. Ransford any of the stamps which were made according to the Norton pattern?

A. I do not.

(Complainant's counsel gives notice now that he shall move to exclude all the testimony of this witness as to what was communicated by him to the departments in Washington, or by the departments to him on this subject, on the ground that the same is in writing, and that the writings are not accounted for or produced.

Defendant's counsel gives notice that at the hearing of the above application he shall move to strike out all of this witness's testimony on cross-examination on the objections there stated.)

1699 Re-redirect resumed:

Re-Re-D. 76. Q. Without any reference to the sources from which you received information in regard to the Norton invention, is it or is it not true that ever since 1860 it has been your belief that the Norton invention was patented in 1859?

(Objected to as incompetent to call for the belief of the witness and as leading.)

A. I have always supposed it was patented in 1859.

Re-Re-D. 77. Q. If you made an affidavit in 1864, did you make it with the impression that the Norton invention was patented in 1859?

(Same objection.)

A. Undoubtedly; I have always had that impression.

JOHN A. DIX.

Subscribed and sworn to before me this January 8, 1878.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Wednesday, January 9, 1878, at 12 m.

NEW YORK, *January 9th*, 1878—12 o'clock m.

Pursuant to adjournment.

Present, counsel as before.

THOMAS H. CORBETT, a witness produced on the part of the defendant, being duly sworn, testifies as follows:

1. Q. What is your name, age, residence, and occupation?

1700 A. Thomas H. Corbett; I am 45 years of age; I reside at 30 Lee avenue, Brooklyn, Eastern District, N. Y., and I am an engraver.

2. Q. Have you ever made instruments for the postmarking of letters and the cancellation of postage-stamps for the post-office in New York City?

A. Yes.

3. Q. When have you made such instruments?

A. At various times.

4. Q. When did you first begin to make them?

A. The first charge I have on my books is July 29, 1860.

5. Q. When did you first make any kind of an instrument for the postmarking of letters? I think you misunderstood my last question.

A. I cannot say positively when I made the first stamp—the first killing marking stamp.

6. Q. I am not asking you about a combined instrument, but a simple postmarking instrument. About what time did you first make such?

A. About 1849 or 1850, I think.

7. Q. Were you then engaged in business for yourself?

A. No, sir.

8. Q. About what time did you make such an instrument, being engaged in business for yourself?

A. Well, 1859.

9. Q. Look at the instruments on the table, and if you see any similar to what you made in 1859, pick it out and read the endorsement on the label.

A. There is nothing on the table exactly like it.

10. Q. Look at Def'ts' Exh. No. 4, and state in what respects that differs from those which you made in 1859.

A. They were much larger.

11. Q. Were they in other respects like Exh. No. 4?

A. Yes.

12. Q. Did you ever make a combined instrument for the post-office in this city by which the postmark could be put on the envelope
1701 wholly apart from the postage-stamp, and the postage-stamp could be cancelled at one blow?

(Objected to as leading. Question withdrawn.)

13. Q. Did you ever make an instrument in which a postage-stamp cancelling apparatus was combined with the postmarking apparatus?

(Same objection.)

A. Yes.

14. Q. Describe how the combination was first made, and illustrate what you say by reference to any of the instruments lying on the table before you.

A. It was a plain New York stamp, with a piece of brass soldered on one side of it, and on the brass were filed straight marks—straight lines the same as the one which I hold in my hand, Def'ts' Exh. No. 5.

15. Q. Describe the way in which that instrument is intended to be used, and what sort of marks it is intended to make on letters, and the position of those marks with reference to each other and to the postage-stamp.

A. I was told that the idea of this piece being fastened to the stamp was to cancel the revenue stamp and postmark the letter at the same time.

16. Q. What you were told by others is not evidence. What I want is your own judgment, based on your knowledge as a maker of such instruments, of the matters referred to in my last question. (Last question read to witness.)

A. That's all I knew of it at that time.

17. Q. What I asked did not relate to your knowledge at that time. Please answer the question from such knowledge as you possess now.

A. It was to postmark the letter and cancel the revenue stamp at the same time.

18. Q. What was the position of the postmark and of the cancellation mark with reference to each other and with reference to the postage-stamp?

1702 A. The cancelling stamp was on the left hand side of the marking stamp when ready for use.

19. Q. What I ask about is not the instrument, but the marks the instrument makes on the letter. What is the position of those marks with reference to the postage-stamp?

A. The same as Def'ts' Exh. No. 5.

20. Q. Whereabouts would the cancellation mark appear on the letter when made by Exh. No. 5?

A. On the right hand end of the letter.

21. Q. Will it be on or off the postage-stamp?

A. That depends altogether upon the stamper, or it should have been the man stamping it.

22. Q. Is it intended that the cancellation mark should be on the postage-stamp, as you understand it?

A. Yes, as I understand it.

23. Q. Where is it intended that the postmark shall appear on the letter—on or off the postage-stamp?

A. On the letter and not on the postage-stamp.

24. Q. State as nearly as you can recollect, without reference to any written documents which you may have, when you first made an instrument like Exhibit No. 5 for the New York post-office.

A. In 1860, I think.

25. Q. Can you recollect in what part of the year?

A. Not without looking in my book or paper.

26. Q. Who gave you the order for instruments like Exhibit 5?

A. I am in doubt who that person was, but think it was Mr. Post.

27. Q. Do you recollect whether instruments like Exhibit 5 needed to be repaired ever?

A. Yes; sometimes the killers would come off and the stamps would be worn down and want recutting again.

28. Q. What do you mean by killers?

A. The stamp that cancels the postage-stamp.

29. Q. When the killers were soldered on, do you recollect whether or not they came off frequently?

1703 A. The first one or two that I done being only soldered were knocked off in the stamping, and I afterwards, to make them strong, put a steel pin through the killer and part of the stamp, so that they would not break off in using.

30. Q. About how long should you say it was before you began to use a pin?

A. I couldn't say exactly; perhaps two or three months.

31. Q. Did the pin hold the killer securely to the postmarker?

A. I never heard of any breaking off after I put the pin in it.

32. Q. Did you, in 1860, make any instruments for the New York post-office in which the killer and postmarker were connected by a cross-bar?

(Objected to as leading.)

A. Not to my knowledge.

33. Q. Did you at any time receive an order from any employee of the post-office for an instrument with a cross-bar?

A. No.

34. Q. Did you at any time receive a request or proposition from any employee of the post-office to make such an instrument?

A. Yes.

35. Q. At about what time was that?

A. It was some time in 1860.

36. Q. What is your best recollection as to what part of the year it was; spring, summer, fall, or winter?

A. I couldn't tell without consulting my books what time of the year it was.

37. Q. Have you any books which contain an entry in regard to such an instrument being proposed or suggested to you by an employee of the post-office?

A. No.

1704 38. Q. Without reference, then, to your books, endeavor to recollect what part of the year it was that this proposition was made. State as near as you can.

A. I cannot recollect.

39. Q. Who was the person who made the proposition to you?

A. I can't recollect positively which person it was; all I know is it was one of three parties, Mr. Post, Mr. Charles Smith, or Mr. Holbrook; I think it was Mr. Post who was sent by Mr. Holbrook to get the first killer soldered on a stamp.

40. Q. Who was it that proposed the cross-bar?

A. I understood it was Mr. Holbrook.

41. Q. Who proposed it to you, if you recollect?

A. I think it was Mr. Charles Smith.

42. Q. Did Mr. Smith, or the person who made the proposition, bring you a drawing of what he wanted done?

A. I can't recollect.

43. Q. What is your best memory on the subject?

A. I cannot recollect whether he did or did not—it's impossible.

44. Q. Did you ever receive any order for instruments with a cross-bar from other persons than employees of the post-office?

A. What do you mean by cross-bar?

45. Q. Look at Defendant's Exhibit No. 1. By cross-bar I mean the piece that runs perpendicular to the handle and connects the killer and postmarker.

A. Yes.

46. Q. Do you mean that you did receive such an order?

A. Yes, sir.

47. Q. From whom did you receive it?

A. Mr. Post.

48. Q. When—about what time—did Mr. Post give such an order?

A. I have no recollection.

1705 49. Q. I think you misunderstood my meaning. What I want to know is whether you received such an order from persons not employed in the post-office?

A. Not that I am aware of; I have no knowledge of receiving any order.

50. Q. Do you remember who was postmaster when you first made the instruments having soldered cancellers?

A. I am not positive; I think it was General Dix.

Cross-examined:

51. X Q. Were you the manufacturer or maker of stamps for the New York post-office in 1860?

A. I repaired their stamps—not made them complete.

52. X Q. Didn't you make any of the instruments that were soldered as you have described?

A. Yes, sir; that is, I made the killers for some of the stamps.

53. X Q. Did you do the soldering?

A. No, sir.

Redirect:

54. Re-d. Q. Who did do the soldering?

A. A man named Wilcox.

55. Re-d. Q. Who was he—what was his business?

A. A tinsmith.

56. Re-d. Q. After you had made the cancellers how did Wilcox get hold of the instrument in order to do the soldering?

A. I took it to him to be soldered, as I had no facilities for doing it myself.

57. Re-d. Q. Did you employ and pay him yourself for the work?

A. I did.

Recross:

58. X Q. You and Mr. Wilcox then together made the stamps for the post-office in New York at that time?

A. No; I only engaged or hired him to do that part of the work.

1706 59. X Q. Who else beside you and Mr. Wilcox were concerned or engaged in the preparation of these stamps for the post-office in New York?

A. Edmund Hoole had the government contract for post-marking stamps at that time, and he may have made some for the New York post-office, but cannot say positively.

60. X Q. Have you any knowledge that he made any of those stamps with the killer soldered on them; or do you mean that he had the contract for making the old style of stamps like Defendant's Exhibit 4?

A. I never knew him to make any stamps with the killer soldered on, as per Defendant's Exhibit No. 5.

Re-redirect:

61. Re d. Q. How long should you say it was after you first made the instrument which has the soldered canceller, before Mr. Smith, or Mr. Holbrook, or Mr. Post made the proposition about the cross-bar?

A. I couldn't tell exactly; some months afterwards.

62. Re-d. Q. Should you think it was two months?

(Objected to as leading.)

A. I could not tell positively.

63. Re-d. Q. Can you tell whether it was one month or forty?

(Objected to as improper on direct examination.)

A. Inside of twelve months.

64. Re-d. Q. Do you think it was inside of six months?

(Objected to as above, and also because it is leading.)

A. Yes.

1707 65. Re-d. Q. Do you think it was inside of three months?

(The same objection.)

A. I cannot recollect.

66. Re-d. Q. Do you think it was inside of five months?

(The same objection.)

A. I think it was, but I am not sure.

Re recross:

67. Re X. Q. Do you wish to be understood as saying that you cannot fix the time when this proposition referred to was made to you?

A. I do.

THOS. H. CORBETT.

Subscribed and sworn to before me this 9th January, 1878.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Thursday, January 10th, 1878, at 2 p. m.

NEW YORK, *January 10th*, 1878—11 o'clock a. m.

Present, counsel as before.

Adjourned to Saturday, January 12th, 1878, at 11 o'clock a. m.

1708 NEW YORK, *January 12th*, 1878—11 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Adjourned to Monday, January 14th, 1878, at 2 o'clock p. m.

NEW YORK, *Monday, January 14th*, 1878—2 p. m.

Pursuant to adjournment.

Present, counsel as before.

Adjourned to Tuesday, January 15th, 1878, at 10.30 o'clock a. m.

TUESDAY, *January 15th*, 1878.

Present, counsel for the respective parties.

JAMES J. RILEY, sworn as a witness on the part of defendant, deposes and says as follows:

1. Q. What is your age, residence, and occupation?

A. I will be 59 years of age the last day of February; residence, 110 Forsyth street, New York City; occupation, tobacco and segar business, wholesale and retail, 60 Williams street, New York City.

2. Q. Have you ever been a clerk in the New York post-office?

A. I have.

3. Q. State when you first went into the office and when you left it.

A. To the best of my knowledge, I went in the post-office in 1849, under Wm. V. Brady; I was in the post-office over twenty years; I left the post-office between six and seven years ago.

1709 4. Q. Do you remember what President appointed Mr. Brady?

A. Yes, sir; President Taylor, to the best of my knowledge.

5. Q. How long after Mr. Brady was appointed was it before you went into the office?

A. That question I could not decide; I was considered one of the first appointments.

6. Q. State about how long.

A. A year probably, may be less; I could not state it properly; it must have been less than a year.

7. Q. State in what different departments of the post-office you were employed while you were a clerk.

A. That is a very difficult question to answer; if you say permanent position, I will answer you.

8. Q. In what permanent position?

A. Cancelling and stamping letters.

9. Q. Did you cancel and stamp in both the domestic and foreign departments?

A. Yes, sir.

10. Q. In which department did you begin as a clerk?

A. In the domestic.

11. Q. About how long did you continue to be a stamper in the domestic department?

A. That question I could not answer unless I had the date of my appointment in the foreign department.

12. Q. After you had been a stamper in the domestic department were you transferred directly to the foreign department?

A. I don't know what you mean by that question; do you wish me to explain that to you (and counsel says yes); I was appointed in the foreign department at that time; I don't want to add any more.

13. Q. Were you ever transferred permanently to the foreign department?

A. Yes, sir.

14. Q. Do you remember who was postmaster when you were so transferred?

1710 A. To the best of my knowledge, William V. Brady; during his administration.

15. Q. State generally without trying to be precise to a day, or a month, or a year, about how many years you were a stamper in the domestic department?

A. To the best of my knowledge, three years; it might be more or less.

16. Q. Were postage stamps in use to any great extent when you first became a stamper?

A. No, sir; do you wish me to put any addition to that?

(Counsel says yes.)

WITNESS continues: There was no three cent stamps at the time; I wish to correct that further; whatever the reduction in the postage was I was in the office, when they first commenced stamping, as stamper.

17. Q. Were any postage-stamps used when you first became a stamper in the domestic department?

A. Yes, sir.

18. Q. State how they were killed or cancelled.

A. They were cancelled with an iron killer first, then afterwards New York and the date put on.

19. Q. How was the iron killer made?

A. Well, the iron killer was made like any ordinary stamp, about as round or thick as my finger.

20. Q. Look at Defendant's Exhibit No. 4 and state how nearly that is like the killer that was in use when you were first a stamper in the domestic department. What changes would have to be made in it?

A. Much smaller than that, with plain bars right straight across.

21. Q. Do you mean that the New York would be off and the plain bars would be on the acting face?

A. Yes, sir.

22. Q. Was any change made in the instrument by which the postage-stamps were killed while you were a stamper in the domestic department?

1711 A. Yes, sir.

23. Q. Describe the first change that was made.

A. The first change that I recollect was a piece of pine wood tied to a stamp. Any farther? With a killer cut in the end.

24. Q. What kind of a stamp was the piece of pine tied to?
A. The ordinary stamp—New York and the date.
25. Q. Was that stamp like Defendant's Exhibit No. 4?
A. No.
26. Q. Who tied the pine to the plain New York stamp?
A. I have myself.
27. Q. Did any one do it before you, to your knowledge?
A. No, sir.
28. Q. Have you in your possession now an instrument made like the one which you have described as having a piece of pine tied to the plain New York stamp?
(Objected to as leading.)
A. I have; except the stamp is much larger, on the same principle.
29. Q. Produce it.
(Instrument produced and offered in evidence, and it is marked Defendant's Exhibit No. 6. J. A. S., ex'r. Jan'y 15, 1878.)
30. Q. In Defendant's Exhibit No. 6 what is the killer made of?
A. Pine wood and cork.
31. Q. You misunderstood my question, I think. In this very instrument before you here, Defendant's Exhibit No. 6, what is the killer made of?
A. Cork.
32. Q. Did the plain New York stamp to which you tied the
1712 piece of pine have a rim or ledge where the iron joins the wood, such as appears in Defendant's Exhibit No. 6?
(Objected to as leading.)
A. No, sir.
33. Q. Was there anything to prevent the piece of pine from slipping when the instrument was used; if so, what was it?
A. Yes, sir; a round bead with projection sufficient to keep the killer in its place from slipping.
34. Q. Whereabouts on the stamp was this round bead?
A. Adjoining the steel.
35. Q. You mean where the steel met the wooden handle?
A. Yes, sir.
36. Q. In what respects did the bead differ from the ledge next the iron in Defendant's Exhibit No. 6?
A. I don't call that a bead; it is not a full bead anyhow. I don't know what to call it; I call that a half round.
37. Q. Will you make a drawing of the stamp to which you tied the piece of pine wood?
A. I can't do it now; I shall do it some other time.
38. Q. Look at the drawing which I now produce, and state whether there is anything in that drawing which resembles the bead which you have spoken of?
A. Yes, sir.
39. Q. How is it marked?
A. A A.
(Drawing offered in evidence, and it is marked Defendant's Exhibit No. 7. J. A. S., ex'r. Jan'y 15, 1878.)
40. Q. Did the bead keep the pine from slipping?
A. It assisted to keep it.
41. Q. Did you make the killer of any other substance than pine?
1713 A. Yes, sir.
42. Q. Mention what you first substituted for pine?

. Iron. I am not positive whether it was cork or iron; I think it cork.

3. Q. Why did you first tie the pine on to the plain New York stamp?

. To facilitate the business.

4. Q. How was the business facilitated?

. In order not to have to stamp the letters twice, the killer and then New York stamp on.

45. Q. While you were a stamper in the domestic department were e postage stamps ever killed by the plain New York stamp?

A. Yes, sir.

46. Q. Did any of the officers of the post-office object to this?

A. Yes, sir.

47. Q. Who objected, and what was his position?

A. Munson Clarke; his position was—he was called the general superintendent.

48. Q. Did he give any reason?

A. Yes, sir.

49. Q. What was it?

A. Frequently those stamps fell off—taking off the date; of course the date was on the stamp. Any further? (Counsel says yes.) In consequence there was no date to the letter when mailed. In consequence, on reception of the letter there was no date attached to it.

50. Q. How did Munson Clarke direct you to cancel the postage-stamps?

A. With a killer.

51. Q. Do you mean a separate killer?

A. Yes, sir.

52. Q. Did he want the postmarking to be done afterwards?

A. Yes, sir.

53. Q. How much did that increase your work?

A. About double.

1714 54. Q. Did you postmark the letters and cancel the postage-stamps in the way Munson Clarke directed, and so do double work for any considerable length of time?

A. Not a great while; I couldn't exactly specify the time.

55. Q. How did you avoid doing double work?

A. By soldering a piece of steel on the iron stamp.

56. Q. Was that after you had tried the piece of pine and the cork for killers?

A. That question I could not answer; not the way it is put.

57. Q. What is the trouble?

A. The trouble is here: we use the cork in two different shapes.

58. Q. Did you tie a piece of pine on a plain New York stamp for the purpose of avoiding doing the double work which Munson Clarke's directions would have made you do?

A. Yes, sir.

59. Q. Without attempting to be perfectly accurate, state about how long you continued to use the pine killer?

A. It was a very short period, but could not state the exact time.

60. Q. Well, was it a week or two weeks, or a month?

A. I could not state. I should think about two months, or less than two months.

61. Q. Did you then adopt any other sort of a killer attached to the plain New York stamp?

A. Yes, sir.

62. Q. What sort of a killer?

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A. A steel killer, or iron, just as you might call it.

63. Q. How was this steel or iron killer attached to the plain New York stamp?

A. By soldering, I suppose it was.

64. Q. Was it fastened securely?

A. Yes, sir.

65. Q. When this instrument, having an iron or steel killer,
1715 was used, did any part of the postmark, the New York, or the date, appear on the postage stamp?

A. That answer I shall have to qualify. Not when properly stamped.

66. Q. How many blows did it take to postmark the envelope and kill the postage stamp?

A. Only one when properly stamped.

67. Q. About how many letters with postage stamps on them used to come into the office in a day at the time that you adopted the piece of pine?

A. I could not answer that question, sir.

68. Q. How did you use to carry them round in the post-office; in a bag, or something of that sort?

A. I did not carry them, sir.

69. Q. Somebody did; what did he carry them in?

A. Do you wish me to answer that? (Counsel says yes.) Witness says he generally took them up in his hand; I suppose, east, north, and south. The clerks carried them away from our tables.

70. Q. What were the letters dropped into when they were deposited in the post-office?

A. In baskets and a table.

71. Q. About how large were those baskets?

A. About two feet long, fourteen or fifteen inches wide; different shapes—round and square.

72. Q. About how high?

A. About a foot, I suppose, as near as I can recollect; it is a long time ago.

73. Q. How many of these baskets would be filled with letters having postage stamps on them in the course of a day?

A. I cannot say.

74. Q. Would more than one be filled?

A. Yes.

75. Q. Would half a dozen?

A. I cannot say.

76. Q. You should think three or four would be filled at that time?

A. I should think so.

77. Q. Did postage stamps begin to be used in considerable numbers while you were a stamper in the domestic department?

1716 A. Yes, sir.

78. Q. About how long do you think you had been in the office before they began to be so used?

A. That question I couldn't answer distinctly; two or three years, I suppose.

79. Q. When did Munson Clarke cease to be general superintendent?

A. That I could not answer.

80. Q. About how long did you use the instrument having the iron canceler soldered on to the plain New York stamp? Speak in round numbers, as near as you recollect.

A. I could not state the exact time.

81. Q. Do you think it was six months or a year?

A. I cannot say.

82. Q. Do you think it was one month? I don't expect you to be perfectly accurat· at that time.

(Objected to as leading.)

A. Yes.

83. Q. How much more than a month do you think it was used without being perfectly accurate? Give your best recollection.

A. I could not say.

84. Q. Do you think it was used four months?

A. Probably it was, and more; I could not say exactly what time it was.

85. Q. Do you recollect that it ever ceased to be used while you were a stamper in the domestic department?

A. Yes, sir; to the best of my knowledge.

86. Q. Why did you cease to use it?

A. We adopted another mode.

87. Q. Did you ever cancel the postage-stamp with a plain New York stamp after you had begun to use this combined instrument?

A. Yes, sir; not as a rule.

88. Q. When did you use the plain New York stamp afterwards?

A. That question I could not answer; it was against the orders.

1717 89. Q. Whose orders?

A. The superintendent.

90. Q. Was that Munson Clarke?

A. Yes, and others.

91. Q. State all you recollect about using the plain New York stamp.

A. That question I don't know how to answer.

92. Q. You stated that you did use it sometimes. Now, what I want is, to tell all you recollect—at what times and under what circumstances you used it.

A. Do you wish me to state that? (Counsel says, yes.) Witness says: The best of my recollection there was two stampers steady—this is the best of my recollection—and two stamps with killers attached; when hurried, called in an extra clerk to assist, and had to use a New York plain stamp; this is as far as I recollect. If you wish me to say more, I will say more.

93. Q. I wish you'd state all you recollect about it.

A. I have used a plain stamp myself in preference to the double stamp, being much lighter.

94. Q. What did you use whenever Munson Clarke was not in the office?

A. Well, I don't know how to answer that question at all.

95. Q. What I want to know is, whether it made any difference in regard to the instrument you used, whether Munson Clarke was or was not in the office to oversee and know what you were doing?

A. It was immaterial; it was a general rule to use a plain stamp and killer.

96. Q. Attached?

A. Yes, sir.

97. Q. Do you recollect whether Munson Clarke always continued to be superintendent?

A. He was supposed to be.

98. Q. Was he superintendent at the time that you went into the foreign department, if you recollect?

A. Yes, sir; to the best of my recollection.

1718 99. Q. Was the combined killer and postmarker used till you went into the foreign department?

A. Not in that shape.

100. Q. What other shape was adopted before you went into the foreign department?

A. To the best of my recollection it was a hollow tube with cork in it—tube screwed on.

101. Q. What was the tube screwed to?

A. To the iron stamp or steel stamp. I couldn't swear positively whether it was screwed on or soldered on; it is a long time ago. I could not carry it in my head for 30 years.

102. Q. Was the instrument having the cork and tube used till you went into the foreign department?

A. To the best of my recollection it was.

103. Q. State as accurately as you can, according to your best recollection, how long that sort of an instrument was used.

A. I couldn't specify any definite time.

104. Q. Do you think it was six months or more, or less?

A. I could not say.

105. Q. Do you recollect that it was used at all?

A. I don't understand the question. I can't answer it. What do you mean by "at all"? Before or after, you mean?

106. Q. I want to know whether you recollect that such an instrument as you have described, having a tube and cork screwed or soldered to the postmarker, was ever used in the post-office.

A. Yes, sir.

107. You are sure of that, are you?

A. Yes, sir; to the best of my recollection.

108. Q. Now, I ask you what your best recollection is of how long it was used. I don't care whether your best recollection actually agrees with the fact, but I want what you actually remember. It seems to me that you ought to be able to tell somewhere near.

A. I cannot.

1719 109. Q. Do you think it was used for a week?

A. Yes, sir.

110. Q. For a month?

A. To the best of my recollection it was.

111. Q. Was it used for two months? Speak to the best of your recollection.

A. Yes.

112. Q. Was it used for three months? Speak to the best of your recollection.

A. Yes, sir.

113. Q. Was it used for four or five months?

A. I cannot say.

114. Q. Do you recollect that it ceased to be used ever while you were in the domestic department?

A. Yes, sir; no, sir, while I was in the domestic department.

115. Q. Do you recollect whether the superintendent and other officers ever ceased to require that the postmark, consisting of New York and the date, should not appear on the postage-stamp?

A. Yes, sir.

116. Q. Do you mean that they did cease to require that?

A. No; they still continued the order.

117. Q. Do you mean as long as you remained in the domestic department?

A. Yes, sir.

118. Q. Do you know what was used in the domestic department after you went into the foreign department?

A. I cannot recollect.

119. Q. Was the tube and cork which you have spoken of as soldered or screwed to the postmarker fastened securely?

A. To the best of my recollection it was.

Cross-examined:

120. X Q. Pick out of the exhibits on the table the one like that in use when you went into the foreign department.

1720 A. To the best of my knowledge that is one. The stamp is screwed on and the cork screwed on. Exhibit referred to is Complainant's Exhibit A.

121. X Q. Why was the use of the cork or pine wood abandoned as a killer?

A. Well, it was much softer and made a better impression.

122. X Q. Why was the cork abandoned as a killer?

A. I don't know; it was after my time.

123. X Q. Why was the iron or steel soldered on to the plain stamp abandoned as a killer?

A. In order to have a new killer every day.

124. X Q. When the last instrument referred to was abandoned, what was then adopted?

A. I think it was this (referring to Complainant's Exhibit A), with a cross-piece on.

125. X Q. Was the use of this last instrument ever abandoned in the office, to your knowledge?

A. I cannot say. I cannot recollect.

126. X Q. Do you know Anthony Yeomans and Albert Ryer?

A. Yes, sir.

127. X Q. Were they clerks with you in the stamping branch of the New York post-office?

A. To the best of my recollection they were not; at least Mr. Yeomans was not.

128. X Q. Do you know when they became clerks in the post-office?

A. To the best of my recollection Mr. Isaac B. Fowler appointed them.

129. X Q. What sort of stamps did you use in the foreign department after you were transferred?

A. It would be almost impossible to answer such a question as that. We had over forty different stamps.

130. X Q. Do you know anything about what took place in the domestic department after you were transferred?

A. My recollection is very poor in that regard. I cannot state distinctly.

1721 131. X Q. Do you know whether or not they continued the use of the stamp like Complainant's Exhibit A after you were transferred?

A. To the best of my recollection they have.

132. X Q. Where is Munson Clarke?

A. He is dead a good many years.

133. X Q. When did he cease to be general superintendent of the New York post-office?

A. I do not recollect.

134. X Q. You have stated that the use of the stamp like Complain

ant's Exhibit A was continued by his direction and the directions of others. Who do you mean by others?

(Objected to on the ground that the witness has not stated what counsel says.)

A. We always had to go by the orders of the superintendents, Mr. George Coffin and Mr. Clement and Mr. Strong.

135. X Q. Were they superintendents during the administration of Mr. Brady?

A. Yes, sir.

136. X Q. Where did you get Defendant's Exhibit No. 6, which you have produced here to-day?

A. This gentleman here, Mr. Clarke, the defendant's counsel, furnished me with the handle and the iron portion; the other portion I furnished myself.

137. X Q. How long is it since you saw one of the instruments which you say was used in the post-office like this exhibit?

A. About six or seven years.

138. X Q. Where did you see it then?

A. In the post-office.

139. X Q. Was it in use?

A. I cannot say.

140. X Q. Who showed it to you?

A. I had free access to it. I am not speaking about this stamp here—Defendant's Exhibit No. 6.

141. X Q. What stamp are you referring to?

A. Well, I couldn't say what stamp particularly. I think it had gutta percha for a killer.

1722 142. X Q. I will repeat my question. When did you last see an instrument like Defendant's Exhibit No. 6, now shown you?

A. I couldn't state positively; 15 or 16 years, probably; it may be more or less.

143. X Q. State in what year you were transferred from the domestic to the foreign department?

A. I cannot recollect.

144. X Q. Was it before 1853?

A. I cannot say.

145. X Q. Was it before 1860?

A. I think so.

146. X Q. Are you sure of it?

A. Well, I'm not swearing positively; to the best of my recollection I am certain about it.

147. X Q. Who succeeded Mr. Brady as postmaster?

A. Mr. Fowler—Isaac B. Fowler.

148. X Q. Can you tell the year, or anything near the year when he was appointed?

A. I think it was 1853 or 1854.

149. X Q. Where were you when Mr. Fowler was appointed postmaster?

A. That I could not say positively.

150. X Q. You do not know, then, do you, whether or not you were transferred from the domestic to the foreign department during Mr. Brady's administration?

A. Not distinctly.

151. X Q. Do you know in whose administration you were transferred?

A. Not distinctly.

152. X Q. Who succeeded Mr. Fowler as postmaster?

A. To the best of my knowledge it was John A. Dix.

153. X Q. Who was head stamper while you were in the domestic department?

A. Charles Smith.

154. X Q. Did the killer that was soldered on the plain stamp ever break off?

A. Not to my recollection.

1723 Redirect:

155. Re D. Q. Have you a distinct recollection that you were appointed by Mr. Brady?

A. Undoubtedly.

156. Re D. Q. Have you a distinct recollection that while you were in the domestic department you tied a pine killer to an ordinary New York stamp and used the same?

(Objected to as a repetition of the former direct examination, and as leading.)

A. Yes, sir.

157. Re D. Q. Is your recollection clear and distinct that an iron or steel killer was substituted after the pine had been used for a little while?

(Same objection.)

A. Yes, sir.

158. Re D. Q. Is your recollection clear and distinct that the substitution was made while you were a stamper in the domestic department?

(Same objection.)

A. I think so.

159. Re D. Q. Who soldered the iron killer to the postmarker?

A. To the best of my recollection it was Mr. Hoole.

160. Re D. Q. Do you recollect any circumstances, such as the remarks of fellow clerks to you, which impressed on your mind the fact that your way of combining the killer with the postmarker was a valuable thing?

(Objected to as leading, and as improper on cross-examination.)

A. Yes, sir.

161. Re D. Q. State what you recollect about that.

(Same objection, and also as asking for hearsay.)

1724 A. Mr. Clement and Mr. Thomas Clarke and several others made the remark that I ought to get out a patent for the same.

162. Re D. Q. Was the time when you first used a pine killer the time when postage-stamps first began to be used in considerable numbers?

(Same objection.)

A. Yes, sir.

163. Re D. Q. To the best of your recollection who was postmaster when you were transferred to the foreign department? State without attempting to speak absolutely positively.

(Same objection.)

A. I do not recollect.

164. Re D. Q. Do you think that you were as much as five or six years in the domestic department?

(Same objection.)

A. I cannot say.

165. Re D. Q. You can tell what your best recollection is. Please give that.

(Same objection.)

A. Well, I don't think I was in the domestic department five years, if that.

Re-cross:

166. Re X Q. What was your invention for which you were advised to get a patent?

A. On the same principle as Defendant's Exhibit 6.

167. Re X Q. Do you mean that you were advised to get a patent for a principle or for any particular instrument? And if for any particular instrument, describe it.

(Objected to on the ground that it is immaterial what the witness was advised to do.)

A. For an instrument with a steel killer attached to it.

1725 168. Re X Q. How was the steel killer attached?

(Same objection.)

A. The first principle was soldering.

169. Re X Q. What was the next principle?

A. The next principle was a tube, as far as my recollection goes.

170. Re X Q. Did the tube constitute the killer?

A. No, sir.

171. Re X Q. What did?

A. Cork and rubber.

172. Re X Q. What was the next principle?

(Objected to on the ground that counsel ought to specify in his question whether he is speaking of the principle that he was advised to get a patent for, or changes that were actually adopted in the post-office.)

A. I cannot distinctly recollect, we have had so many different kinds.

173. Re X Q. Why didn't you get a patent, as you were advised?

A. The principal reason was, I held a position under the government and gave them the benefit of my ingenuity.

174. Re X Q. Any other reason?

A. Well, there might have been; I did not wish to go to that trouble.

175. Re X Q. Were all the improvements made on the plain stamp while you were in the domestic department your inventions?

A. That question I couldn't answer, sir; I might have some assistance, some advice and some improvement recommended.

176. Re X Q. How do you know that Mr. Hoole did the soldering?

A. I don't know positively; he did the work, and Mr. Corbett.

177. Re X Q. Were he and Mr. Corbett together in the same shop or building?

A. To the best of my knowledge they were.

1726 178. Re X Q. Did you have any communications with General Dix about any stamp?

A. Not that I recollect.

179. Re X Q. How was the tube which you say you used attached to the handle of the instrument?

A. I couldn't recollect distinctly; I think it had a cross-bar or a cross-piece attached.

180. Re X Q. When was your attention first called to this matter, with the idea of your being a witness?

A. I think it was last week; it might have been the week before.

181. Re X Q. Had you thought anything upon this subject prior to that time since these different stamps were introduced into the post-office?

A. Yes, while I was in the office, but not since.

182. Re X Q. When you left the domestic department, as I understand, you left there in use a combined stamp like Complainant's Exhibit A?

A. Well, I can't answer that question positively; to the best of my recollection I have used those—screwed them on.

183. Re X Q. Haven't you sworn here to-day that a stamp like Complainant's Exhibit A was used in the domestic department at the time you were transferred to the foreign department?

(Complainant's Exhibit A shown witness.)

A. I have not sworn it.

184. Re X Q. Have you sworn that the plain stamp with the killer soldered on was in use in the domestic when you were transferred to the foreign department?

A. I swore to the best of my recollection.

185. Re X Q. Give the names of all the clerks who talked with you about your invention.

A. It would be impossible; I cannot recollect; I gave the names of two; the most of them are dead.

186. Re X Q. Are the two who you named dead?

A. They are, sir.

187. Re X Q. Who was postmaster when you quit the post-office?

1727 A. Patrick H. Jones.

188. Re X Q. Was he the predecessor of Mr. James, the present postmaster?

A. Yes, sir.

J. J. RILEY.

Sworn to before me this January 15th, 1878.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Wednesday at 12 o'clock m.

NEW YORK, *January 18th*, 1878—10.30 a. m.

Pursuant to adjournment.

Present, counsel as before.

EZRA MILLER, a witness produced on the part of the defendant, being duly sworn, deposes and says:

1. Q. What is your name, age, residence and occupation?

A. Ezra Miller; I am 65 years of age; I reside at Mahwah, New Jersey; I am by profession a civil engineer, and am at present employed in introducing a new invention, which I have patented, entitled Miller's Platforms, Couplers and Buffers for Railroad Passenger Cars; my office is 6 Park Place, in this city.

2. Q. What was your occupation about the years 1857 to about 1860?

A. In 1857 I was engaged and occupied as chief engineer in the building of a railroad in Wisconsin; in 1858, 1859 and 1860, as postmaster of the city of Janesville, Wisconsin.

3. Q. Who was President when you were appointed postmaster?

A. James Buchanan.

1728 4. Q. About how long after Buchanan was inaugurated was it before you were appointed postmaster?

A. About a year.

5. Q. Please give as detailed an account as you can of the instrument or instruments which were used in the Janesville post-office for the purpose of postmarking letters, and of cancelling postage-stamps, when you first became postmaster, and of any changes that were made while you were in the office.

A. The instruments in use in the office for that purpose when I took

it were, so far as the iron postmarker is concerned, were very much the same, and about the size of one I find on the table, with a label attached, marked Defendant's Exh. No. 4. It is in the form of a cylinder, about an inch long and about an inch in diameter, with the name of the post-office engraved on the outer edge of the circle, with a square mortise or hole in the center to receive and hold the type used in marking the date, and a small thumb screw to hold those types firmly; the wooden handle used with the iron marker was very much like in form the one I find on Complainant's Exhibit U; the technical name of this kind of handle is brad-awl handle.

6. Q. How were the postage-stamps cancelled at that time and in that office?

A. By the use of the instrument I have just described, and with ink upon the marking face of the instrument; the application of the inked instrument being upon the postage-stamp itself.

7. Q. The postmark and the cancellation mark were the same thing, were they?

A. Yes, sir.

8 & 9. Q. Was any change made, and if so, by whom, and how long after you went into the post-office, and what was the nature of such change?

A. I found that the stamps cancelled in the way that I have described were sometimes cleaned off and used, or attempted to be used, a second time in my office; I directed my clerks to use more force, if pos-
1729 sible in cancelling postage-stamps; the effort to do that caused soreness of the hands; to remedy that I changed the handle, and got up a new stamp with the handle parallel, or nearly parallel, with the face of the stamp, as a carpenter's hammer handle is nearly parallel with the face of the hammer; with this instrument I could get more power in applying the stamp, and with less damage to the hands; this was four to six months after my appointment.

10. Q. Describe more particularly how that part of the new instrument was made into which the handle fitted.

A. In making a plan of the instrument I took the carpenter's hammer first as a starting point, forming the face of the hammer very much like the hand stamp I have before described for marking letters; the claw end of the hammer I utilized by making it in the form of a socket to receive and hold type to be used in marking letters "paid," "missent," "advertised," &c.

11. Q. When the instrument was used, whereabouts on the envelope was the postage-mark put—on or off the postage stamp?

A. On the stamp.

12. Q. Have you drawings which illustrate the hammer stamp?

A. I have, sir; I produce them.

(Drawings marked Defendant's Exhibit No. 8. J. A. S., Ex'r. January 18, 1878.)

13. Q. Please state what the different letters in the drawings represent.

A. The same letters are intended to represent the same parts in the three drawings on the sheet Def't's Exh. No. 8; the capital letter A designates the hammer-head; the italic letter *a* a thumb-screw used to fasten the type; the capital letter B the handle of the instrument, which I made of wood; the italic letter *b* a thumb-screw to tighten the types used in marking the dates; the capital letter C the socket in the upper end of the hammer, made to receive the type used to mark the
1730 words "*paid*," "*missent*," "*advertised*," &c.; the capital letter D the

position of said type when in use; the capital letter E the screw tenon upon which the marker is screwed or placed; the capital letter F the said marker, and the capital letter G the position of the types for marking the dates.

Q. 14. Did you get the sort of an instrument you have described patented?

A. Yes, sir; it was several months after I commenced using it; it might probably have been a year; according to the date on the paper which came from the Patent Office, I see it was March 22d, 1859; that paper is Defendant's Exhibit No. 8.

15. Q. Did you make an instrument for the purposes enquired about of any other shape than the instrument you have described?

(Complainant's counsel objects because it is not competent for the defendant to give any evidence by this witness showing or tending to show an invention or prior use of the subject-matter in controversy, for the reason that such evidence is not properly described and set out in the answer, as required by statute.)

A. Yes, sir; I made a double-headed one.

16. Q. What was the double head for?

A. One was a marker, the other was a canceller.

17. Q. How many blows did it take to put on the postmark and the cancellation mark?

A. One blow, both at the same time.

18. Q. When the double-headed instrument was used, whereabouts on the envelope did the postmark appear, on or off the postage-stamp?

A. Off the postage-stamp.

19. Q. Will you make a drawing of one of your double-headed instruments?

A. I have a pencil sketch here, which I have just made upon the table here, showing the double-headed stamp, and marked by letters to correspond with the paper already exhibited, marked No. 8, ex-
1731 cepting as to the letter H, which shows the additional head used for cancelling postage-stamps; this instrument was made solid, of one piece of steel.

(Sketch offered in evidence, and marked Def't's Exh. No. 9, J. A. S., ex., Jan. 18, 1878.)

20. Q. I see that this sketch contains some writing in pencil; is that your writing, and is it correct?

A. Yes, sir; it is merely an explanation of the part marked H.

(The matter written in pencil on Defendant's Exhibit No. 9 offered in evidence.)

21. Q. What configuration did the marking face of the canceller have?

A. It was what we called an orange quarter, having four points inside of the circle.

22. Q. You stated the whole of the double-headed stamp was made of steel, did that include the handle?

A. No, sir; the hammer handle was made of wood the same as the original.

23. Q. When did you first make one of your double-headed instruments?

A. It was before I applied for the patent a month or two.

24. Q. Did you ever obtain more than one patent for this sort of a thing?

A. No, sir.

25. Q. Was the double-headed instrument put in use in the Janesville post-office?

A. Yes, sir.

26. Q. State in what year, if you recollect.

A. It was in the winter of 1858, or January, 1859; as soon as I made it I put it right in use.

27. Q. How long did it continue to be used in the Janesville post-office?

A. I couldn't answer; I used it during my term most of the time, and presented it to my successor when I left.

1732 28. Q. When did you cease to be postmaster?

A. Shortly after the inauguration of Mr. Lincoln.

29. Q. Who was your successor?

A. James M. Burgess.

30. Q. While you were postmaster, did you use any other sort of an instrument for the purposes inquired about?

A. Yes, sir.

31. Q. Give a description of that other instrument.

A. I had a separate canceller, similar to that attachment marked H in Exhibit 9, which was used with a brad-awl handle, which was used when the original hammer stamp was used; sometimes using the marker with red ink and the canceller with black, which made it very handsome looking; this was used part of the time, occasionally when the boys had time to do it.

32. Q. What do you mean by "this was used part of the time"?

A. I mean that sometimes we used the double-header alone to stamp letters, and at other times the original hammer stamp to mark the letters with the name of the post-office and date, and the said canceller to cancel the postage-stamps.

33. Q. What was this canceller made of—of what material?

A. The lower end of it was made of steel, the handle of wood.

34. Q. Did you ever use a canceller made of any elastic substance, like rubber, or cork, or wood, if you recollect?

A. I think we did use one that was sent to me by Mr. Zeverly, Third Assistant Postmaster-General I think he was at that time; I think we used it for a little time, and sent it back with my disapproval, because it did not sufficiently cancel the postage-stamps, owing to the elasticity of the instrument.

35. Q. Was that a separate canceller?

A. It was.

36. Q. Describe briefly how it was made.

1733 A. I don't remember exactly, but very much like the canceller I had, excepting the face was covered with an elastic substance; I think it was rubber.

36½. Q. Look at the canceller in complainant's Exhibit U, and state in what respects, if any, the canceller sent you by Mr. Zeverly differs from that.

A. The canceller face in Exhibit U is made of cork, and it is coupled with the marker; the one that Mr. Zeverly sent me was not faced with cork, and was not coupled with the marker.

37. Q. How was the rubber, which you say formed the marking face of the canceller in the Zeverly instrument, connected with the handle?

A. My impression is that the entire instrument was made of wood, excepting a ferule on the lower end of it, which projected beyond the wood about a quarter of an inch, and was filled with the elastic substance.

38. Q. About what time was this canceller of Zeverly's sent to you, as near as you recollect?

A. It was shortly after I obtained my patent papers; it might have been a month or two; in the summer of 1859.

39. Q. Did you use it at all in your office?

A. We did; we gave it a good trial.

40. Q. Did you use in your office any other instrument having brad-awl handles, for the purposes inquired about?

A. Not that I remember; I have had instruments sent to me by other postmasters for trial, but I don't remember what they were.

41. Q. Did you ever use a compound postmarker and canceller having any other sort of a handle than a hammer handle?

A. Not that I remember.

42. Q. Who devised or invented the original hammer stamp and the double header?

A. The hammer stamp was undoubtedly my own invention, and I think the double header was; I had never seen any before; I have seen them since.

43. Q. Why didn't you get a patent for the double header?

1734 A. Because I considered the hammer handle plan or system entirely original, and therefore patentable; the other I was not sure of exactly, but I was sure of one thing—that the hammer-handle was the only one that would give us sufficient power, and would have to be used with any kind of a stamp; it was not necessary to patent a stamp; but it has not since been used.

Cross-examined:

44. X Q. I understand you to say that your double header was made simply by casting on to the side of the postmarker the postage-canceller. Is that correct?

A. Well, it is not cast; it is forged steel; the two are forged together of steel.

45. X Q. You say that the reason why you did not apply for a patent for this double header was that you were not quite sure that it was original. What made you have doubts upon that subject?

A. I had no doubts, because the question never occurred to me; the cancelling of a postage-stamp required, in my estimation, more power than could be used with a brad-awl handle; therefore it would have to be used with the hammer-handle which I had already patented.

46. X Q. Was the invention which you supposed you made any the less original because the separate canceller was forged with the postmarker?

A. The canceller that I found in the office when I took the office, was a postage-stamp canceller and a post-office marker, and used as such at that time as one instrument; they were one instrument; in making my double header I merely separated these two instruments, which I did not think much of an invention; another thing, at that time I had no idea of asking for a patent.

47. Q. Did you not consider that when the separate canceller was forged with the postmarker that an improvement had been made upon your original hammer stamp?

1735 A. I did not; in my invention the thing of value in my estimation was simply in the handle; and in the making the two stamps out of one I merely showed what could be done with the hammer handle, that is all; in further answer to that question I will state that I made one post-office stamp with, I think, six or eight faces, and I presented that one to Postmaster Clephune, at Washington City, to show the usefulness of my invention, the hammer handle.

48. X Q. If you did not consider the attaching of the separate canceller to your original hammer handle marker as as improvement, why did you use the double-header in the office instead of the original hammer handle marker?

A. Simply because I had in my invention the power to use more than one, and in doing so save time.

49. X Q. Then you admit, do you, that your double-header was so much of an improvement upon the original hammer stamp as to save time in its use, do you?

A. Yes, sir.

50. X Q. Did it not occur to you when you applied for your patent that an improvement upon an instrument which would save time and labor was valuable and patentable?

A. When I applied for my patent I had but one idea about it, and that was that the handle would have to be used with any kind of canceller; that the mere putting of ink upon a postage stamp would not cancel it; that the application of the instrument should be of sufficient force to perfectly cancel the postage-stamp without ink; my object was to prevent the washing of stamps.

51. X Q. You did not then, in what you made, consider it at all important that the postmark should be made on the letter off the postage-stamp, did you?

A. I merely considered the printing of the name of the post-
1736 office upon the envelope and off the postage stamp as desirable, because it made it more distinct and plain, easier read; it was more a matter of taste than of economy in that particular.

52. X Q. Was it not an improvement upon the old style of putting the postmark upon the postage-stamp to have a machine that would put the mark plainly and evenly upon the letter, and at the same time cancel the postage stamp?

A. It was undoubtedly, and was being done with two instruments before I made the double-headed one.

53. X Q. Are you absolutely certain that you made and used this double-header before the 22d day of March, 1859?

A. I think I used the double-header before that time, the 22d March, but it was not the solid one; it was a separate canceller attached to the side of the hammer head by two screws, and that the solid one was after I got the patent; that is my recollection at present.

54. X Q. How long do you think you used the double header with the canceller screwed on?

A. Well, it might have been a couple of months, but not all the time, occasionally because the handle was not in the center of the instrument; it was on one side, and the handle was the center of the marker, so that the greater force of the blow was in the marker instead of the canceller, so that they discarded it; then we got the solid double-header after that.

55. X Q. You have stated that Mr. Zeverly sent you a canceller, and that several instruments were sent to you by other postmasters for trial; am I to understand that about that time you and others were experimenting as to the best mode of marking letters and cancelling postage-stamps?

A. At that time I was endeavoring to prevent a second use of post-
age-stamps; I had consulted Governor Aaron V. Brown, who was then Postmaster-General, upon this subject; he thought it an import-
1737 ant matter and worthy of effort; when I returned home I sent a circular letter round among the postmasters, asking advice as to

their methods of cancelling postage-stamps so that they could not be used again; in other words, to effectually cancel them; I think I sent one to Troy, and one to Fowler, I think, was postmaster of the city of New York at that time; it was this that brought me those contributions from several post-offices.

56. X Q. All, then, that you ever claimed to have invented, as I understand you, was an instrument that would cancel a postage-stamp so that it could not again be used, better than any other instrument in use?

A. My invention was a method of handling the instruments with such power as to prevent future use of the same stamps.

57 X Q. Was that all of your invention?

A. That was my only object; I don't know about the invention; we invent a good many things without knowing it.

58. X Q. Do you remember to have heard anything about an order from the Postmaster-General as to post-marking on the letter off the postage-stamp?

(Objected to on the ground that it is immaterial what the witness has heard.)

A. I think there was an order of that kind made before I was appointed, or at least a circular advising separate marking and separate instruments issued to the post-offices, to enable them to comply with it; that is my recollection of it; when I say post-offices, I mean the larger offices, not the small country offices; they cancel with a pen and ink as a general thing.

59. X Q. How long, if you know, before you commenced the use of the double-header, had the post-marking in your office been made off the postage-stamp, and on the letter?

A. I don't know; I couldn't tell.

60. X Q. I understand you to say that you are not aware that
1738 this handle stamp or double-header was used elsewhere than in the Janesville post office. I think you made that statement?

A. There were none used in other offices, except my own, and except when I called on the postmaster, and I would remain while the stamping clerks were using it, merely to get their opinion on it.

61. X Q. Have you ever seen any of the stamps in the Janesville post-office since you ceased to be postmaster?

A. Not that I remember.

62. X Q. Do you remember at any time while a bill was pending before Congress, proposing to pay Mr. Norton or his assignees for the use of his stamp by the government, of writing a letter to the Postmaster-General, or any committee of Congress, upon the subject of your inventions in that line?

A. I don't recollect of ever knowing anything about such a bill or such a letter.

63. X Q. Did you ever claim to the Postmaster-General, or anybody, that you were entitled to compensation for inventing a postage-stamp that has been claimed by Mr. Norton?

A. Not the slightest recollection of anything of the kind.

64. X Q. Did you write a letter to the Postmaster-General in 1866 or 1867, in which you claimed that you had invented this combined post-marker and postage canceller in the fall of 1860, or forepart of 1861?

(Objected to on the ground that if such a letter was written it should be produced and the witness questioned as to its contents specially.)

A. I have no recollection about it, but Alick Randall was Postmaster-General at that time, and as postmaster of Waukesha at the time that

I issued that circular letter, he conferred with me a good deal upon the subject of the letter that I issued, and was familiar with what I
1739 was doing at that time, and knew that I had that patent; and it is possible may have written a letter to me, which I may have answered, and which may possibly be the one that you have alluded to; but I have no recollection of it; I was in the habit of writing letters to Mr. Randall, and receiving letters from him.

Redirect:

65. Re D. Q. When you speak of the canceller and the post-marker being forged in one piece, state whether that is the same thing or similar to welding one piece of iron to another?

A. It is not; by the word forging I mean to take a piece of metal, and by heating it and hammering it change the shape of it; that is what I call forging.

66. Re-D. Q. Do you understand, on giving your testimony on cross-examination, that there can be an improvement on an instrument which does not require any invention and which is not patentable?

A. Well, it depends upon whether those improvements were known before or not; if they were not known before, it is an invention; if they were known before, it is not an invention.

67. Re-D. Q. May not a person of ordinary mechanical skill make an improvement in an instrument which is not necessarily patentable, in your understanding?

(Objected to, because the witness is not called as an expert, and it is not proper to go into that matter on redirect examination.)

A. I don't know why he couldn't do it accidentally.

68. Re-D. Q. Was the double-header when made solid put into use in your office as soon as it was gotten up?

A. I think not; I think I was in Washington when it was finished, and I put it into use when I returned home; I gave the plans to a
1740 man named Brooks, a gunsmith, in Janesville; he made the instrument, and I think it was completed several days before I got home from Washington.

69. Re-D. Q. Did you know anything about any combined post-marker and canceller before you yourself combined them in a hammer stamp?

(Objected to as a repetition of the former direct examination.)

A. No, sir; not that I remember.

Recross:

70. Re X Q. Did you tell or in any way inform Postmaster-General Randall, or anybody in the Post Office Department in Washington, of the existence or use of this double-header in the Janesville post-office?

(Objected to on the ground that the time of giving the information inquired about should be made specific.)

A. Mr. Randall knew of it before I made it; he was as familiar with it as I was. I showed him the plans before I made the instrument, in Janesville, and all this was before he was Postmaster-General, but I have no recollection of any conversation with him on the subject after he was appointed Postmaster-General; but as to the people in Washington, I had it with me in Washington, and showed it to them, and used it in the office; this was in 1859.

(Defendant's counsel objects to so much of the answer as relates to what was done before Mr. Randall was appointed Postmaster General as irresponsive.)

71. Re X Q. Did you, while you were in Washington, show this instrument to any officer or officers in the Post-Office Department?

A. I made frequent visits to Washington, and on one of them Mr. Claphane requested me the next time I came to Washington to bring
1741 my new stamp with me; that he wanted to see it. I complied with the request, and when I called on Mr. Claphane he was not there, and I left it with the stamp-cancelling clerks; the next day I called and got it and took it up stairs. I had it in my overcoat pocket and visited several of the departments, and showed it, on request, to the departmental officials and clerks.

EZRA MILLER.

Sworn to before me this 18th day of January, 1878.

JOHN A. SHIELDS,
Examiner, &c.

It is noticed that two of the exhibits in John A. Dix's testimony are marked No. 6 and No. 7, and that two of the exhibits in James Riley's testimony are marked No. 6 and No. 7. The marks for identification are hereby amended, by consent of counsel, by adding the name of the witness on each exhibit, who testified about it, so as to distinguish them apart.

Adjourned sine die.

MONDAY, *April* 1, 1878.

Present, Sam'l B. Clarke, on part of the defendant, and George H. Williams and Marcus P. Norton for complainant.

Defendant's counsel offers in evidence certified copy from the records of the Patent Office of the letters patent granted Frederick G. Ransford and Peter Low, dated Aug. 9, 1859, No. 25036, for improvement in postmarking stamps. The same is marked Defendant's Ex. 145, April 1, 1878, J. S. A., examiner.

1742 (Complainant's counsel objects on the ground as inadmissible under the pleadings, and immaterial.)

Defendant's counsel offers in evidence a certified duplicate of the model in matter of letters patent granted Marcus P. Norton, dated Aug. 9, 1859, No. 25036, for postmarking stamps. The same is marked Defendant's Ex. 146, April 1, 1878, J. A. S., examiner.

(Objected to because it is not described in defendant's answer, and as immaterial, and is not a duplicate of the original.)

Defendant's counsel offers in evidence certified copy from the records of the Patent Office of the letters patent granted Marcus P. Norton, dated Dec. 16, 1862, No. 37175, for postmark and cancelling stamp. The same is marked Def't's Ex. 147, April 1, 1878, J. A. S., examiner.

(Objected to because they are not sufficiently described in defendant's answer, and as immaterial.)

Defendant's counsel offers in evidence certified duplicate of the model in the matter of the letters patent granted Marcus P. Norton, dated Dec. 16, 1862, No. 37175, for postmark and cancelling stamp. The same is marked Def't's Ex. 148, April 1, 1878, J. A. S., ex.

(Objected to as not sufficiently described in the answer, and as immaterial and not a duplicate of the original.)

Defendant's counsel offers in evidence certified duplicate in matter of letters patent granted Marcus P. Norton, dated April 14, 1863, No. 38175, reissued Aug. 23, 1864, No. 1748, and assigned to J. Shavor
1743 and A. C. Corse, reissued Aug. 3, 1869. No. 3586, reissued Oct. 4, 1870. No. 4143, division A, assigned to Helen M. Ingalls, reissued Oct. 4, 1870. No. 4144, division B, assigned to the Secombe

Manufacturing Co., for improvement in post-office stamps. The same is marked Def't's Ex. 149, April 1, 1878, J. A. S., examiner.

(Complainant's counsel objects to said certificate because it is imperfect and false in not stating all the assignments of said patent on record; 2. That it is a mere statement of the Commissioner relating to facts, and not copies of records referred to; 3. The Commissioner has no authority to make any such certificate; 4. The paper tied on to the handle with a string has been attached since the original has been filed, and is no part of it; 5. The alleged model is not a duplicate of the original, and is inadmissible.)

Defendant's counsel offers in evidence certified copy from the records of the Patent Office of the letters patent granted Emory N. Moore, dated Jan. 16, 1849, No. 6036, for improvement in machinery for post-marking letters, &c. The same is marked Defendant's Ex. No. 150, April 1, 1878, J. A. S., examiner.

(Objected to by complainant's counsel because it is not sufficiently described in the answer, and is irrelevant and immaterial.)

Defendant's counsel offers in evidence certified copy from the records of the Patent Office of letters patent granted Benjamin Chambers, dated Sept. 23, 1851, No. 8384, for improvement in letter stamps. The same is marked Def't's Ex. 151, April 1, 1878, J. A. S., ex.

(Same objection as to the next preceding alleged copy of a patent.)

1744 Defendant's counsel offers in evidence certified copy from the records of the Patent Office of the letters patent granted Stephen P. Ruggles, dated Aug. 21, 1855, No. 13470, for hand stamp. The same is marked Defendant's Ex. 152, April 1, 1878, J. A. S., ex.

(Same objection as to the next preceding alleged copy of a patent.)

Defendant's counsel offers in evidence certified copy from the records of the Patent Office of letters patent granted Ezra Miller, dated March 22, 1859, No. 23307, for post-office hammer stamp. The same is marked Def't's Ex. 153, April 1, 1878, J. A. S., ex.

(Same objection as to the next preceding alleged copy of a patent.)

Defendant's counsel offers in evidence a certified copy from the bound volumes of the library of the Patent Office of the specification and drawing in the matter of English letters patent granted Pearson Hill, dated March 25, 1857, No. 832, for improvements in machinery for stamping, marking, or printing or arranging papers, &c. The same is marked Def't's Ex. 154, April 1, 1878, J. A. S., ex.

(Complainant's counsel objects on the ground that no sufficient notice of said alleged letters patent, specifications, and drawings is given in the answer; 2. That the Commissioner has no authority to make any such certificate, and the same is illegal and void; 3. The alleged copy of said letters patent, specifications, and drawings is irrelevant and immaterial; 4. Incompetent, because not the best evidence; 5. Because it does not appear when said publication was made in this country.)

1745 Defendant's counsel offers in evidence certified copy from the bound volumes from the library of the Patent Office specification and drawing in the matter of English letters patent granted George Thomas Robinson, dated October 6, 1857, No. 2563, for a machine for obliterating postage-stamps on letters, &c. The same is marked Def't's Ex. 155, April 1, 1878, J. A. S., ex.

(Same objection as to the next preceding alleged copy of letters patent, specifications, and drawings.)

Defendant's counsel offers in evidence certified copy from the files of the Patent Office of the file wrapper and contents in the matter of let-

ters patent granted Marcus P. Norton, dated April 14, 1863, No. 38175, for improvement in post-office stamp. The same is marked Def't's Ex. 156, April 1, 1878, J. A. S., ex.

(Complainant's counsel objects because the alleged copy of the said files is not competent; 2. They appear to be mutilated, marked, and changed; 3. They are irrelevant and immaterial; said files are not admissible to alter, explain, or modify the patent or its specifications.)

Defendant's counsel offers in evidence certified copy from the files of the Patent Office of the file wrapper and contents in the matter of the reissue of letters patent granted Marcus P. Norton, dated Aug. 3, 1869, No. 3586, for improvement in post-office hand stamps and postmarking and cancelling. The same is marked Def't's Ex. 157, April 1, 1878, J. A. S., ex.

(Same objection as to the next preceding alleged copy of file.)

1746 Defendant's counsel offers in evidence the certified copy of the pleadings, of the findings of fact, and conclusions of law found thereon by the court, and of the final judgment in the case of Jacob Shavor and Albert C. Corse vs. United States, in the Court of Claims, No. 2571. The same is marked Def't's Ex. 158, April 1, 1878, J. A. S., ex.

(Objected to as not admissible under the defendant's answer and because it is an imperfect copy of the record in the case.)

Defendant's counsel offers in evidence a certified copy of the deposition of Marcus P. Norton, filed on November 21, 1867, in the case of Jacob Shavor and Albert C. Corse against the United States in the Court of Claims, No. 2571. The same is marked Def't's Ex. 159, April 1, 1878, J. A. S., ex.

(Objected to because it is not competent to give the alleged testimony of Mr. Norton as evidence in this case, as he is a competent witness here; 2. It is not admissible under any issue made by the defendant's answer in this case.

Defendant's counsel offers the last two exhibits in connection with each other.

(Objections renewed.)

Defendant's counsel offers in evidence a certified copy from the files of the Patent Office of the caveat of Marcus P. Norton, filed October 20 and 27, 1853, for a machine for mailing and folding letters, together with the indorsement of the Commissioner of Patents upon the paper marked Exhibit B, in the said copy of the file, to the effect that said paper, Exhibit B, does not form a valid portion of the caveat. The same is marked Def't's Ex. 160, April 1, 1878, J. A. S., ex.

1747 (Complainant's counsel objects to said certificate because it is manifestly false; 2. Objects to what purports to be an indorsement upon the paper marked Exhibit B as unauthorized, illegal, and void; 3. The Commissioner has no right to destroy or mutilate the records of his office; 4. The alleged copy of the file is imperfect and does not contain copies of all that was originally filed; 5. The Commissioner had no jurisdiction to make such endorsement.)

Defendant's counsel offers in evidence certified copies from the records of the Patent Office in relation to certain charges made against Marcus P. Norton, of Troy, N. Y., and the action of said Patent Office respecting the same. The same is marked Def't's Ex. 161, April 1, 1878, J. A. S., ex.

(Complainant's counsel objects on the ground that it does not appear that said copies are true or complete records of said proceedings against said Marcus P. Norton; 2. Said copies of said proceedings are not ad-

missible in evidence, because they do not relate to the issues or the parties in this case; 3. They are irrelevant, immaterial, and incompetent, and relate to matters of a criminal nature, and are unauthorized by law; 4. The said copies contain statements which said Commissioner was not authorized to make, record, or certify to.)

Defendant's counsel offers separately and in connection with the last exhibit a certified copy from the files of the Patent Office of Exhibits A, B, C, and D, referred to in charges made against Marcus P. Norton by the Commissioner of Patents, said charges having been served on said Marcus P. Norton on or about that date, Aug. 29, 1871. The
1748 copies of the exhibits are offered separately and together. The same is marked Def't's Ex. 162, April 1, 1878, J. A. S., ex.

(Complainant's counsel objects to said certificate as unauthorized and illegal, being an unsworn statement of alleged facts; 2. Objects to said indorsements upon said papers marked B and D because they are made thereon without any authority of law, and are void and not admissible as evidence in this case. They are unauthorized, immaterial, and irrelevant, and the Commissioner had no jurisdiction to make them.)

Defendant's counsel offers the last three exhibits together.

(Objections renewed as above.)

Defendant's counsel offers in evidence the certified copy of a letter on file of the Post-Office Department, to wit, a letter bearing date Washington, D. C., Aug. 10, 1860, from St. John B. L. Skinner, Acting 1st Assistant P. M. G., to postmaster at New York, being the last one in the bundle of three letters under the same certificate. The same is marked Def't's Ex. 163, April 1, 1878, J. A. S., ex.

Defendant's counsel offers in evidence certified copy of two original letters on file in the Post-Office Department, to wit, a letter from John A. Dix to Hon. J. Holt, Postmaster-General, dated Post-Office, N. Y., Aug. 21, 1860, and also a letter from John A. Dix to General Skinner, dated Post-Office, N. Y., Aug. 28, 1860. Each of these letters are offered separately, and the endorsement on each is also offered. The first of the letters is marked Def't's Ex. 164, April 1, 1878, J. A. S., ex., and the second, Def't's Ex. 164 A, J. A. S., ex.

1749 (Complainant's counsel objects to said copies because the parties thereto are competent witnesses and their testimony is the best evidence.)

Defendant's counsel offers in evidence certified copy of the original letter on file in the Post-Office Department, dated Troy, N. Y., March 14, 1864, from Marcus P. Norton to the Hon. Postmaster-General. The same is marked Defendant's Ex. 165, April 1, 1878, J. A. S., ex.

Defendant's counsel, in view of the objection to Exhibits 164 and 164 A, withdraws the exhibits.

Adjourned to April 2, 1878, at 10 o'clock a. m.

NEW YORK, *April* 2, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Defendant's counsel offers in evidence a certified copy from one of the records of the Post-Office Department, the same being a record of postage-stamps sent to the Postmaster at New York City in the year 1847 and 1851, and the same is marked Defendant's Exhibit 166, J. A. S., ex'r.

Defendant's counsel offers in evidence a certified copy from the bound volumes of the library of the Patent Office of the United States of the specification and drawing in the matter of the English letters patent granted D. G. Berri, dated April 24, 1860, No. 1020, for an improved

date stamp, the same having been sealed the 27th September,
1750 1860, and the same is marked Defendant's Exhibit 167, J. A. S., ex'r.

(Complainant's counsel waives objection to said alleged specifications and drawings on the ground that the same are not set up in the answer, but objects to them on the ground that the certificate of the Commissioner is unauthorized by law; second, that they are secondary and not the best evidence; that they are irrelevant and immaterial and incompetent, and the Commissioner has no power by his certificate to make them evidence.)

THOMAS J. W. ROBERTSON, a witness called on behalf of the defendant, being duly sworn, testifies as follows, in answer to questions propounded by SAMUEL B. CLARKE, Esq., of counsel for defendant:

1. Q. What is your name, age, residence, and occupation?

A. Thomas J. W. Robertson; I am 45 years of age; I reside in Washington, D. C., and I am a patent solicitor.

2. Q. What has been your employment or occupation during your life? Answer general.

A. From the 18th to the 24th year I was engaged more or less in the printing business; from the 20th year I have taken great interest in mechanical pursuits, and since 1854 I spent most of my time in the study and practice of mechanism; the last ten years I have been employed as a patent agent, and for the larger part of that period I had charge of one of the branches of the Patent Office practice of Munn & Company, during which time it was my special business to examine and report upon the novelty and patentability of alleged new inventions. I have been frequently called to testify as an expert in cases before the United States courts; as a printer I have taken special pains to
1751 keep myself posted in the various improvements in that art, and have now a small printing office of my own; as a mechanic I have a small machine shop connected with my residence for experimenting and model-making purposes.

2½. Q. Have you examined the certified copy of the specification and drawing of the English letters patent granted D. G. Berri, and which have been offered in evidence and marked Defendant's Exhibit 167?

A. I have.

3. Q. Are you familiar with the form in which the specifications of English letters patent appear in the United States Patent Office; are they printed?

A. I am; they are printed.

4. Q. Where printed, if you know?

A. They bear the imprint, usually, of an English firm of printers who do most of the work for the English Government in London; of my own knowledge I cannot state where they are printed; I only know that of all that I have examined I never saw one to my knowledge bearing any other imprint than that of the firm above referred to, the last name in which is Spottiswoode, whose names usually appear as the printers of most English Bibles that are imported into this country,

5. Q. How soon after a patent is issued in England does it customarily appear in print?

(Objected to as incompetent for witness to state any custom.)

A. From the imprint on such patents they appear to be printed within a few months of the date of enrollment; sometimes the imprint bears the same date as to the year as the enrollment.

(Objected to as secondary, and not the best evidence.)

6. Q. How soon after they are printed in England are they received in the United States Patent Office?

(Objected to as not the best evidence.)

1752 A. I can give no positive answer to that; to my own knowledge I have seen such patents within a year after the date; this answer refers to the full patents, but abstracts of the English patents are printed in the English journals in from two to three weeks after the date of the provisional specification, which journals are usually received here and are placed on file in the Patent Office as soon as possible after publication.

(Objected to as incompetent evidence.)

7. Q. Please state whether the model which I now produce and show you is made in conformity with the specification and drawings of Berri's patent, Defendant's Exhibit 167.

A. I can see no difference in the stamp itself, but there appears to be a slight difference in the form of the handle, and there is no screw thread shown in the drawing on the shank that enters the handle, nor does there appear to be any ferule shown on the handle in the drawing; with these exceptions the drawing and model appear to exactly agree.

(Defendant's counsel offers model in evidence, and it is marked Defendant's Exhibit 168, J. A. S., ex'r.)

8. Q. Have you examined the specifications and drawings of the patent granted Marcus P. Norton on the 14th April, 1863, and the reissue of said letters patent on which this suit is brought, being division A, No. 4143, dated October 4th, 1870?

A. I have.

9. Q. Will you please to give, as fully as you can, an account of the state of the art to which the original patent belongs as it existed at the time the original patent was granted, to wit, the 14th of April 1863?

(Objected to because it does not appear that the witness is competent to give such evidence; second, the evidence itself is inadmissible,
1753 as it involves the question of opinion and not a statement of facts.)

A. From my first acquaintance with the printing business, it has been common to produce impressions of two or more types at one blow; it was also common to enclose such types in what are technically known as "chases," which served to keep the types in their proper places and served incidentally as a means to prevent the crushing of the types by the power of the press; types made of wood were commonly employed, to my own knowledge, with the end of the grain of the wood so arranged as to be used for the printing surface; soft materials for types were well known long anterior to the date of the patent referred to; in some cases rubber being employed, in others a composition of glue and molasses, and in other cases printing surfaces of felt enclosed in metal and attached to wood.

Among the devices used to produce the impression were handles of various forms carrying different styles of receptacles for the types. I hold in my hand a hand stamp purchased by me in Broadway, New York, some time previous to March 10, 1856, which consists of a handle bearing a long shallow box or oblong tube with one end closed and having a screw to bind and firmly hold the type in position. This stamp was originally a perfect stamp, with sufficient type to print my name. The most of those type have been lost and I have substituted for them a piece of folded paper to prevent the loss of the remainder.

Defendant's counsel offers this stamp in evidence, and it is marked Defendant's Exhibit 169, J. A. S., ex'r.

(Objected to as inadmissible under the allegations in the answer.)

(Witness continues:) At the time I purchased Exhibit 169 the same dealer had a different class of stamp, with a broad surface sur-
1754 rounding the type, which surface formed a printing surface, so that the same stamp would produce an impression on any soft material to which it might be applied, showing a name and an ornamental border in addition thereto. Printing presses had been employed having two or more boxes containing types, which boxes were attached to a frame made to receive them and through which the impression was produced. This last form of press I saw in use as early in 1854. Some time previous to 1859 I saw a hand stamp having between the handle and the printing plate a piece of rubber, which rubber was enclosed in a tube or recess formed in the lower part of the handle. Previous to 1856 I saw a device illustrated in the Scientific American, a newspaper published in this city by Munn & Co., consisting of a cross-bar from which depended three pens, by which three marks might be made at the same time by one movement of the handle attached to the centre of said cross-bar, so that three letters could be written at the same time. One class of stamps that had been employed were made with metal boxes to contain wooden type; other stamps for the same purpose has other soft material enclosed in metal borders and provided with a handle by which they were operated.

10. Q. At the time that you purchased that stamp—Defendant's Exhibit 169, on Broadway, in 1856—were there any common and well-known means by which that stamp could have been altered in size and other respects so as to be adapted at one end of the tube for making a postmark on letters, and at the other end of the tube for making a postage-stamp cancellation mark at one operation?

(Objected to as inadmissible under the allegations in the answer, because the witness is not a proper person to give such an opinion.)

1755 A. Defendant's Exhibit 169 could, without any alteration in said tube or handle, have been made to date or postmark a letter and cancel the stamp thereon, by simply taking out the types and using in lieu thereof proper letters and figures to produce the date at one end of the tube, and putting in the other end of the tube one or more letters with their faces downwards, so that the "feet" of the type would produce an impression on the stamp, or even if types were used in the ordinary manner the effect produced would be sufficient to cancel the stamp; at the time referred to the year was seldom given on the postmark, so that there was plenty of room in the tube for the date as then given and a cancelling device besides.

11. Q. Using only common means and means well known to persons familiar with the art of printing in the year 1856, describe how nearly the stamp, Defendant's Exhibit 169, that you bought in Broadway, could then have been made to approximate to the thing patented in Mr. Norton's original patent of April 14, 1863, a duplicate of the model of which has been offered in evidence, marked Defendant's Exhibit 149.

(Objected to as above.)

A. So far as relates to the first claim, it was only necessary to have inserted in the tube or box any of the type made of soft material, referred to in my answer to Q. 9, or ordinary wooden type commonly used in all printing offices, to have made the hand stamp marked Defendant's Exhibit 169 essentially the same as the cancelling device referred to in the first claim of said patent; so far as relates to the second claim, a device similar to the combination covered therein may be made by placing in one end of the box in Defendant's Exhibit 169 one of the

wooden type, or type made of soft material referred to in my pre-
1756 vious answers. Next, placing an ordinary "space" against the side of said soft type, then inserting type of about the size shown in Defendant's Exhibit 149, sufficient to form the name of the town and date; Defendant's Exhibit 169 thus provided would accomplish all that Defendant's Exhibit 149 would, and would substantially meet the combination claimed in the second clause of the claim of the patent granted to Marcus P. Norton April 14. 1863, No. 38175; at the end of the box the space before referred to in conjunction with the sides of the box would form the equivalent of the cancelling device, and the type at the other end of the box would give the date or postmark; that is, without any other change being made in the tube or box of Defendant's Exhibit 169. By taking other means well known to the art of printing, and changing the form of Defendant's Exhibit 169, two small boxes, one of which would contain a soft type, and the other the type giving the date or postmark (such boxes as are referred to in my answer to Q. No. 9), and attaching them by any means then well known, or by the means by which the boxes referred to were attached to the frame, to the opposite ends of the tube or box of Defendant's Exhibit 169, the same combination would be produced as in claim 2 of the patent referred to; such boxes and means of attaching to the frames carrying the boxes were seen by me certainly as early as 1854, and had then been in use for several years in the Sun office; it was a common device, well known to printers to attach two or more different "chases" to one press, each of which contained different type, and were secured so as to move simultaneously; another class of type holders, called "turtles," were frequently used in clusters of four upon the same frame, each one of which would occupy the same position with respect to the adjoining one that the Norton canceller, described in Plaintiff's Exhibit D, does to the postmarking device therein shown; the two "turtles" being con-
1757 nected by a cross-bar in substantially the same manner as the cancelling and postmarking devices before referred to are connected by the cross bar mentioned in claim 2 of Complainant's Exhibit D; so far as the use of the soft type is concerned in cancelling postage-stamps, it would make no difference whether the said type were used with their faces or feet up, as cancellation would be produced in either manner.

12. Q. Would the changes which you have referred to have been in 1856 essential modifications of Defendant's Exhibit 169, or only formal and immaterial changes?

(The same objection, and also it is not admissible for the witness to give his opinion on that subject.)

A. They were such that were within the knowledge of every one well versed in the printing business, and would therefore be mere formal changes.

13. Q. How far back can you carry the use of the wood or rubber or other soft or elastic type that you have spoken of, and how inclosed, if in any way, when used?

A. Wooden type have been to my own knowledge (having used them myself) in use as far back as 1852; the type used by me at that time were old and well worn; type of soft material I have seen described in a patent issued in 1843, in the United States; the use of printing surfaces of soft material is also described in an English patent granted to Hancock in 1838; the method usually employed for securing the wood type referred to was to inclose them in a "chase," which is a meta frame in which they were tightly wedged; previous to the date 1852

above given, I was employed in a printing office where I have no recollection of seeing wood type used, but metal type were secured in rings or short tubes of substantially the same form as the tube in Defendant's Exhibit 149; this was in the latter part of the year 1850.

1758 14. Q. Please to examine Defendant's Exhibit 145, which is a certified copy of a patent granted to Ransford & Low, on the 9th August, 1859, and state whether from those specifications and drawings an instrument for the postmarking of letters and the cancellation of postage-stamps at one operation, cancellation being done by inking only, and not by cutting, could have been made at the time the patent was granted by a person familiar with the art of printing as it then existed, he making no other changes or modifications or departures from the specifications and drawings of that patent than what were then well-known substitutes for such part or parts, if any, of the thing patented in said patent as it then was necessary to change.

(Objected to as leading and argumentative and for the reasons stated in the foregoing objections.)

A. As I understand the exhibit, an instrument could be made that would postmark a letter and cancel a stamp at the same time without cutting the stamp by any person, whether familiar with the art of printing or not, having ordinary common sense, as it is only necessary to take a stamp made in accordance with such specifications and rub the cancelling device on a stone so as to dull the cutting edges thereof, when the instrument so made would readily postmark and cancel without cutting.

15. Q. Please answer the same question as the last with reference to Defendant's Exhibit 147, which is a certified copy of a patent granted Marcus P. Norton, on the 16th December, 1862, No. 37175.

A. To make a non-cutting cancelling device of the cancellor therein shown it is only necessary to rub said cancelling device on a stone, give it two or three blows of a hammer or possibly a few strokes of a file across the face, when the cancelling device shown in said exhibit would no longer have cutting edges, and it would simply be a cancelling device. In fact, without such rough usage, the edges would soon become so dull as to no longer cut from the rough usage such stamps ordinarily receive.

1759 16. Q. Please to examine Defendant's Exhibit 154, which is a certified copy from the Library of the Patent Office of English letters patent granted Pearson Hill, dated March 25th, 1857, No. 832, and state whether, from those specifications and drawings, you could construct that part of the machine thereby patented which is intended to postmark letters and cancel postage-stamps; and if you could, describe fully that part of the machine intended for that purpose, and how you would make it, being especially specific as to the die.

(Objected to because it is improper for the witness to give the opinion asked for.)

A. I find described in the patent three different machines for postmarking letters. The postmarking device proper consist' in each machine of a pivoted lever, having on one end the postmarking device, which is more particularly shown on sheet 4, Figures 4 and 5. It is also shown in sheets 6 and 7, the postmarking device being represented in each case by the letter E. It is also shown in sheets 1 and 2, but not so clearly. I could from those drawings and specifications readily construct a machine that would postmark letters and cancel postage stamps at the same time. As shown in Figure 11, sheet 7, the machine would consist of a table to receive the letters, a lever having at one end the

postmarking and cancelling device, and at the other end is connected by a pitman to a crank attached to or forming a part of a rotary shaft, to which motion is imparted by treadle and pitman, in a manner well known to every one who has seen a scissors grinding or sewing machine, the whole being so arranged that by operating the treadle a rotary motion is given to the shaft represented by letter B in the drawing, which causes the crank C to give motion, through the pitman C, to the postmarking lever D, which is pivoted or journaled at D. With a machine so constructed it is only necessary to operate the treadle to give an up and down motion to the postmarking and cancelling
1760 device E to produce an impression by said postmarking and cancelling device upon a letter placed beneath it. No means are shown in Fig. 11 of sheet 7 for inking said postmarking device, but an inking apparatus, or a substitute therefor, in the form of a continuous ribbon, is shown in Figure 10, sheet 6, where a similar lever is shown. In the drawings Fig. 1, sheet 1, Figs. 4 and 5, sheet 4, another form of inking apparatus is shown, either of which may be used to suit circumstances.

The cancelling and postmarking device on the end of the lever D, as shown in Figs. 4 and 5, consists of three blocks marked E E E, having above each one a piece of caoutchouc or rubber marked Q Q, above which again is a plate, K, which is pressed upon the rubber by a screw represented by R, the blocks of caoutchouc and plate being enclosed in a right angle tube; the blocks E E E have flanges on them to prevent them falling out of the tube, or from being pushed out by the elasticity of the caoutchouc.

It is stated in the specification, on page 11, that "the dies may be made with cavities for the reception of types for the date or for other purposes, and which may be changed from time to time. I also make the die, with the whole design, in duplicate, so that the design with the date may be legibly impressed upon the letter or envelope as well as upon the postage stamp, which is obliterated or cancelled by it."

Adjourned to Wednesday, April 3d, 1878, at 10 o'clock a. m.

1761 NEW YORK, *April 3d*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Examination of J. W. ROBERTSON continued by SAM'L B. CLARKE, esq., of counsel for defendant:

17. Q. State wherein the apparatus for postmarking and cancelling which is described in that patent of Pearson Hill, No. 832, of 1857, differs from the post-office stamp described in the patent on which suit is brought, and from the duplicate model thereof, Defendant's Exhibit 149, and whether the differences, if any, are only formal and immaterial, or are substantial and essential.

(The same objection.)

A. I find in the reissued patent, No. 4143, two blocks attached to a cross-bar, each of which has a recess; the recess in one block being designed to receive type, to be secured therein by a set screw, in the manner well known to the art of printing and to mechanics generally. The other block is designed to receive in its recess a cancelling die or type which the specification states may be made of wood, cork, rubber, or of any elastic material.

I find in the post-marking and cancelling device represented in figures

4 and 5, of sheet 4, of the English patent, No. 832 of 1857, three blocks marked E, E, E, which it is stated on page 11 of the written copy of said patent "may be made with cavities for the reception of types for the date or for other purposes."

If made of the size shown in figs. 4 and 5, one of the blocks E could be made to contain sufficient type to post-mark a letter, and one of the other blocks could contain a cancelling die or type, by which means a letter could be post-marked and the stamp thereon cancelled equally well, and probably better, than with devices shown in the reissued patent, No. 4143, on which this suit is brought.

1762 As wooden type were then well known, there would be no invention in placing type of wood or similar soft material in a cavity formed in the block E, described in the English Patent No. 832, of 1857.

In view of this, and the state of the art generally, I cannot see any invention that it would be necessary to make to adapt the post-mark and cancelling device shown in said English patent to post-mark a letter and cancel the stamp thereon at the same time, and it is therefore fully equivalent in operation to that described in the United States patent of M. P. Norton, Reissue No. 4143.

The differences between the inventions described in the two patents consists mainly in the method by which the blow is given to the latter in the act of post-marking and cancelling. In the English patent foot power is employed to produce the impression; in the Reissue Patent No. 4143 a handle, such as was then well known, was applied to the cross-bar connecting the post-marking and cancelling blocks. These being mere formal changes, within the power of any mechanic to make, I cannot see any substantial improvement or change in the stamp described in the Reissue Patent No. 4143 that is not shown in the English Patent No. 832, of 1857.

(Complainant's counsel objects to so much of the foregoing answer as undertakes to state as to what does and what does not constitute an invention, and as to what is or is not an improvement, as wholly irresponsive to the question, and an attempt by the witness to swear an argument for the defendant into his testimony.)

18. Q. State wherein the post-office stamp or device for post-marking and cancellation, described in the letters patent granted Ransford & Low, Aug. 9, 1859, Defendant's Exhibit 145, differs from the post-office stamp described in the letters patent on which suit is brought, Reissue No. 4143, and from the duplicate model thereof, Defendant's Exhibit

1763 149, and whether the differences, if any, are formal and immaterial, or substantial and essential.

A. I find in the Patent No. 25036, issued to Ransford & Low, a post-marking device having attached thereto a cancelling device, consisting of a plate, which the specification describes on page 3 as being "for the purpose of cutting, blotting, cancelling, or effacing the frank or postage-stamp, so as to prevent the second use of the same, while at the same time the name of the post-office, the year, the month, and the day of the month, is printed upon the envelope."

I find in the Reissue Patent No. 4143 a post-marking and a cancelling device, which cancelling device, is stated in the specification, "may be of any desired distance from the aforesaid post-marking or dating device or stamp D, or it may be securely fastened to the immediate side of the said post-marking and dating part, or stamp or device, D, by any convenient and suitable mechanical means."

I also find, in another paragraph of said specification, the statement

that "I also construct my said postage-stamp cancelling device, die, or type of cast-iron, steel, or suitable metal."

In still another paragraph, I find these words: "The aforesaid metal cancelling device, die, or type, G, figures 5 and 6, may also be fastened or secured to the immediate side of the said post-marking device by any good and sufficient means." I find in the two patents different kinds of type used for post marking the letter, that shown in the Patent No. 25036, issued to Ransford & Low, being substantially the same with that patented to myself in the year 1857; in that described in the Reissue Patent No. 4143 ordinary type are used. These being, at the time the original patent was granted, of which No. 4143 is a reissue, the equivalents for each other, and the method of attaching the cancelling devices being described in said reissue patent as attached to the side of
1764 the post marking device, I can see no substantial difference between the instruments described in the two patents, excepting that the earlier one has an additional feature not described in the Reissue Patent No. 4143, to wit: The cutting edges formed on the bottom of said blotter, which would readily be defaced by rubbing on a stone, or even by the use to which such instruments are usually put. As to the model shown in Defendant's Exhibit No. 149, I find therein a cancelling device, containing a die or type of soft material, which is not shown in the patent of Ransford & Low, but, as stated in previous answers, such type being known to persons conversant with the state of the art, I do not regard this change as anything substantially or essentially different from the blotting or cancelling device shown in the patent of Ransford & Low, when such cancelling or blotting device has become dull from use, or from being rubbed on a stone in the manner before described, when the state of the art of printing is taken into consideration, together with the foregoing extracts from the specification of the Reissued Patent No. 4143.

19. Q. State wherein the post-office stamp or device for post-marking and cancelling postage-stamps which is described in the letters patent granted to Marcus P. Norton on the 16th of December, 1862, No. 37175, differs from the post-office stamp which is described in the patent on which suit is brought, Reissue No. 4143, and from the duplicate model thereof Defendant's Exhibit 149, and whether the differences, if any, are merely formal and immaterial or are substantial and essential.

A. The difference between the two instruments consists in one of the cancellers being provided with cutting edges and the other with a die or type of soft material; in all other respects they appear to be the same, excepting that one has no type in the recess for dating nor no name engraved on the face of the post-marking device, while that
1765 marked Defendant's Exhibit 149 has the type and name which is lacking in the other; in view of the quotations made from the Reissued Patent No. 4143, given in my previous answer, and the state of the art, I do not consider these differences as making any substantial improvement in the art of post-marking and cancelling letters that is not shown in the Patent No. 37175, issued to Marcus P. Norton, Dec. 16, 1862.

(Complainant's counsel objects to so much of the foregoing answer as gives the opinion of the witness on the subject of improvements as irresponsive to the question.)

20. Q. Please to examine Defendant's Exhibit 137 (Wheeler) and Defendant's Exhibit No. 6 (James Riley), point out the differences between them, and state whether the differences are substantial or not, and state wherein, if at all, the two instruments differ from the post-office stamp

described in the patent on which suit is brought, reissue 4143, and whether the differences are material or only formal.

A. I have examined Defendant's Exhibit No. 6 (Riley) and 137 (Wheeler). I find Riley's stamp, Exhibit No. 6, to consist of a postmarking device having on one side a cork apparently designed to cancel a stamp on the same letter to which the postmark is applied, said cork being firmly secured to the postmarking device by thread, which thread is partially covered with wax to keep it in position.

Defendant's Exhibit No. 137 (Wheeler) shows what appears to be intended to represent a postmarking device, having on one side thereof a cylinder of wood which is bound to the postmarking device by a string and wire, the postmarking device and the cylinder being flattened so that they may be the better secured to each other. The handle of each of these exhibits have a rim which serves to prevent the rising of the cork or cylinder when used for cancelling or postmarking letters.

1766 They are to all intents and purposes essentially the same so far as the cancelling devices are concerned, although differing slightly in material. With respect to the difference between Defendant's Exhibit No. 6 (Riley) and Defendant's Exhibit No. 137 (Wheeler) and the instrument described in the reissue patent No. 4143, I can see nothing in view of the state of the art of printing that is not a mere formal change.

21. Q. Please to examine Defendant's Exhibit No. 5, Defendant's Exhibit No. 136 (Anthony), Defendant's Exhibit 135 (Powers), and Defendant's Exhibit 138 (Wheeler), and state wherein they differ from each other and whether the differences are material or only formal, and wherein they differ from the instrument described in the patent on which suit is brought, reissue 4143, and whether the differences, if any, are material or formal.

A. I find all four of the exhibits mentioned to be essentially the same, the only difference in three of them being in the names engraved on the postmarking device, the size of the instrument and the metal of which they are composed. Exhibit 138 (Wheeler) differs from the others in being simply a wooden model which I believe to be designed to represent a metal postmarking and cancelling device like the other. In view of the description contained in the reissue patent No. 4143 and the state of the art of printing, I can see nothing but mere formal changes between the exhibits mentioned in the question and any instrument constructed in accordance with the specification of the reissue patent No. 4143.

22. Q. Please answer the same question as the last with reference to Defendant's Exhibit 139 (J. H. Zevely) and Defendant's Exhibit 140 (J. H. Zevely).

A. I find Exhibit 139 (J. H. Zevely) to consist of two cylinders or tubes connected by cross-bar, each tube containing a block of wood, one of the blocks being provided with a recess in which type

1767 could be secured, to print a date. The small block appears to be solid, and with the grain of the wood are arranged to present its end for use in cancelling. The other Exhibit No. 140 I find to consist of a block of wood, having on its face two surfaces, one of which has a mortice or recess, in which type could be secured to print a date, and the other surface is left plain, so that it could be used for blotting or cancelling a postage-stamp at the same time and with the same blow that the date was imprinted on the letter. I consider them to be essentially the same, so far as operation is concerned. I also consider the Defendant's Exhibits No. 139 (J. H. Zevely) and 140 (J. H. Zevely) to

be essentially the same with the instrument described in the specification of the reissue patent 4143, the difference between the the exhibits and the instrument described in said patent being merely formal, and within the power of any mechanic conversant with the state of the art of printing to make.

Cross-examination by Mr. WILLIAMS:

1. X Q. How long have you lived in Washington?

A. Since April, 1867.

2. X Q. Where did you live before that time?

A. The two years previous I spent in Brooklyn.

3. X Q. Where before that?

A. From 1851 until I moved to Brooklyn, I lived most of the time in New York City. Portion of that time I spent in Europe, in Washington City, and Staten Island.

4. X Q. What did you do during the latter period, which you described in your last answer?

A. From 1851 until 1854, I worked at the printing business in Staten Island, New York, and Washington. From 1854 until 1867, I devoted my time to making inventions in various classes of mechanics, but I occasionally worked at the printing business for two or three years after 1854. I spent a portion of the time in Europe in endeavoring to dispose of some inventions in sewing-machines. The balance of
1768 the time spent there I devoted to sight-seeing, visiting, and to devising other inventions.

5. X Q. Did you obtain your livelihood during that period by making inventions?

A. Part of the time by making inventions, obtaining patents for them, and manufacturing articles by the use of my inventions, and part of the time I worked at my trade as a printer, and a portion of the money which I spent in maintaining myself and family I obtained from a capitalist who was interested in my inventions. I also obtained various sums of money for the sale of patents obtained on inventions made by me.

6. X Q. What articles did you manufacture under your inventions for which you received money?

A. I made clothing on sewing-machines, or rather such articles were made under my direction on my patented machine. I also engraved thousands of dozens of glassware on my patented machinery for engraving glassware.

7. X Q. You are now a clerk in the office of Munn & Co. in Washingington, are you not?

A. I am not; I left their employ over a year and one-half ago, and am now in business for myself as a patent solicitor.

8. X Q. Didn't you swear upon your direct examination "that for the last ten years I have been employed, and for the larger part of that period I had charge of the Patent Office practice for Munn & Co"?

A. Those are not my words as I gave them. It is a mistake on the part of the examiner in taking down my words; what I said was that "I had been employed as a patent solicitor for the last ten years, and for the larger part of that time I had charge of one branch of the Patent Office practice of Munn & Co.;" those are substantially my words.

9. X Q. Were you ever a clerk in the employ of Munn & Co.; and, if so, for how long, and when did you commence, and what was your salary?

1769 A. I was never what I consider a clerk in their office, my time

not being devoted to clerical duties, but I was employed as an examiner to report upon the novelty and patentability of alleged new inventions after making due search in the models and records of the Patent Office. I entered their office in Washington in April, 1867, and continued with them until about August, 1876; a portion of that time I received a salary of $30.00 per week, which was increased to $35.00 for the latter portion of that period.

10. X Q. When did you first have anything to do, in any capacity, with the Patent Office in Washington?

A. I made my first preliminary examination either in November or December, 1853, to find out if some of my own inventions were patentable or not.

11. X Q. Have you, from time to time since that date, examined the files and models in the Patent Office for any purpose?

A. During portions of 1853 and 1854 I made frequent examinations in the Patent Office of the models, records, and drawings therein, and during the period included between April, 1867, and Aug., 1876, I was continually making such searches; I believe I have made at least 14,000 searches and wrote reports thereon.

12. X Q. I understand you to mean by your last answer that you did not make any such examinations between 1854 and 1867?

A. I have no recollection of making such in the Patent Office, but during that time I made frequent searches in the Patent Office reports, the volumes of the Scientific American, and the English patents in the Astor Library, and also in such foreign scientific publications as were accessible to me in the Cooper Institute.

13. X Q. What did you make all those extended examinations for?

A. To see if the various inventions which I devised during that period were patentable.

1770 14. X Q. Why did you so studiously avoid examinations in the Patent Office during that period to see whether your inventions had been anticipated or not, when you made examinations prior to and subsequent to that period for that purpose?

A. Because it was most convenient for me to make the examinations in New York when I made them in New York, as I then resided in New York and Brooklyn; when I made the examinations in Washington I lived in Washington, except on one occasion in 1854, when I was in Washington to see about an application for a patent that had been rejected. I then made several examinations in Washington, although residing, for the latter portion of the year 1854, in New York.

15. X Q. Did you reside in Washington in 1853?

A. I did in the latter part of 1853 and in the commencement of 1854; up to about April, I think.

16. X Q. Did you make application for any patents between 1854 and 1867; if so, how many?

A. I did; I can't remember all the applications that I made during that period; I obtained some seven or eight patents on sewing-machines, a patent on a braiding machine, a patent on a hand stamp, and three patents on glass-grinding and engraving machines.

17. X Q. I understand that during that time you never went to Washington to see about these applications or obtaining these patents; is that so?

A. I was never in Washington for the purpose mentioned or any other from 1855 up to the time that I went to Washington in April, 1867; I was too poor during most of that time to pay the fare and other expenses that were incidental to such a trip.

18. X Q. You spoke of obtaining a patent for a hand stamp; did you ever have any controversy with anybody about that patent?

A. I did.

19. X Q. With whom?

1771 A. I had one with Marcus P. Norton in 1871, when I made application for the extension of the patent granted for the hand-stamp; I had also law suits with various parties, all of whose names I cannot now recollect, for infringing said patent after extension, in at least one of which the claims of said Marcus P. Norton to said invention were thoroughly ventilated, and the patent in all the suits was sustained.

20. X Q. State, if you know, upon what ground Mr. Norton claimed to contest your right to a patent for that hand stamp.

(Objected to as immaterial and as not within the scope of the direct examination.)

A. Mr. Norton claimed to be the earliest inventor of the stamp in question, to prove which he referred to the file of a caveat, which caveat contained a paper purporting to be a description of my invention as patented to me in my hand-stamp patent, which paper, after due trial before a commission in the Patent-Office, was adjudged to be fraudulent, and as being written at a much later date than the date it bore on its face.

21. X Q. Did you make any affidavit or have anything to do with those proceedings?

(Same objection.)

A. I was called upon by one of the assistant examiners to make a statement as to what I knew about Mr. Marcus P. Norton's connection with the opposition to the extension of my patent, and also as to what I knew about the paper referred to in my last answer; I made such a statement in writing, which statement I afterwards swore to at the request of the assistant examiner before referred to; that was all that I had to do with the proceedings against Mr. Norton, except as an auditor at the trial.

22. X Q. Do you know Jeremiah D. Green, Peter Low, F. G. Ransford, or either of them?

1772 A. I have a speaking acquaintance with Mr. Green; the other two names mentioned I have frequently heard, and it is possible, and very probable, that I met one or both of them two or three times in April, 1861; I have not seen these gentlemen (meaning Low and Ransford) to my knowledge since that time, if I saw them then.

23. X Q. Were they not witnesses for you on the trial in the extension case before the commissioner, and also in the court where the Norton claim was in controversy?

A. I believe they were, but I was not present when their evidence was given.

24. X Q. Did you ever have any business transactions with Ransford & Low?

A. I cannot answer positively that I had anything to do with them personally, but I was called upon by two gentlemen in April, 1861, who negotiated with me for the purchase of my hand stamp patent; those gentlemen may have been Messrs. Low & Ransford; I have no knowledge whether they were or not, but I believe them to be; I have no recollection of their introducing themselves to me under those names, and they certainly were not introduced by any one else; the papers connected with the transfer of the patent were made out under their direction in the office of Mr. Stetson, a patent agent in this city.

25. X Q. Where do you keep your printing office in Washington City?

A. In my office, where I transact a portion of my patent business.

26. X Q. Please give the number and street.

A. 820 F street.

27. X Q. Do you print any newspapers or books, or documents of any description?

A. I have not as yet; I bought the type with the idea which I have not yet carried out, of starting a scientific journal.

28. X Q. Have you any printing press in that office?

1773 A. I have not, as I intended to get my press-work done by pressmen who make a specialty of that work, as is commonly done with some of the largest and most successful publications in the country.

22. X Q. Your type is at present stored away in boxes, is it not?

A. It is in the ordinary cases employed by printers to keep their type when in use, and my type is now ready for use.

30. X Q. Were the type that you purchased old or new?

A. They had been used, some of them; I may say most of them had been used.

31. X Q. Of whom did you buy those type?

A. I bought them of a printer who was giving up business.

32. X Q. What is his name and how much did you give him for them?

A. His name is Knight; I can't give his first name; I think it was W. D. Knight; I gave for the type and cases $30; and I believe they were worth about $200, if I had to buy them new.

33. X Q. When did you make that purchase?

A. I think it must have been October, 1878.

34. X Q. Is that the first printing establishment you ever owned?

A It is.

35. X Q. Where do you keep your machine shop?

A. As stated in a previous answer, in the rear of my dwelling, which is at 818 O st., northwest, Washington, D. C.

36. X Q. What articles do you manufacture in that shop?

A. I use it simply as previously stated, for experimenting and model-making purposes; I do not manufacture articles for sale therein.

37. X Q. Have you any blacksmith bellows or anvil, or tools of that description there?

A. I have neither anvil nor blacksmith's bellows there, constituting no part of a machine-shop proper, but are the working tools of a blacksmith.

38. X Q. Do you work in iron or altogether in wood?

1774 A. Mostly in metal, seldom in wood.

38. X Q. When did you start that establishment?

A. I bought one of the lathes, I think, about four years ago; the other one I think I bought it about 1865; I built the shop for these tools about three years ago.

40. X Q. You make models, as I understand you, there exclusively for your own use for the Patent Office?

A. I have built models for my own use, and I have altered models for other people, but most of the work done in that shop was done by my son, who makes models and working machinery for himself and other parties.

41. X Q. Did you not say in your answer to question 36 that you did not manufacture articles for sale?

A. I did.

42. X Q. What then do you mean by saying machinery models were made there for other persons, in your last answer?

A. The models and machinery then referred to were made to order, and not intended for sale as an ordinary article of merchandise is.

43. X Q. How do you know that Spotiswood & Co. do the printing for the British Government in London?

A. All the publications of the British Government that I have seen bore the imprint of the firm mentioned in my answer to question 4.

44. X Q. When you say, then, that the English firm, of which Spotiswood is one member, do most of the work in London for the English Government, you mean that they do the work of such publications as you have seen?

A. I do.

45. X Q. How do you know that Spotiswood & Co. print most of the English Bibles that are imported?

A. All that I have seen of English Bibles imported into this country bear their imprint.

46. X Q. How many thousand of such Bibles do you think you have seen?

1775 A. I don't know that I ever saw a thousand.

47. X Q. Do you know that you ever saw a hundred?

A. I may have done so, but cannot state positively.

48. X Q. You have never been particularly engaged in the Bible business, have you?

A. During a portion of the time that I was engaged in the printing business, one of the offices with which I was connected had in connection with it a book and stationery store. I was frequently engaged in said store during the absence of the regular attendant, and Bibles were for sale there.

49. X Q. When was that, and where was that printing office?

A. In Stapleton, Staten Island; that was in the winter of 1851, and a portion, if not all, of the year 1852.

50. X Q. About how many English Bibles do you think that printing office kept for sale?

A. I can't say.

51. X Q. How large is one of those books in the Patent Office which contains a description of English patents?

A. The English patents are bound up in volumes of two sizes; the printed specifications being contained in volumes about the size of a half sheet of legal cap, being, as near as I can remember, not quite so long, but a little wider; the drawings are in much larger volumes, probably about two feet in one direction and about eighteen inches in the other; these are the nearest measurements that I can give, as I never gave any attention to the size of the books, but only to their contents.

Adjourned until Thursday, April 4th, 1878, at 10 o'clock a. m., by consent.

1776 NEW YORK, *April 4th*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of the witness J. W. ROBERTSON, continued by the Hon. GEORGE H. WILLIAMS, of counsel for complainant:

52. X Q. State about how many pages are contained in one of those books in the Patent Office.

A. I can't tell with any degree of exactness, but I believe the volumes of specifications to be from one inch and a half to one inch and three quarters thick; many of these volumes contain a large amount of blank paper so as to make the volumes of uniform size.

53. X Q. How long do you think it takes in England to make such a book from the date of the earliest to the date of the latest patent which it contains?

A. Possibly about a week.

54. X Q. Do you mean that all the patents which are contained in one book are filed or enrolled within a week?

A. I cannot say as to that, but in some of the recently bound volumes have one hundred patents in each, which I believe to be about the number issued weekly by the English Patent Office.

55. X Q. Does the Patent Office in Washington receive one such book every week from England?

A. I do not think they do; I believe the specifications and drawings are sent unbound to the United States Patent Office and are then bound at the Government bindery in Washington City.

56. X Q. How does it happen then that these books bear the imprint of Spottiswoode & Company?

A. Each separate patent is issued as a distinct publication with a separate cover, which cover bears the imprint of the firm I have mentioned.

57. X Q. In what shape are the abstracts to which you have referred?

1777 A. The abstracts are made, I believe, from the specifications on file in the British Patent Office by patent agents and published in the journals which such patent agents publish; another set of abstracts are made for publications in the Engineer, a weekly journal published in London.

58 X Q. Who is it that files these papers "as soon as possible," as you have stated, in the Patent Office?

A. I have no knowledge, but suppose the Patent Office subscribes and pays for them, when they are forwarded by the publishers in the ordinary course of business; the Patent Office authorities prefer to have all their foreign publications and patents open to examination to prevent the granting of patents for inventions that have already been patented abroad.

59. X Q. Are these books and papers to which you have referred accessible to the examiners of the Patent Office?

A. They are.

60. X Q. When Mr. Norton made his application for a patent in 1863 had the examiners the opportunity, and was it their duty, to examine the books and papers to which you have referred to ascertain if the invention had been anticipated in England?

(Objected to so far as it asks for the duty of the examiners.)

A. I have no knowledge as to the opportunity the examiners had in 1863, as I was not then in Washington, but if such books were there at that time I have no doubt but that they had full opportunity to examine such books and papers, and it was their duty to do so.

61. X Q. Do you consider the examiners of the Patent Office competent to decide whether the patent to Pierson Hill, dated March 25th, 1857, No. 832, for improvements in machinery for stamping, marking or printing, and arranging papers, did or not anticipate the patent of 1863

to Norton, for his combined postmarking and post-cancelling instrument?

1778 (Objected to because it is immaterial what the examiners did or were competent to do, and because it is improper to ask a witness his opinion as to the competency of examiners.)

A. Some of the examiners of the Patent Office are considered to be competent examiners, but the examiner who I believed passed the patent of 1863 was dismissed from his position as primary examiner because of incompetency; in addition to this, I desire to state that I have no knowledge that the examiner who passed the patent issued to Mr. Norton in 1863 ever saw the patent of Pierson Hill, referred to in the question.

(Defendant's counsel objects to all the answer after "competent examiners," as irresponsive.)

62. X Q. What was the name of the primary examiner so dismissed?

A. Mr. Peale.

63. X Q. Do you not think it probable that the examiner or board of examiners, or some officer in the Patent Office, saw this patent of Pierson Hill's, if it was on file there at that time?

(Objected to, as it does not ask for any fact.)

A. I can give no answer to this question as I was not conversant with the practice of the office at that time; I only know that many of the examiners do not make very careful examinations of the foreign patents, and that the examiner whose duty it was to examine the application of Mr. Norton may have overlooked the patent referred to.

64. X Q. Could not the validity of Norton's patent of 1863 have been raised on account of the patent to Pearson Hill at the time of its several reissues?

(Objected to as asking the opinion of witness on a question of law.)

1779 A. The examiners in the Patent Office do not usually consider the validity of the patents sent to them for reissue, but they endeavor to meet the claims presented in the new application by such references as they may be able to find.

65. X Q. Do you mean to say that upon the application for the reissue of a patent, the question as to whether the patentee was the first and original inventor is never considered?

(The same objection and also as immateral.)

A. It is usually considered.

66. X Q. Do you think that the patent to Pearson Hill, Defendant's Exhibit No. 154, is void for the *for the* want of novelty?

(Objected to on the same grounds as above.)

A. I have no reason to think so.

67. X Q. Is that machine anything more than a combination of well known parts, elements, or instruments?

A. That machine shows elements combined together in such a manner as to require invention to arrange them, and motions were given to the parts so arranged that I believe to have been new at the time such patent was granted; I therefore consider it something more than a combination of well-known parts.

68. X Q. What do you mean by saying that new motions were given to parts?

A. I mean, for instance, the motion given to the lever J^3 in Fig. 11 of sheet 7.

69. X Q. What is there new about that motion?

A. The peculiar motion given to the upper end of said lever is indicated by the dotted lines shown in connection therewith.

70. X Q. Describe, without reference to the drawings, the newness and peculiarity of that motion.

(Objected to as immaterial.)

1780 A. I find the lever referred to to be connected with a treadle or lever, and also with a crank, the two movements of which, when combined together, produce an elliptical movement of the upper end of said lever.

71. X Q. Were not a combination of a treadle and a crank connected with a lever known before 1857?

A. That question is too indefinite to answer properly, but I have seen no lever, treadle, and crank combined together in the manner shown so as to produce the motion indicated in the drawing of the patent referred to.

72. X Q. What do you mean by an elliptical motion of the lever?

A. I mean the motion that is given by the combination of parts referred to to the extreme upper portion of said lever, which is clearly indicated by the dotted line in the drawing, Fig. 11, sheet 7.

73. X Q. Define the meaning of the word elliptical as applied to motion.

A. Anything traveling with a circular motion, always maintaining the same distance from the centre, may be said to have a circular motion; anything traveling in a line in a similar manner but at different distances from the centre, when the space enclosed within the line traveled by the object having an elliptical motion has two different diameters, may be said to have an elliptical motion; by taking an egg and passing the finger around the longest circumference, a substantially elliptical motion will be given to the end of the finger.

74. X Q. That motion you consider the invention of Mr. Pearson Hill, do you?

A. I have no knowledge of such a combination of mechanism to produce the motion referred to of earlier date than that of Pearson Hill's patent; I therefore suppose it to be his invention.

75. X Q. Why does the combination of a treadle with a crank produce this elliptical motion?

A. The treadle gives the lever an up and down motion; the 1781 crank gives the lever a vibratory motion, and the combination of these two movements produces in the upper end of the lever the elliptical motion before referred to.

76 X Q. Were not treadles, cranks, and levers well known before 1857?

A. Cranks, treadles and levers were well known in 1857, but not in the same combination shown in Fig. 11 of Pearson Hill's patent.

77. X Q. Then the invention lies in the combination of well known parts or instruments, does it not?

A. It does, excepting that I am not aware that a lever of this precise form, constructed to be connected with a crank and treadle, had ever been before known or used.

78. X Q. Do you wish to be understood as saying that there is invention in changing the form of the lever?

A. I do in this instance.

79. X Q. How does that form differ from any other form of a lever?

A. The lever differs in this case from those previously employed, in being connected to and forming part of a pitman or connecting rod, so as to change the usual circular vibratory motion of said connecting rod

into the elliptical motion described by the upper extremity of said lever.

80. X Q. You have said in your last answer how this lever was connected so as to produce a certain motion, but you have not stated how the form of the lever itself differs from others; please answer as to that point.

A. In answering question 78, I meant that in changing the ordinary pitman or connecting-rod J into a lever, I consider that invention has been shown in such change.

81. X Q. How does that lever differ from an ordinary pitman or connecting-rod?

A. In having an additional length added to it.

82. X Q. You are then of the opinion, are you, that invention
1782 may consist in changing the form of a rod so as to make it larger than it ordinarily is when used for the same purposes?

(Objected to as immaterial, and because it is not proper to ask the witness his opinion on something outside of the case.)

A. I am of opinion that when by such a change a new motion or a new effect is produced, as in the case referred to, an invention may be made by such change.

83. X Q. You say in your answer to Q. 67 that that machine of Hill's shows elements combined together in such a manner as to require invention to arrange them; state wherein the invention lies in that combination.

(The same objection.)

A. All the elements of that combination are old excepting the addition to or extension of the pitman J, so as to change the pitman into a lever; this extension of itself would not constitute an invention, as it would produce no useful effect unless arranged in substantially the same way as shown in Fig. 11 of Pearson Hill's patent, with the other elements which I have stated form part of that combination.

84. X Q. What constitutes the invention in that machine of Hills's?

(The same objection.)

A. Do you mean all the machine described in the patent, or the one I have been questioned about?

85. X Q. How many machines are described in Hill's patent?

A. At least three.

86. X Q. What are they?

A. They are described in the specification as improvements in machinery for stamping, marking, or printing, and arranging papers, letters and other articles.

1783 87. X Q. Are there three different and distinct machines, or is it one machine capable of producing three different effects?

A. There are three different machines described, each of which is of different construction from the others, but all are designed to accomplish the same purpose.

88. X Q. Do you consider that either of said machines is void for the want of novelty?

(The same objection.)

A. I have no reason to believe that they are, but I couldn't undertake to say that they are or are not void for want of novelty, as I have not had sufficient time given me to consider such a question or to make the necessary examination into the state of the art; the answers that I have given as to the novelty of the invention described in Fig. 11 refer only to my knowledge of the state of the art at the time that Pearson Hill's patent was granted.

89. X Q. Is the postmarking and stamp-canceling machine, as described in Hill's patent, as you understand it, void for the want of novelty?

(The same objection.)

A. I have never heard of Machines being void for want of novelty; patents sometimes are declared void for want of novelty, but for reasons before stated, the combination of mechanism shown in Fig. 11 of Pearson Hill's patent seems to me to present sufficient novelty and utility to make said patent valid, leaving out of question the other machines described in the other ten figures.

90. X Q. What is the machine described in Fig. 11?

A. It is a machine designed to postmark or stamp letters or other papers.

91. X Q. How do you know that by means of that machine a letter can be postmarked and the stamp thereon cancelled equally as well and probably better than with Norton's postmarking and stamp cancelling device?

1784 A. From my general knowledge of mechanics and the art of printing, I believe that a machine constructed on the principle shown in that drawing and in accordance with the specification would be capable of producing a more even and better impression on a letter and postage-stamp than can be produced by any stamp that is held in the hand, and which works without any means of producing an even impression.

92. X Q. Do you know that that machine has been used anywhere, or is of any practical utility?

A. I do not know of any such machine having been constructed, but I have every reason to believe that a machine constructed as described would be of practical utility.

93. X Q. Are you aware that one of the great objects is speed in the postmarking and stamp-cancelling letters?

A. I am.

94. X Q. Wherein does the invention lie in the machine described in Fig. 11 of Hill's patent?

(Objected to, because it is immaterial whether there is or is not any invention in that.)

A. All the invention that I can see in that figure is in the extension of the pitman J, so as to form a lever, and the combination with a lever so formed of the crank and treadle.

95. X Q. Is that all the inventions you find in any of the machines described in Hill's patent?

A. To answer that question it would require a thorough examination of all the other six sheets of drawings, and the eighteen pages of closely written manuscript contained in the specification, which would require at least one day to thoroughly understand and consider; I therefore cannot now give the answer requested, as I have only examined the patent on certain points, but there are probably other novel and patentable features contained in some of the details of construction and arrangement of parts.

1785 96. X Q. When I asked you what constituted the invention in Hill's patent, you inquired of me if I meant all the machines contained in the patent, or the one you have been questioned about. What one did you then refer to?

A. The one shown in Fig. 11 of sheet 7.

97. X Q. What has the elliptical motion of the lever to which you

have referred to do with the postmarking and stamp cancelling of letters?

A. It has nothing to do with the postmarking or cancelling proper; its object is to remove the letter after it has been stamped or cancelled.

98. X Q. Did you not state in your direct examination that the difference between the inventions described in Hill's and Norton's patents consists mainly in the way in which the blow is given to the letter in the act of postmarking and cancelling?

A. I did; by the "inventions" I meant the instruments described in said patents.

99. X Q. Did you not swear, in your direct examination, that the changes from one instrument to the other would be merely formal, and within the power of any mechanic to make?

A. I did swear to substantially that effect, having reference to the changes necessary to make the postmarking and cancelling device shown in the Hill patent into that shown in the reissued patent No. 3143.

100 X Q. Can a patentable invention be made by a new combination of o d elements?

(Objected to as asking for the opinion of witness on a question of law.)

A. If such new combination displays invention, and not mere mechanical skill or good judgment, such a combination may be patentable.

101. X Q. What is invention?

(The same objection.)

A. Invention, as I understand it as applied to machinery, consists in combining the parts of a machine in such a manner as to produce
1786 some new and useful result; not meaning thereby a mere aggregation of parts which any mechanic skilled in the art to which the machine belongs could readily combine together.

102. X Q. Was the postmarking a letter and cancelling the stamp upon it at the same time and blow a new and useful result when the patent was issued to Pearson Hill in 1857?

A. I do not so consider it, and I do not think from the specification forming part of the letters patent granted to Pearson Hill that he considered the stamping and cancelling portion of the machinery described in said patent, or the cancelling and postmarking of a letter and stamp at the same time, as any part of his invention, as his claim covers only the combination with the mechanism described for stamping, marking, or printing of the fingers or instruments for removing the letters after they have been postmarked or stamped, one form of such instrument being the lever mentioned several times previously by me as forming the novel feature in Fig. 11, sheet 7, of Pearson Hill's patent; I consider the postmarking and cancelling of a letter and the stamp thereon at one blow and at the same time as being nothing more than the stamping or printing of two marks at the same time on any other article, a sheet of paper for instance, as such stamping or printing two or more marks is the foundation of the art of printing, and should not be monopolized by any patent at this late day, or the day when said Pearson Hill's patent was granted.

103. Q. Suppose an instrument or machine is invented by which there is great economy of time and expense in producing a well known and not new result, could that be patentable?

(Objected to as asking for the opinion of witness on a question of law.)

A. If the production of such machine required invention, such a machine would be patentable.

1787 104. X Q. You were mistaken, then, were you, in saying that to constitute an invention it was necessary to produce a new and useful result?

A. If I made the statement referred to I probably meant the new result that would be produced in the making of an article by machinery that had heretofore been made by hand, but I have no recollection of making the precise statement as given by the counsel, and must request that the whole question and answer be given to me or be read to me before I can tell whether I was mistaken or not in the answer I then made.

105. X Q. Counsel reads to the witness Q. 101 and answer.

106. X Q. Do you wish now to make any further answer?

(Objected to as assuming that the part read is the same thing as the counsel's next preceding question implies to have been the statement of the witness, and as therefore assuming that the next preceding question needs further answer.)

A. I do not.

107. X Q. Are you aware that the great proportion of the inventions patented are labor-saving machines?

A. I am.

108. X Q. Suppose the machine of Pearson Hill, as described in his patent, enabled one man to do the work which it took two or three others to do before that time, would it not be an invention?

A. That would depend upon the question whether the machinery employed required invention to produce it or not; I find I misunderstood the question; it would be an invention, but not because it did the work with one man that it took two or three to do before, but because of the invention displayed in the construction of the machine.

109. X Q. I understand, then, from your answer, that invention does not depend upon the result produced, but upon the form of the
1788 machine, and that a complicated machine, producing the same result as a preceding and simple one, would be an invention; am I right?

A. The mere form of the machine or its complication has nothing to do with the question whether such machine would contain patentable features or not, as a simple machine might contain elements of patentability that might be lacking in the more complicated one.

110. X Q. Does the result produced have anything to do with the patentablity of a machine?

(The same objection.)

A. It depends upon what you mean by result; if, for instance, a shoemaker takes a sewing machine that had been previously only used on cloth and applied it to sewing shoes, the result produced in that instance, to wit, shoes sewed by machinery, would not make such a machine patentable, although he might have made some slight changes therein if such changes did not require invention. If, however, to make that machine sew shoes it was necessary to make changes requiring invention, then the machine would be patentable.

111. X Q. Is a machine which produces no good or useful results patentable, irrespective of its construction or form, if invented by the maker?

(The same objection.)

A. Under the patent law patents are only granted, or should be only granted, for new and useful inventions; a machine, therefore, that produces no good or useful results is not properly patentable, although

hundreds are patented every year that I believe produce no good or useful results.

112. X Q. Patentability, then, depends on results, does it not?

(The same objection.)

A. As before stated, some invention is required to render a machine patentable.

1789 113. X Q. Is not a new combination of old elements, producing new or useful results, an invention?

(The same objection.)

A. That depends, as before stated, upon whether there is any invention in combining those elements, or whether those elements produce any new result which is due to the combination, and is not the mere addition of the result produced by such elements working separately; that is, as I understand patent law.

114. X Q. Suppose certain elements, when worked separately, would take two or three men to produce a given useful result, should be combined so as to produce the same result by the labor of one man, would the latter be a useful result due to the combination of such elements?

(The same objection.)

A. The saving of the labor of two men would be a useful result due to the combination of such elements, if I understand your question rightly.

115. X Q. Would not that combination then be patentable?

(The same objection.)

A. That would depend upon the manner in which those elements were combined; if, for instance, two grindstones are mounted in separate frames, each stone turned by a separate man, there would be no combination that would be patentable in connecting those stones together by ordinary mechanical means, so that one man could turn them, so as to dispense with the labor of one man; but if the two grindstones should be connected by some mechanical device in a novel manner not heretofore known as a means of connecting rotating shafts or other rotary objects, then such a combination of parts would, in my opinion, be patentable, not because it saved the labor of one man, but from the new combination that it required invention to produce.

1790 116. X Q. Will you stake your reputation as an expert upon asserting that if two grindstones are mounted in separate frames, each stone turned by a separate man, there would be no combination that would be patentable in connecting those stones in any way not before known, so that one man by performing the same labor that he did before could do the work of the two men, and produce the same results that were before produced?

(Objected to as assuming that this witness has, or pretends to have, some reputation as an expert in questions of law to stake.)

A. I do not stake my reputation upon any such assertion; in my previous answer I sa d nothing about the single man performing the same labor as the two men did.

117. X Q. Did you not speak of the combination of grindstones, so that one man could turn them, so as to dispense with the labor of one man?

A. I did; but I did not say that the one man would not have to work harder in turning two grindstones than he would have to do in turning one.

118. X Q. Suppose then that the two grindstones were so combined that one man without working any harder than he did before in turning one of the grindstones could turn the two grindstones, and produce the

same results that were before produced by the labor of the two men, would that be a combination producing a useful result and patentable?

(Objected to as asking for the witness's opinion on a matter of law.)

A. I hardly know how to answer that question; it assumes as a fact, as I understand it, that it is possible to produce such a combination of mechanism as would enable one man to do the work of two men in turning grindstones, without extra labor on the part of the one man; I am willing to stake my reputation as a mechanical expert on the
1791 assertion that no means are known that will enable one man to turn two grindstones by manual labor alone as easy as he could turn one on the same conditions in both cases; but if any one should ever discover a means whereby one man can perform the labor of two in turning grindstones without any extra exertion on the part of the single man, he will then discover or have invented some new means not now known to mechanics, and such means would be patentable, whether applied to grindstones or any other machinery.

119. X Q. Assuming the latter part of your answer to be true, does it not follow that if any man has discovered a means by which one man can perform what was before the labor of two in postmarking letters and cancelling the stamps thereon without extra labor on the part of the one man, he has discovered a means of saving labor that is patentable?

A. If it were possible, which I deny, that one man can perform the labor of two in postmarking stamps by hand without extra labor on the part of the one man, the means by which the result referred to is produced would be patentable, but I regard it as impossible for one man to produce as many and perfect cancellations and postmarks with a double stamp as two men can do, each operating a single stamp, without extra labor on the part of the one man, as it requires more force to give an impression with a double stamp than it does with a single one.

120. X Q. You state in substance in your answer to question 17 on your direct examination, that in the English patent (referring to Hill's) foot power is employed, and in the Norton, hand power is employed, and that the change from one to the other is a mere formal change. Do you mean by that answer to say that the substitution of one sort of power for another in running or using a machine is always a matter of form?

A. Not necessarily.

121. X Q. Why not necessarily, if your answer to which I have referred is a correct proposition?

1792 A. Because it frequently requires invention to make a change from one power to another in running machinery; as, for example, the application of steam to running carriages at the time when steam engines had not been used for that purpose.

122. X Q. Suppose a machine is used which is run by the use of the hands of the operator, and some one discovers a way of running it by the use of the foot, so that the hands might be otherwise employed, would that be a mere formal change in the machine?

A. It would require something more than a mere change from the use of hand power to the use of foot power to make it anything more than a mere formal change, in view of the fact that hundreds of thousands of machines have been placed upon the market and are in constant use, in which either hand or foot power can be applied at will, and the fact that it has been a common practice with mechanics to apply cranks and treadles on machines that were designed to be turned by hand. If any invention was displayed in making such change from hand to foot power, and such invention was new, then the change, or, rather, the means of making the change, would be something more than a mere formal change.

Adjourned to Friday, April 5, 1878, at 10 a. m.

NEW YORK, *April 5th*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of the witness T. J. W. ROBERTSON continued by the Hon. GEORGE H. WILLIAMS, of counsel for complainant:

123. X Q. Are the crank and lever with the other parts of the
1793 machine described in Fig. 11, sheet 7, of Hill's patent, a combination of elements different from the handle, cross bar, cylinder, cork, &c., as described in Norton's patent of 1863?

A. They are, and would be patentable as a new combination, had the combination been invented after Mr. Norton's patent of 1863 was granted.

124. X Q. I understand you to mean by your last answer, that if Hill had made and used his machine as described in Fig. 11, sheet 7, of his patent in the United States, after the Norton patent of 1863 was granted, he would not have infringed the Norton patent?

A. My last answer had no reference the question of infringement; a patent may be for a valid combination, and yet a machine constructed according to it may infringe a previous valid patent.

125. X Q. Explain your last answer so as to show how a patent may be valid, and a machine constructed in accordance with it an infringement upon another patent.

(Objected to as asking this witness a question of law.)

A. For illustration of my meaning, I will cite cases of the various sewing machine patents; the patent of Elias Howe, jr., Sept. 10, 1846, had as one of the elements described in said patent a needle having an eye near the point and a groove running longitudinally along its side; the machine shown in the patent of A. B. Wilson, granted, I think, in November, 1850, used a similar needle, but the machine itself was essentially different in construction from the machine patented by Howe, yet this machine was considered an infringement of the Howe patent because it used a similar needle, and the owners of the patent of Wilson are believed to have paid hundreds of thousands of dollars to Howe on this account; this same patent granted to Wilson was always sustained by the courts whenever its validity was contested, because the claims in said patent covered inventions not described in Howe's patent.

1794 126. X Q. Was Wilson's patent held good as against Howe in those cases?

A. I never heard, nor do I believe, that there was ever any suit brought by the owners of the Wilson patent against Howe.

127. X Q. Was there any suit by Howe or his assignees against Wilson or his assignees?

A. Not that I am aware of; but Howe or his assignees brought suit against Isaac M. Singer & Co., who also held patents that were sustained by the courts, granted subsequent to the said Howe patent, and the Howe patent having been sustained in that suit, most of the other manufacturers of sewing-machines took licenses from Howe, paying from five to ten dollars for each machine they made; some few manufacturers continued to make sewing-machines, but were stopped when found out by injunctions; this I give from the reports in the journals, papers, books, verbal reports and such other means as were open to me, and not of my own knowledge by seeing the transactions referred to, but believe all that I have stated to be true.

128. X Q. Do you not understand that Howe claimed to have invented a needle, the claim for which was recognized as valid, and it was held that other persons could not use his invention without his license?

A. I do.

129. X Q. When did you first examine the Pearson Hill patent?

A. Last week, on Tuesday.

130. X Q. Where?

A. In this building.

131. X Q. That was about a week before we commenced taking testimony, was it?

A. It was.

132. X Q. Do you consider a saw and a knife mechanical equivalents?

A. Under many circumstances the two instruments referred to would be the equivalents of each other; there may be instances where
1795 one of them may be employed in preference to the other, and the employment of either of them to accomplish the desired result would depend upon the judgment of the person employing the instrument; a knife is really only a saw having infinitesimal teeth, as can be seen by examining the edge of a knife under a miscroscope.

133. X Q. Would a machine that sawed and a machine that cut perform different functions?

A. I can see no difference in the functions performed by said instruments, as they both produce the same result, to wit, a separation of the article operated on.

134. X Q. You think, do you, that a knife in as aw-mill for converting logs into boards would be the equivalent of and perform the functions of a saw?

A. It is a matter of convenience or good judgment whether a knife or a saw is used in a saw-mill. Knives are used in many machines for cutting wood in the same manner as saws are employed; veneer-cutting machines in some instances have saws, in other instances have knives, for separating the veneer from the log.

135. X Q. Do you not know that those differences have been patented as inventions?

A. I do not know nor do I believe that any patent has been granted in this country covering broadly the employment of either a knife or saw in wood-cutting machines within the last forty years, although various patents have been granted for various combinations of mechanism designed to be used in connection with saws or knives; I say within the last forty years, and I except the patents granted abroad, because patents are granted in foreign countries having claims which would cover anything that inventors choose to ask for, and because a somewhat similar custom formerly prevailed in this country.

136. X Q. Do you think that if there was no mode for manufact-
1796 uring logs into lumber except with knives, and that a man should invent a saw for that purpose, he would make a patentable invention?

(Objected to as asking a question of law, and because it is improper to put a supposititious case that has no relevancy to this suit to the witness.)

A. I am not prepared to give, at this short notice, an answer to that apparently simple question. As before stated in a previous answer, a knife is nothing more than a saw with infinitesimal teeth. The question, therefore, appears to hinge upon the size of the teeth in the knife and saw, which is simply a question of degree. As, however, a saw might be applied to produce an article that is useful in many circumstances which could not readily be made with a knife, to wit, sawdust, I am inclined to think the invention of a saw would be patentable.

137. X Q. Do I understand you to say that the chief object of using saws is to make sawdust?

A. I have no wish to be so understood.

138. X Q. Are you not aware that patents have been granted recently upon ripping, belt, and other sorts of saws?

(Objected to as immaterial.)

A. I am aware that patents have been granted for various forms of saw teeth, but I do not believe that any patent has been granted, nor that the Patent Office would now grant, any patent on making teeth larger or smaller. No United States patent has been recently granted for what is known as the belt saw, although patents have been granted for combinations of mechanism for running such saws.

139. X Q. Do not those various combinations of mechanism designed to be used in connection with saws or knives, to which you have referred in your answer to Q. 135, perform different functions?

A. In some instances they do and in others they do not. Some
1797 of the combinations, for instance, have reference simply to the means of moving the log to the saw; others have reference to the driving of the saw; others, again, are for the purpose of securely holding the log to the carriage; others are designed to give a slow motion to the carriage when the saw is operating on the log, and a fast one when the saw is not operating; and still others are for the purpose of conveniently and regularly moving the log latterly in the log-carriage after each board is separated from the log. Each of these classes of mechanism perform different functions, when the classes are considered, but the different combinations of mechanism in each class may be said to have the same functions.

140. X Q. Would a machine that produced the printing of letters on paper perform the same function as a machine that would produce only the cutting of the paper?

A. That question is very indefinite. If the object was the separation of the paper into two or more pieces, the printing of letters on said paper would not always effect the object. I have, however, frequently seen cuts made in paper by the act of printing letters on its surface. If the object of said cutting and printing were the defacing or cancelling of printed papers, the function of the machines would be the same, although performed in a somewhat different manner.

138 & 141. X Q. Is that the most intelligible answer that you can give to my question?

(Objected to unless counsel will define what he means by function.)

A. I do not see that I can give a better or more intelligible answer to the question in its present indefinite form.

139 & 142. X Q. Do you think that a printing press and a machine for cutting paper so as to make paper bags perform the same functions?

A. I do not.

1798 140 & 143. X Q. Suppose the knives upon Defendant's Exhibit 146, produced with the patent of 1859, were filed off so as to make a flat surface; would not that surface be then so much above the surface of the postmarker as to not make any, or but a faint, impression upon the paper when the instrument was applied to it?

A. I find on examination that if the sharp edges, which I suppose to be what the counsel means by knives, were filed entirely away so as to produce a perfectly flat surface on said cancelling device, that the impression then produced by the cancelling device would be a comparatively light one; if, however, the filing was only sufficient to dull the knives, it would still make a perfect cancelling instrument, as a portion

of the said cutting edges projects above the postmarking device; I mean by "above," when I hold it in my hand with the face of the instrument upwards. There is another feature to be considered in reference to this question. The cancelling device operates on a surface that is higher than that on which the postmark is placed, by the thickness of the postage stamp, so that to produce an even impression of both the cancel and postmark there should be a slight difference between the height of the postmarking and cancelling devices, to correspond with the difference in height between the stamp and the letter.

141½. X Q. Suppose Mr. Thomas L. James, the postmaster in New York, was using a stamp exactly like the model marked Deft's Exh. 149, produced with the patent on which suit is brought, and the owners of the patent with which the model marked Exh. 146 is produced should bring a suit against him for the infringement of their patent, do you think he could successfully defend upon the ground that the instrument used by him cancelled the stamp by blotting it with ink from a cork canceller instead of cutting the stamp by means of metal knives, or sharp cutting edges, as you prefer to call them?

(Objected to as being a question of law.)

1799 A. In view of the state of the art of cancelling and postmarking stamps and letters, as developed by the various exhibits filed in this suit, I am of the opinion that the court would construe the claim in patent No. 25036, issued to Ransford & Low August 9, 1859, which I believe to be the patent referred to by the counsel in his question, as covering only a cutting canceller attached to the postmarking device, and, as there is no cutting device connected with the canceller shown in Defendant's Exhibit 149, there would, therefore, be no infringement of said patent in its use.

142. X Q. Suppose the instrument, the model of which is marked Def't's Exh. 146, produced with the patent of August 9, 1859, had been thoroughly tested and tried as a postmarking and stamp cancelling device, and had been found not only to be useless but pernicious, and for that reason wholly disused, would not the patent for that instrument be void for the want of utility in the alleged invention?

(Objected to as being a question of law.)

A. The mere fact, if it be one, that the instrument constructed according to said patent had been proved to be not only useless but pernicious for the especial purpose referred to, would not vitiate the patent, because the instrument may be useful for other purposes beside postmarking and cancelling letters and postage-stamps. The objection to the use of the instrument referred to is said to be that it destroyed or injured the envelope or its contents; this objection would not apply to the cancelling of a revenue stamp, and the invention would, therefore, be useful for that purpose.

143. X Q. Could the instrument of which Defendant's Exhibit 146 is a model be used for cancelling revenue stamps without postmarking the document or paper to which the stamp is affixed?

A. Some revenue stamps are large enough to receive the im-
1800 pression of both the canceller and postmarker devices, and, in that case, there would be no mark on the check or other article to which the revenue stamp is attached. It has usually been the custom in cancelling revenue stamps to add the date of cancellation. I believe there was a rule at one time, if there is not now, requiring the date to be given in the cancellation of revenue stamps. If, however, there is any objection to the dating and cancelling of the revenue stamp at the same time, it is a very easy matter to remove all the type, leav-

ing only the cancelling device attached to the instrument, and in this manner the instrument could be used for cancelling revenue stamps without postmarking the document or paper to which the stamp is affixed, even if the small size revenue stamp were used.

144. X Q. State the difference between a formal and a substantial change in a machine or instrument.

A. As I understand the terms, and as I have used them in my answers to previous questions in this suit, I mean by "formal" such change as a mechanic conversant with the state of the art to which the machine or instrument pertained could make without invention; by substantial changes I meant to refer to such changes which an ordinary mechanic could not make without invention. If, for instance, stamps for cancelling letters had been always operated by hand, and some new means were devised for operating such instuments by foot power, such means, if it required invention to produce them, would make more than a mere formal change in stamp cancelling instuments; it would then be a "substantial" change. Such means, however, must be new, and require invention to produce them. If, on the contrary, such means were well known and had been in common use for a similar purpose, such change would be a mere "formal" change.

145. X Q. Can you tell with certainty whether you purchased the little lettering stamp which you have produced, marked Def't's Exh. 169, in 1855 or in 1856 or in 1857 or in 1858?

1801 A. It was purchased before March 10, 1856, how much previous to that time I cannot state exactly; it may have been a month or two, or it may be a year or more previous to that time; it was not purchased afterwards.

146. X Q. How do you know it was purchased before the 10th of March, 1856?

A. Because on that day I left New York to take a trip to Europe and the stamp was purchased to mark some of our clothing sometime previous thereto.

147. X Q. Do you think that if you had obtained a patent for the letter-stamp produced by you in 1856 that the construction and use of an instrument like Defendant's Exhibit 149, produced with the patent on which this suit is brought, would have been an infringement of that patent?

A. That would altogether depend on the claims I obtained in such patent and whether such claims were valid; with my knowledge of the state of the art of printing I do not think I could have obtained valid claims that would cover an instrument like Defendant's Exhibit 149.

148. X Q. Leaving out of view your extensive knowledge of the state of the art, to which you constantly refer, suppose you had obtained a patent with claims covering the construction of the said letter stamp, and all the purposes to which it could be applied if so constructed, could the manufacture and use of an instrument like Defendant's Exhibit 149 be an infringement of your patent?

(Objected to as an improper supposition, and because the question is not definite as to the extent of the claims and how much they are supposed to cover, it thus being left undetermined whether the witness shall have in mind the same idea as to what the supposed patent would cover as complainant's counsel had in asking the question.)

1802 A. My knowledge of the state of the art, whether it is extensive or not, has no bearing on the question, but the state of the art, as known to mechanics generally, would have a bearing on the subject, and if I should have obtained at that date claims covering the construc-

tion of the said letter-stamp, and all the purposes to which it could be applied, such a patent or such claims would be invalid, as in my judgment there was nothing patentable in that stamp at that time; if, however, it was possible at the time referred to to have obtained valid claims covering the construction of the said letter-stamp and all the purposes to which it could be applied, then an instrument like that shown in Defendant's Exhibit 149 would be an infringement of said patent.

146 & 149. X Q. It is your opinion, then, is it, that the use of the letter-stamp marked Def't's Exh. 169, as it is now constructed, is an infringement of Norton's patent of 1863?

A. Most decidedly not.

147 & 150. X Q. Is it not, as you have last answered, because there is a substantial difference between the said letter stamp and this combined postmarking and stamp cancelling instrument, patented to Mr. Norton in 1863?

A. The main reason that it is not an infringement is because the invention and sale of said stamp was long anterior to the date of Mr. Norton's patent and the fact that said patent has no claims, nor could have any valid ones, covering the construction of said letter-stamp.

148½. X Q. Suppose said letter-stamp had never been made or known until after Norton's patent, would it then be an infringement to make and use it, supposing the claims to be in that patent the same as they are in the patent on which suit is brought?

A. If the said claims are valid, by putting appropriate type, sufficient to postmark the letter and cancel the stamp at the same time, the manufacture and use of said letter-stamp would be an infringement
1303 of said claims. To make it an infringement of the claims given in said letters patent, were such claims valid, it would only be necessary to remove the type now in it and place therein type for the postmark at one end of said stamp and wood or other soft type for cancelling at the other, when it would be substantially the same with Defendant's Exhibit 149, and with the stamp described in the patent of 1863, issued to Marcus P. Norton, of which No. 4143 is a reissue; but if the stamp and the type therein are only those that it originally contained, namely, those used in marking a name on clothing, the manufacture and use of such stamp would not infringe the claims of said reissued patent, so that the question whether said stamp would be an infringement of said reissued patent, or of the original patent, provided their claims are valid, would depend upon the question as to the type it contained and the use to which it was put.

149. X Q. How would you manage to put into this letter-stamp, marked Exhibit 169, the words "Washington, Jan'y 31st, 8 p. m., D. C."?

A. Any boy who had served three months at "case" in a printing office would put those letters and figures in less than half the space contained in the type receptacle of said stamp.

150. X Q. Would those letters be in a circular form or in a straight line?

A. The letters, if put in by the boy referred to in my last answer, would probably be in two straight lines, but a printer of ordinary ability would be able with the resources at his command in most printing offices to put a portion of said type in a curve line and the remainder within the space enclosed between said curve line and the side of the type receptacle.

151. X Q. Would not a man ordinarialy need a microscope to read the letfering made in that way?

A. Any person with ordinary good eye-sight could read such lettering

without any assistance from any kind of instruments if ordinary care were taken in producing the impression.

1804 152. X Q. To cancel the letter-stamp with that instrument, what could be inserted?

A. Any type in use in a printing office that was small enough to go in the cavity could be used for that purpose, or such type as were originally used when the art of printing was first discovered in Germany, about 400 years ago, as the type then used when placed in the type receptacle of said hand stamp would be a perfect answer to the first claim of said reissued patent No. 4143, the type referred to being of wood, as metal type was a subsequent invention; this last statement I give as I obtained it from historical works on the subject of printing and not of my own knowledge, as I am not of sufficient age to have witnessed the use of such wood type.

153. X Q. Do you know that type inserted as you have stated in this letter stamp would effectually cancel the stamp upon a letter?

A. I never tried it, but from my knowledge of printing I have not the least doubt of it.

154. X Q. How would you fasten the cancelling type in this instrument?

A. By various ways known to the art of printing, one of which would be by the use of the screw contained in the end of the stamp, another would be by filling up the space not occupied by the letters for postmarking, and the cancelling type with "spaces," and then forcing between them what is called a "hair space," which is a very thin piece of metal about as thick as paper, or as I have sometimes seen done, a little plaster might be run in the receptacle; I should not recommend the last plan, however, for steady use.

155. X Q. Do your answers contemplate a vacancy between the postmarking and the stamp canceller as in the Norton instrument?

A. In my last answer I referred to filling up the space not occupied by the postmarking letters and canceller with "spaces," such spaces I intended to put between the canceller and postmarking letters, which would leave an opening or vacancy between the postmark and the cancelling type.

1805 156. X Q. Could this little stamp which you produced (Exhibit 169) be conveniently used to do the postmarking and stamp cancelling in the larger post-offices of the country with the present handle on it?

A. It would undoubtedly be much more convenient with a larger handle.

157. X Q. (Question repeated and the witness requested to answer it.)

A. I can see no reason why it could not be conveniently used.

158. X Q. Is that all the answer you can make to my question?

A. To make it more emphatic, I will say that it could be conveniently used, but as stated in answer to Q. 156, the larger handle would be more convenient.

159. X Q. Is there any ferule around the handle in the stamp that you have produced to correspond with that around the handle in the Norton instrument?

A. There is not.

160. X Q. Is there any cross-bar in that little stamp that you have produced, such as is found in the Norton instrument?

A. I do not find any cross-bar of exactly the same form as that shown in the Norton instrument; I find, however, at the bottom of the receptacle for the type some metal that corresponds in position with the cross-

bar in the Norton hand stamp, which metal serves the same purpose as the cross-bar referred to in the question, inasmuch as a shank which connects the stamp with the handle arises from it and it serves as a means of transferring the power given by the hand from the handle to the type; the whole box or tube forms a cross-bar, but it differs from the Norton bar in having one long recess to receive the type instead of two circular ones to receive the type block and cancelling tube.

161. X Q. Is not the bottom of the type receptacle to which the
1803 handle in the stamp you have produced different in shape, width, depth, and material from the cross-bar in the Norton instrument?

A. It is.

162. X Q. Do you find any screws in the bottom of the type receptacle of the stamp you have produced corresponding with the screws in the cross-bar of the Norton instrument?

A. I do not.

163. X Q. Is there any hollow cylinder attached to the bottom of the type receptacle in your stamp like that holding the cork canceller screwed to the cross-bar in the Norton instrument?

A. There is no hollow cylinder exactly like that in the Norton patent, nor is there any cylinder attached by a screw to a cross-bar of the stamp produced by me; there is, however, an oblong receptacle formed on or forming part of the cross-bar, which receptacle can be used for the same purpose as the cylinder in Norton's patent in the manner indicated in the last paragraph on page 39 of the amended bill of complaint, folio 156, where it is stated that "such cancelling dye or type G may extend upwards to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt. In such case there would not be any tube or pipe surrounding said cancelling die or type G; the operation and effect produced would in such case of construction be the same." In this case the Norton die or type would extend up into the recess in the cross-bar in the same manner as the type does in the hand-stamp shown in Defendant's Exhibit 169.

164. X Q. Do you swear that the type receptacle in the instrument produced by you, or anything in it, is described by what you have quoted in the patent in suit?

A. I do not swear that the exact construction of the stamp shown in Defendant's Exhibit 169 is described in the reissued patent 4143, but I swear that I believe the quotation refers to the holding of a can-
1807 celling dye or type in a receptacle in said cross-bar by a screw, pin, or small bolt, and the type is held in a receptacle in the Stamp Exhibit 169 by means of a screw or small bolt; and I am borne out in this by Fig. 5 of reissued patent No. 4143, which shows a cancelling die or type secured in a receptacle, although the screw or small bolt is not there shown.

165. X Q. Do you swear that Fig. 5 of the drawings to said patent shows a receptacle in the cross-bar for the cancelling device, or do the words of the specification describe any such thing?

(Objected to, the question being for the court.)

A. As I understand the words receptacle and cancelling device, I do swear that there is a receptacle shown in the drawing at Fig. 5 for the reception of a portion of the cancelling device in substantially the same manner as in the hand-stamp referred to, although the means of securing said cancelling device in the recesses or receptacles are different to some extent, and there is more of the type enclosed in its recess or receptacle than there is of the cancelling device enclosed in its recess or

receptacle; the means shown of securing the cancelling device in its recess or receptacle, and the type in its recess or receptacle, are both well known means of securing articles in their place, and either is used as may be most convenient to the person constructing the receptacle.

Adjourned to Saturday, April 6, 1878, at 10 o'clock a. m.

1808 NEW YORK, *April 6th*, 1878.—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Cross-examination of the witness, T. J. W. ROBERTSON, continued by the Hon. GEORGE H. WILLIAMS, of counsel for complainant:

166 X Q. Is there any receptacle in the cross-bar of the Norton instrument for type as shown in the model produced?

A. In the model Exhibit 149 the receptacles in the arm are for the purpose of receiving two tubes or holders, one of which is for the purpose of receiving type for postmarking, and the other the type for cancelling, which in the model referred to is of cork; so far as appears from that model, the receptacles in the cross-bar are not intended to receive the type; but I find in folio 160 of the amended bill of complaint, which is a portion of the reissued patent No. 4143, purporting to describe one of the means of carrying out the alleged invention, of which the model referred to is an example, the following passage: "I also construct my said postage-stamp cancelling device, die, or type, of cast-iron, steel, or other suitable metal, substantially as shown in G[1], Figs. 5 and 6, and which may be secured to the said cross bar or piece, B, in like manner as the said tube or cylinder C, Figs. 2 and 4, and which is done either by screw and nut, where the same unites with the said cross-bar, or it may there be firmly fastened by means of suitably constructed and arranged pins or rivets." This passage from the specification fully proves to my mind that it was the intention of the inventor to use said receptacle in the cross-bar for the reception of the type for cancelling.

167. X Q. Is it possible for you to give a direct answer to a plain and simple question of mine without obtruding into that answer what you suppose to be an argument for the defense, wholly irresponsive to the question?

1809 A. In my answers to the questions of the counsel, I have endeavored to give such answers as would make myself understood. In answering questions as to a model belonging to a patent, I consider myself at liberty to take the specification and drawings of said patent as a means of informing myself of the object of any part of the model referred to, which is all that I have done in answering the previous question.

168. X Q. In the letter stamp which you have produced, is there any cork of the shape, size, or any place for the cork, or any other substance of similar size and shape, as shown in the model of the Norton instrument?

A. There is not, of similar size or shape.

169. X Q. Is there in said letter stamp any tube or cylinder of the size and shape as in the model of the Norton instrument, for the reception of the type used for dating the time of stamping and cancelling letter?

A. There is no tube or cylinder of the same size and shape shown in Mr. Norton's instrument in said letter stamp.

170. X Q. Is there in or about said letter stamp any permanent and

solid lettering to indicate the location of the post-office when the stamp is used, as shown in the Norton model.

A. There is not.

171. X Q. Excepting the handles of the two instruments, which are made of wood, does not the Norton instrument for postmarking letters and cancelling the stamps thereon at the same blow, differ in construction, form, weight, and the materials of which it is made, from the clothes-marking stamp which you have produced?

A. It does.

172 X Q. Did you ever know or hear or learn in *an* any way that an instrument in all respects like the one you have produced, marked Exhibit 169, was used for postmarking and stamp-cancelling letters prior to 1863?

1810 A. I never did.

173. X Q. Where have you kept this instrument that you have produced since you purchased it?

A. That is almost impossible for me to tell; I believe that it has always been in some portion of my house during the time I lived in Washington, and in one or other of the rooms occupied by me in New York and Brooklyn, ever since I bought it, until I brought it from Washington to produce it here, except during my trip to Europe, and I am not certain whether I took it with me then or left it locked up in a bookcase, which was in the care of my wife's brother-in-law.

174. X Q. Can you tell how often you have seen this instrument within the last ten years?

A. I cannot; but I have not seen it many times.

175. X Q. When was this paper wadding that appears in the instrument put into it?

A. I put some paper wadding in it, I think, on Sunday last, to keep the type from falling out.

176. X Q. Such instruments have been on sale, have they not, in the proper shops, since you purchased that one?

A. I believe they have.

177 X Q. I understood you to say that you claim to be the inventor, and had a patent for the stamp to which the cutting canceller is attached, as shown in Defendant's Exhibit No. 146 produced, with the patent to Ransford & Low, dated Aug. 9, 1859; is that correct?

A. I am the inventor of and had a patent issued to me for a postmarking stamp, substantially the same, with the postmarking device shown in Defendant's Exhibit 146, when the cutting cancelling device is removed therefrom.

178. X Q. Did not that invention consist in a new combination of wheels, types, and other elements well known to mechanics and printers at that time?

(Objected to as not the best evidence.)

1811 A. It did consist in a combination of elements, some of which were known before, others were new, and all the elements were combined in a manner not previously known.

179. X Q. What were the new elements in that combination?

(Objected to as raising an issue out of this case.)

A. The dating type-wheels had not been known before my invention, neither had a plate to receive a permanent inscription been so made as to allow the dating wheels to be turned without removing the plate.

180. X Q. Do you swear that wheels with types or figures on them were never made before you invented that instrument?

A. I do not: but wheels so combined as to be used for dating purposes never had been, to the best of my knowledge and belief.

181. X Q. Then you simply combined what was known to exist so as to produce what you believe to be a new and useful result, did you not?

A. I combined wheels having types therein to indicate figures which were old, with other wheels having types to indicate the months which were new, with a plate having engraved thereon the name of a place, the plate being so constructed as to allow of the wheels turning through an aperture formed in said plate without the necessity of previously separating the inscription plate and the type-wheels, which was also new.

182. X Q. Do you mean to say that wheels with tellers or figures on their periphery were inventions by you?

A. I expressly stated above that wheels having figures were old; I had never seen, previous to my invention, nor am I aware that wheels had ever been formed previous thereto with types arranged on their peripheries in such a manner as to give the names of the twelve months of the year.

1812 183. X Q. Could not a mechanic well acquainted with the art of printing substitute on the periphery of a wheel letters indicating months or names, in place of figures indicating dates?

A. He could, probably, if the idea had ever been suggested to him.

184. X Q. Do you think the idea is one that would ordinarily occur to such a person as I have described in the foregoing question?

A. I do not; for numbering wheels had been known many years previous to my invention, and also hand stamps with ordinary types for dates; and no one, as far as I am aware, had ever suggested the idea until I had made the invention shown in my hand-stamp patent.

185. X Q. Do you know that wheels with letters on their periphery were not known before your invention?

A. I cannot call to mind a single instance of wheels with letters on their periphery having been used previous to my invention.

186. X Q. You think, then, do you, that it would require invention to substitute letters for figures on the periphery of a wheel?

A. I do not, as it would be but a mere change of characters; but the combination of such a wheel or wheels with other devices by which they might be conveniently used for dating purposes, provided there was any invention, ever so small, in the whole device or instrument would be a patentable invention.

187 & 188. X Q. Can you tell from your scientific knowledge, or knowledge of the art of printing, by merely looking at it, whether or not an instrument when used would be a perfect or effective postmarking and stamp cancelling instrument?

A. That answer depends upon what you mean by a perfect or effective cancelling instrument; the Post-Office Department, I believe, has yet to find what it considers a perfect and effective cancelling instrument, as the cancellation marks made by any ink with which we

1813 are at present acquainted can be removed if suitable means were taken, leaving the stamp apparently uncancelled, unless ink of such character as to burn the stamp be used, when there is danger of destroying the envelope or its contents, and of injuring the cancelling device.

188 & 189. X Q. What I mean is, can you tell by looking at the instrument before any experiments have been made by its use, whether or not it will post-mark letters—cancel the stamps thereon at a single blow in the most effective manner known at this time?

A. I cannot, as I do not know all the means that have been devised for cancelling stamps and post-marking letters up to this time, so many patents having been granted for different devices for this purpose.

190. X Q. You are also aware, are you not, that there has been a good deal of experimenting to ascertain the best and most effective way for post marking letters and cancelling the stamps thereon since the introduction of postage-stamps?

A. I am.

190½ X Q. Referring to Defendant's Exhibit No. 6, do you wish to be understood as stating that it shows the same combination of elements in its construction as the model, Defendant's Exhibit 149, called the Norton instrument?

A. I find the cancelling and post-marking types to be essentially the same in both instruments, but I do not find the cancelling type or die enclosed in the tube in Defendant's Exhibit No. 6 that is shown in the Norton stamp, nor is the cross-bar of the latter shown in Exhibit No. 6.

192 X Q. Look upon what I hold in my hand, which is an ordinary lead pencil made of wood and lead, both of which are old and well known elements; suppose they were now for the first time so combined as to produce that pencil, would you regard that as an invention?

(Objected to as raising an issue outside of this case.)

1814 A. I have no doubt but that a patent would be obtained for such an instrument, but whether the courts would sustain it is another question in view of a decision of the Supreme Court, where somewhat similar invention was involved, namely, a combination of a rubber tip with a lead pencil, in which the court took the ground that there was no invention in combining the two substances, although it produced a new and useful article.

193. X Q. I did not ask you for the opinion of the Supreme Court, with which I am familiar, and which you have misstated, but I want your judgment as an expert in answer to my former question as to whether or not the combination named would be an invention.

A. I do not set up for an expert in patent law, nor am I here to be examined as one; the question put to me by counsel involves some very nice points of patent law, and will require considerable time and thought to give a reliable answer to it, but I think that as pens of various kinds have been mounted in wooden handles, and tools of various kinds, and metals of various kinds have been used for marking purposes, and that chalk has been enclosed in handles, there would seem to be very little, if any, invention in enclosing lead or plumbago in wood so as to form a pencil.

194. X Q. I do not wish you to evade the question by such statements as you have just made. I therefore ask you if wood and any metal or article that could be used for writing or making marks was combined, as indicated in the lead pencil, for the first time in the world, would that, in your judgment, be an invention?

A. If nothing had ever been enclosed before in a handle, or lead had never been before used for writing, I think such a combination would be an invention.

195. X Q. Look at the edge of the lid of this table which is before you, you see there evidences of planeing and the formation of
1815 a cone or groove in the edge of it. Suppose the planing was done by one instrument and the grooving with another, each used by a separate man, and the two tools should be so combined in one tool that one man could work the tool and produce thereby what

was before the separate result of the two, would that combination, in your judgment, be an invention?

(Objected to as raising an issue out of this case, and because it is improper to put such a supposition to a witness.)

A. That question is one which, as stated by the counsel, no man, having a regard for his reputation, would wish to answer without further data than is contained in the said question; I have, heretofore, in answer to various questions, given my opinion that the mere idea that labor was saved by an alleged new combination was not patentable, or, in other words, that it is not an invention simply to combine two instruments together; that it depended entirely upon the means by which the two instruments were combined, and that if the means of combining them were new it would be an invention to combine them; but if the means for uniting the two were old and well known there would be no invention, in my opinion, in the combination referred to, simply as a combination; if, however, some new effect other than the mere addition of the results of the two instruments were produced by such combination, then it would be an invention to combine such instruments; but from the conditions stated by the counsel I can see no reason for supposing that any other result would be produced beyond the mere addition of the effects produced by the two instruments working separately.

195½. X Q. Can there be, in your judgment invention in changing the form of an instrument or a machine?

A. Sometimes.

196. X Q. Can there be invention in changing the substance or material of which a machine or instrument was made?

1816 A. Usually mere change of materials are not considered inventions, but circumstances may be such that a change of material would be an invention.

197. X Q. Do you think that the substitution of an India rubber for a cloth covering of a roller in a washing machine would be an invention if such a thing was never before known?

(Objected to as indefinite, and as raising new issues.)

A. If rubber rollers in washing machines were substituted for cloth rollers there would be a new effect produced by the substitution, as the rubber would be impervious to water; but if rubber rollers were well known for a similar or analogous purpose, it would be no invention to transfer a rubber roller from one machine to another, unless in the new position it accomplished some object that it did not in the other, as its mere use for one thing in place of another is not considered invention; if, for instance, rubber rollers had been used in wringing machines, the mere change of a rubber roller from a wringing machine to a washing machine, where it acted simply as a means of squeezing the water out of the clothes being washed, it would be no invention to make such change.

198. X Q. Suppose a washing machine is made with a roller covered by cloth, and for that reason it will not work, and is worthless, and some man should substitute an India-rubber covered roller for the cloth roller, and the machine should then prove of great utility, would that change be an invention?

A. That would depend upon the question whether rubber rollers had been used for an analogous purpose before; as the rubber rollers have been used in wringing machines where they act in a similar manner to the rollers in some styles of washing machines, I can see no invention in making such change; but if, in the new position, said rubber-covered

roller produced some new effect, it would in that case be an invention, or what is ordinarily considered such.

1817 199. X Q. May not invention sometimes consist in changing the shape, length, or size of an element or part of a machine?

A. It may sometimes, but not ordinarily.

200. X. Q. You have stated that you were not here to be examined as an expert in patent law; will you state what you are here for?

A. As a mechanical expert, conversant with the art of printing and mechanics generally; although in the course of my experience as a patent solicitor and mechanical expert I have gained some knowledge of patent law, I do not presume to, or wish to, instruct the court trying this suit on that subject; though I believe I have some little knowledge of the theory and practice of mechanics.

201. X Q. When did you go into preparation to be a witness in this suit?

A. What do you mean by preparation?

202. X Q. When did you commence any examination with reference to the subject matter of this suit?

A. I have had occasion to examine many of the patents referred to in my testimony, on several occasions previous to my engagement to act as expert in this suit, but I did not commence a thorough and systematic examination of all the patents, exhibits, and papers connected with it until a week ago last Tuesday.

203. X Q. Who engaged you as an expert in this case?

A. Mr. Clarke, defendant's counsel.

204. X Q. Have you had any conversation about your services as an expert in this caswith any other person but Mr. Clarke?

A. I have mentioned to two or three gentlemen, mostly personal friends, that I was in the city for the purpose of acting as an expert in this case; I have had no other conversations that I can remember, excepting that one of the examiners in the Patent Office asked me if I could act as such, and I replied that I thought that I was toler-

1818 ably conversant with the subject of hand stamps, and should be willing to act as an expert; that is about all the conversation that I remember just now.

205. X Q. Have you seen Mr. Jeremiah D. Green since this suit was commenced?

A. I have seen the gentleman referred to on several occasions lately, but I don't think that I have spoken a dozen words to him on the subject of this suit; I think, however, that he informed me in the record room of the Patent Office in Washington, some three or four weeks ago, that such a suit was going on; I also met him in Mr. Clarke's room, where we may have exchanged some few words, but neither of the conversations referred to had, in my opinion, anything to do with my testimony in this case.

206. X Q. How long was Mr. Peale, to whom you have heretofore referred to in your evidence, examiner in the Patent Office?

A. I do not know but he has been there many years.

207. X Q. Mr. Clarke, to whom you have referred in your answer next preceding the last one, is the gentleman who appears for the defense in this case—is he?

A. He is.

Redirect:

208. R. Q. In the early part of your testimony, on cross-examination, some reference was made to a patent for a hand stamp that had been

granted to yourself, and in regard to it I think you stated there has been some controversy in the courts and the Patent Office. Have you a copy of that patent?

A. I have, and I produce it.

Defendant's counsel offers copy in evidence, and it is marked Def't's Exhibit 170, Robertson. J. A. S., Ex'r.

(Complainant's counsel objects to the introduction of this
1819 document as part of the examination of this witness, after the cross-examination is closed.)

209. Re D. Q. I think you have stated on your cross-examination, substantially, that a mechanic, without the exercise of any invention, and by using only well-known mechanical means, could construct from the patent of August 9, 1859, a combined postmarker and canceller, by means of which the cancellation could be done by inking only, without cutting. I think you have also stated substantially that the use of an instrument like the duplicate model of the patent on which suit is brought, Defendant's Exhibit 149, would not be an infringement of the the 1859 patent, in your opinion. If I am right in my understanding of your testimony, please state fully how your two opinions are reconcilable.

(Objected as leading, and re-examination upon the same subject upon which he has been already examined and cross-examined.)

A. Because the patent granted for the invention represented by Defendant's Exhibit 146 has a claim that could only be sustained, in view of the state of the art, by construing it to cover only a postmarking device, having attached thereto an instrument for the purpose of cutting the postage stamps so as to thoroughly efface or cancel them; I do not find in the stamp marked Def't's Exh. 149 any cutting device, and its use would not therefore infringe the claim of the patent for the instrument shown in Def's Exh. 146; a person may use all the parts that may be shown in a patent, not covered by the claim, without infringing the patent in the least; and therefore, although the user of the stamp marked Defendant's Exhibit 149 would use a cancelling device attached to or connected with a postmarking instrument, yet, as he did not use the cutting part of the cancelling device, the use of the combined canceller and postmarker shown by Defendant's Exhibit 149 would not be an
infringement of the claim of the patent issued for Defendant's
1820 Exhibit 146, as such claim would necessarily have to be construed by the court if it was sustained.

Adjourned to Monday, April 8, 1878, at 10 o'clock a. m.

NEW YORK, *April 8th*, 1878—10 o'clock a. m.

Pursuant to adjournment.

Present, counsel as before.

Witness desires to make the following statement:

It appearing to me, from the questions asked me by complainant's counsel, that my connection with the controversy between myself and Mr. M. P. Norton, that some objections may be made to my testimony on that account, I desire to state that, with all due sincerity and solemnity, I am willing to swear, and do swear, that I have no personal feeling against Mr. Norton any more than against a perfect stranger, whom I never met before, and that I would as soon do him a favor as I would any other stranger, but I would not go out of my way to do it.

I have no longer any interest in the controversy about the patent on hand stamps issued to me in 1857, nor in the extension of the same pat-

ent granted in September, 1871, as I disposed of my whole interest in it to Mr. B. B. Hill, of Springfield, Massachusetts, some two or three years since.

I would like also to add a little explanation of my meaning in the answer given to the cross-question 194, which refers to the question whether it would be an invention to combine a planing tool with a moulding tool in such a manner that one man could use both at the same time. The statement I then made I still believe to be true, but think it may possibly be distorted, in its present form, out of its proper meaning, and I therefore wish to add that I con-
1821 sider the junction or combination of two knives, one of which is a planing device and the other a moulding instrument, would be simply the uniting of two short knives into one long one, and that as moulding knives or cutters have sometimes narrow straight portions, there would be no invention in extending said knives or cutters so as to form planing cutters, as a planing cutter and a moulding cutter is essentially the same, and operates the same way, the only difference being in the forms of their edges.

T. J. W. ROBERTSON.

Sworn to before me this 8th day of April, 1878.

JOHN A. SHIELD,
Examiner, &c.

NEW YORK, *April 8th*, 1878.

Present, counsel as before.

THOMAS D. STETSON, a witness produced on the part of the defendant, being duly sworn, in answer to interrogatories propounded by SAMUEL B. CLARKE, Esq., of counsel for defendant, testifies as follows:

1. Q. What is your name, age, residence, and occupation?

A. Thomas D. Stetson; I am 50 years of age; I reside at 950 Lexington avenue, N. Y. City; occupation, solicitor of patents.

2. Q. State what you know, if you know anything, in regard to the trial of the case of Jacob Shavor and Albert C. Corse against Edmund Hoole in the circuit court of the United States for the northern district of New York, in the latter part of the year 1864?

A. I was present; there was a jury; there was counsel for complainant; there was no counsel for defence, and no testimony was put
1822 in for the defense; at some stage I addressed the court and stated that I was in the employ of the defendants, but was not one of the defendants, and was not a member of the bar; I stated that the defendants wished to put in a defense, and asked an adjournment to the next morning for the purpose; counsel for the complainants, Mr. Norton, asked the court to proceed and have judgment entered and said something to the effect that it could be reopened afterwards; I don't remember the exact words which passed between the counsel and the judge; I am not sure that I understood their full purport at the time; the result was a verdict immediately for the complainants; the damages were merely nominal.

(Objected to as irrelevant, and that the record is the best evidence.)

3. Q. Is that all that you recollect as to what yourself said or what Mr. Norton said, or what was done?

A. Yes.

4. Q. Why did you make your statement to the court?

A. I believed it was true and that it was important to the interests of defendant and to the obtainment of justice.

(Objected to as the opinion of the witness.)

5. Q. Why did you believe it to be true that the defendant wished to put in a defense?

A. I am going to decline to answer; I have devoted much time and labor in preparing myself to serve professionally in proceedings on patents; I have not been employed professionally in this case; I am unwilling to be drawn into an examination involving the merits on a simple subpœna, as has been served on me; I decline to answer.

6. Q. What facts connected with that case were there which made you believe that the defendant therein wished to put in a defense,
1823 and which induced you to make that statement to the court which you have referred to?

A. I decline to answer.

7. Q. Were there any witnesses present on the part of the defendant in that case to your knowledge?

A. None but myself; I was employed as an expert.

8. Q. What preparation, if you know, was made for the defense?

A. I had been employed to ascertain what testimony was available and to prepare to serve as expert, and had done so; I don't remember the specific facts; in general there had been a defense prepared; I think it was exactly as indicated in the amended answer, filed in that suit.

9. Q. State what you had to do with that suit before the trial, if anything.

A. The original answer was prepared and filed before I was called into it; the amended answer I prepared in whole or in part; I think I investigated the facts and aided to determine what was expedient to put into the answer; I probably attended very closely to the construction, the mode of using and the effect of different stamps, because I always do that, but I don't now recall the specific steps; probably I searched the American Patent Office and the printed records of British and French patents; probably I discussed the matter with counsel with a view to aid each other in arriving at correct conclusions on the pertinacy and effect of the testimony; I don't recollect specifically, but I consider it nearly certain that all that had been done; I esteem them always proper to be done; I had done what I considered the proper thing in that case.

10. Q. Were any other witnesses than yourself subpœnaed in the case?

A. I don't know; I was not subpœnaed.

11. Q. Were copies of any letters patent obtained to support the defense set up in that answer?

1824 A. I am quite confident that one earlier patent granted to the same Mr. Norton, dated August 9, 1859, with certain assignments thereof, were ready in form of certified copies from the Patent Office; I think there were others, but cannot be certain as to others.

12. Q. Were any models constructed after the specifications and drawings of the 1859 patent?

A. I don't remember.

12½. Q. Had any testimony been prepared as to what sort of instruments for postmarking and cancelling had been used in the New York City post-office?

A. My impression is that there was no question on that point; that a sample was ready which it was to be admitted all round Mr. Hoole, the nominal defendant, had made and sold to use; I think I should have

remembered it if there had been any dispute or doubt as to that; I don't remember positively.

13 & 14. Q. Describe that sample as well as you can.

A. I think it was about like this Defendant's Exhibit 148, letters being cut or cast in the circle on the large end, and type being filled in the middle.

15. Q. Do you notice any other respect in which this exhibit, Defendant's Exhibit 148, differs from that sample?

A. No; but I can't be positive about the construction; I am quite confident that there was a cross-bar with the stamping device at one end and the cancelling device at the other, and the handle connected or near the middle; that the canceller was smaller than the stamper with its face about even with it, and engraved somehow; I think the cancelling face was iron, the surfaces being dull so as to deface with ink without cutting; I think the face of the canceller was not swelled or raised in the middle beyond the edges like this Defendant's Exhibit 148; if there is any merit in that latter feature projecting the middle of the cancelling face out beyond the plane of the edge, that is a later improvement.

1825 16. Q. Did that sample stamp have any patent mark on it?

A. No.

17. Q. Was any testimony prepared as to what sort of instrument was used in the N. Y. City post-office in support of the defense on that point in the answer?

A. I don't recollect any.

18. Q. Why did you state to the court that the defendant desired to put in a defense?

A. Because he had a defense which I had been at some pains to aid in preparing. I was his servant. I believed that he wanted to offer it. I don't remember any specific reasons for the belief, or any specific reasons for my saying what I did or for not saying more. I was at some loss to determine there, as I am here in this examination, to determine what course to pursue.

19. Q. I think in one of your answers you spoke of Mr. Hoole as the nominal defendant. Why did you call him the nominal defendant?

A. His name was used, but I understood he was not much interested.

20. Q. State the facts which led you to that understanding.

A. The damages finally arrived at, 6¼ cents, had been, I think, previously fixed on as the amount prayed for. Mr. Hoole took very little or no pains to search for testimony or discuss its bearing. I think he had gone out of the business or was about going out of making these stamps.

21. Q. Who had fixed on 6¼ cents as the amount of damages, and when?

A. I am not positive; my impression is that that had been arrived at a long time before the trial.

22. Q. What is your best recollection as to who the parties to the arrangement were?

A. I don't believe I knew at the time. I certainly don't now.

23. Q. How did you get the idea there was such an arrangement?

1826 A. I should say it was from common consent.

24. Q. Who were the parties to the common consent?

A. I don't know.

25. Q. During the progress of the suit did Mr. Hoole make any statement in your hearing as to his interest therein?

A. Not that I remember.

26. Q. Did any person beside yourself and the defendant and the lawyers have anything to do with preparing the defense or with advising about it?

A. Yes; I think a good many did.

27. Q. Who were they?

A. I think a good many stamp men, some bakers, some post-office clerks, some parties connected with Mr. Hoole in the manufacturing, and various parties in the Patent Office. I don't remember specific acts or words, but I think all these will come within the range of that question.

28. Q. Did a person of the name of Hatch have anything to do with the case?

A. Yes; Mr. W. B. Hatch, of Messrs. Fairbanks & Co.; he was interested as a part owner of one or more patents, and as being concerned in the manufacture, as I understood it. I think I was paid for my services through him. The case was managed a good deal like this one, in an uncertain and bungling way. Mr. Hatch was about the only one I distinctly understood. He said go ahead and do what ought to be done and make a defense, and he would see that I was paid the ordinary amount for such professional services.

29. Q. What connection was there between Mr. Hatch and Mr. Hoole?

A. I think Hoole had manufactured the stamps, and Fairbanks & Co. sold them.

30. Q. Did Hoole know what Hatch was doing in the case, or had you any reason to suppose that he knew?

A. I think he knew.

1827 31. Q. While the suit was going on did Hatch make any statement in your hearing as to what damages would be recovered, or anything on the subject of the result of the case?

(Objected to as hearsay.)

A. I don't remember.

32. Q. Did either Hoole or Hatch ever state why the defense was not put in at the trial?

(The same objection.)

A. I think not.

33. Q. Did any of the lawyers for the defendant, either before or after the trial?

(The same objection.)

A. No; if there was any collusion in the case it was concealed from me at the time and has been ever since.

34. Q. Did you ever ask an explanation from Mr. Hoole or Mr. Hatch?

A. I don't believe I ever did.

35. Q. Or from any of the lawyers?

A. No.

Cross-examined:

36. X Q. You made, as I understand, a pretty thorough examination for the defense in the case against Hoole and prepared the amended answer after that preparation; did you set up in that answer all the defenses which you considered available for Mr. Hoole in that case?

A. Yes; I set up all that I considered available at the time of making the amended answer; it is very common to wish afterwards the answer was different; I don't remember how it was about that at a later period.

37. X Q. Your attention was called in that case to the caveats of

Norton dated 1853 and 1854, and you claimed, did you not, in that case that they had been assigned to Ransford & Low?

1828 (Objected to on the ground that what this witness claims is immaterial.)

A. I infer that from the answer.

38. X Q. Who was Mr. Hoole's attorney in that case?

A. There was a good deal of fog about the case at the time, and I have forgotten a good deal since; I don't remember anybody but Mr. George Gifford, and I don't remember his taking any very active part.

39. X Q. Who was the presiding judge at the trial?

(Objected to as secondary evidence.)

A. I think it was Judge Hall.

40. X Q. That case was regularly called on the docket, was it not?

A. I understood so.

41. X Q. Did the judge give instructions to the jury in the case after the evidence was submitted?

A. I think he made a charge in something like the ordinary form, but rather brief.

42. X Q. Did Mr. Tiffany or any other lawyer appear for the plaintiff in the case at that time?

A. I think there was another gentleman besides Mr. Norton; I had the impression that Mr. Norton opened and conducted the case, but he may have appeared only as a witness.

43. X Q. Do you remember to have seen Mr. Hoole or Mr. Gifford in Albany, where the trial was had, at or about that time?

A. No.

44. X Q. When you interposed and requested an adjournment of the case for a day, you then believed, as I understand you, from all that had before that time transpired, the defendants wanted to defend the case upon the trial?

A. I may have been; I think I was puzzled; but I had received no instructions to relax my efforts for a defense, and I made that request to the court as a part of them.

1829 45. X Q. Fairbanks & Co., to which Mr. Hatch belongs, were the contractors with the government, and sub-let the making of these stamps to Mr. Hoole; was not that as you understood it?

(Objected to as the witness can speak from his own knowledge.)

A. I don't know whether it was a sub-letting of a contract or an employment in some other capacity; otherwise, yes.

46. X Q. Didn't you understand from Mr. Hatch, and from the interest that he took in that suit, that Fairbanks & Co. might be held to be infringers of the patent on which suit was brought in case the plaintiffs therein recovered a judgment against Hoole?

(Objected to as immaterial what the witness understood.)

A. I don't know; things were very much mixed; there had been several patents and several assignments of doubtful effect. I understood that it was Mr. Hatch's wish to have me do my best in aiding to get up and present to the court a defense. I think contented myself with that without any speculation on the precise extent of the consequences of a defeat.

THOMAS D. STETSON.

Sworn to before me this April 8th, 1878.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned sine die.

1830 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
vs.
THOMAS L. JAMES, UNITED STATES POSTmaster, New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, John A. Shields, a standing examiner, duly appointed by the circuit court of the United States for the southern district of New York, do hereby certify that the several witnesses named in the annexed depositions appeared before me on the days therein specified, who, being by me duly sworn, gave said testimony, which was reduced to writing by a clerk appointed by me for that purpose, and in their presence, and they subscribed the same.

I further certify that Samuel B. Clarke, esq., counsel for defendant, and George H. Williams, esq., and Marcus P. Norton, esq., counsel for complainant, appeared on said examination.

July 2, 1878.

JOHN A. SHIELDS,
Examiner, &c.

1831 Depositions of sundry witnesses taken before me, Hannibal Forbes, esquire, special examiner, appointed for the purpose, at the city of Wheeling, in the State of West Virginia, on the fourth day of March, 1878, and following days, in a suit pending in the circuit court of the United States for the southern district of New York, wherein Christopher C. Campbell is complainant and Thomas L. James is defendant, counsel for both parties being present.

At a stated term of the circuit court of the United States, for the southern district of New York, held at the city of New York, on the 25th day of February, 1878.

Present, Hon. Samuel Blatchford, Judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

On reading and filing the subjoined consent, and on motion of Stewart L. Woodford, U. S. attorney, the defendant's solicitor herein, it is ordered that Hannibal Forbes, esq., of Wheeling, West Virginia, be, and he is hereby, appointed a special examiner of this court under the 67th equity rule as amended, to take the testimony at said Wheeling of such competent witnesses as may be brought before him on the behalf of the defendant herein.

(Signed) SAMUEL BLATCHFORD.

A copy.

JOHN I. DAVENPORT, *Clk.*

1832 Consent is hereby given that an order in the terms of the above draft may be made.

Dated Cleveland, Ohio, February 20, 1878.

(Signed) STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol'r,
By S. B. C., *Ass't.*
MARCUS P. NORTON,
Solicitor for the Complainant.

Circuit court of the United States, southern district of New York, in equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Proofs for final hearing taken for and on behalf of the defendant at the city of Wheeling, West Virginia, before Hannibal Forbes, esq., special examiner appointed for the purpose, on the fourth day of March, 1878.

Present, pursuant to agreement, Marcus P. Norton, solicitor and counsellor for complainant, and Samuel B. Clarke, assistant United States attorney for the southern district of New York, for the defendant.

JOHN H. ZEVELY, a witness called for and on behalf of the defendant, being by me first duly sworn, testified as follows:

1833 Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence and occupation?

A. John H. Zevely; age 32 years, and am a stamp and seal manufacturer, and reside at Wheeling, West Virginia.

2. Q. How long have you been engaged in manufacturing stamps and seals?

A. I have been manufacturing stamps for twenty years, and seals and stamps on my own account for eight years.

3. Q. How and with whom were you employed in this business prior to eight years ago, and how long had you been so employed?

A. I worked for my father, and for about twelve years.

4. Q. What is your father's name, and where is he now?

A. His name is E. S. Zevely, and resides at Cairo, West Virginia.

5. Q. What sort of stamps were manufactured by your father?

A. Post-office, boxwood, marking and rating stamps.

6. Q. Any other sort of stamps for post-offices?

A. In general way, marking and rating includes all kinds of stamps; we made all kinds of boxwood post-office stamps.

7. Q. Do marking and rating stamps include instruments made for the cancellation of postage-stamps?

(Complainant's counsel objects to question on the following grounds, viz: First. The witness has been twice required to state the kind of post-office stamps said to have been manufactured by his father; the record shows the witness has twice made answer fully to those questions. Second. Question is leading and improper.)

1834 A. They do.

8. Q. Describe some of the sorts of instruments which were made in your father's manufactory for post-marking and for the cancellation of postage-stamps.

(Complainant's counsel objects to the question for the following reasons: First, as improper and immaterial; and, second, as suggesting to the witness the kind of answer desired from him by defendant's counsel.)

A. Do I understand that to mean a combined stamp? If so, one kind of stamp was made of boxwood, surrounded with a brass tube, or circle, and mortised for the insertion of dates, to which was attached a smaller brass tube, by means of a small brass bar about one-eighth of an inch

thick; this small tube was intended to hold the piece of cork or wood or other substance for the purpose of cancelling; the handle to this stamp was inserted in the large stamp, and supported the dates; another kind was made of a piece of boxwood in an oval shape or form, on one end of which was cut or engraved the office stamp or date, and on the other end was engraved a postage-stamp canceller of various devices; another kind was made of boxwood for the office stamp or dater, and a separate piece of boxwood on which was engraved different devices or letters and words for the purpose of cancellation; this was attached to the larger stamp or dater by means of a wire cord or screw.

9. Q. My last question was general, and not limited to combined stamps; if any separate stamps for post-marking and cancelling were made, please describe them.

(Objected to by complainant's counsel as improper and leading.)

A. The office or dating stamps were made of boxwood in circular form at that time, about one and three-eighths to one and one-half inches
1835 in diameter, and about one and one-half inches long, with the name of post-office and State engraved on the face, and mortised for the insertion of dates for the days, months, and sometimes years; a black walnut handle or other hard wood was inserted in the bottom, and supported the dates; these stamps were sometimes made with a brass circle; cancelling stamps were made in various forms, but generally horizontal lines or bars; these were made of different kinds of wood.

10. Q. What was the shape of the handle, and about how large was it in the last post-marking stamp you have described?

A. Hardly know how to describe that; it was of irregular form, about four inches long.

11. Q. Where was the brass ring on this post-office stamp put, and what was its function?

A. The brass ring round the office stamp was intended to form the outer circle in stamping and to add to the appearance of the stamp.

(Complainant's counsel objects to both question and answer on the ground of immateriality, and as wasting the time of this examination upon useless and frivolous matter.)

12. Q. What do you mean by the outer circle in stamping?

(Same objection as to the last question and answer.)

A. I mean the circle surrounding the name of post-office and State engraved on the face of the stamp.

13. Q. Did this brass ring tend to strengthen the stamp, and to prevent the wood from wearing or splitting and make the instrument in general more durable?

(Objected to by complainant's counsel for the same grounds last above stated, and, further, as leading and incompetent.)

1836 A. It did.

14. Q. Did the separate cancellers you have spoken of have a separate handle attached as in the case of the dating stamp?

(Objected to by complainant's counsel as incompetent and leading.)

A. Sometimes, but generally they were one piece.

15. Q. Did these cancellers ever have a brass ring around them?

(Same objections as last above.)

A. Sometimes.

16. Q. Whereabouts?

(Same objection as last above.)

A. Around the faces, or head of canceller.

17. Q. Do you mean the acting face, that part of it that comes in contact with the paper when the instrument is used?

(Objected to by complainant's counsel as immaterial, incompetent, and leading.)

A. Generally the brass ring formed a part of the impression, but they were sometimes made so as not to show any impression.

18. Q. In the several sorts of stamps, both post-marking and cancelling, which you have described, in what direction did the grain of the wood run with reference to the plane of the acting faces?

A. At right angles, or across the grain.

19. Q. The wood was used endwise, was it?

(Objected to by complainant's counsel as not only leading, but as being the testimony of defendant's counsel, unlawfully put into the mouth of the witness for him to say "yes" to, more properly known as "cramming," and second as having been fully answered by the witness in his answer to the last question.)

A. All our stamps were cut on the ends of the grain of wood.

1837 20. Q. With what sort of substance were these several instruments that you have described intended to be used in order to make the impression?

A. With ink in general use in post-offices for stamping purposes; the ink generally used at that time being such as was used by printers.

21. Q. What was done with the several instruments for postmarking and cancelling, which you have described, both the combined and the separate ones, I mean; what did your father do with them?

(The last part of the question is objected to, commencing with the words, "what did," as incompetent, and hearsay, and improper, and as leading.)

A. These stamps were sent out to postmasters to fill orders received from them.

(In view of the answer given, the complainant's counsel withdraws the objections last above taken.)

22. Q. Were they sold?

A. They were.

23. Q. Have you a model of any of the sorts of the combined instruments you have described?

A. I have.

24. Q. Please produce it.

(Witness produces model asked for, and it is marked Defendant's Exhibit 139, J. H. Zevely, March 4, 1878, H. F., sp'l examiner.)

25. Q. Point out all the respects which you notice in which this model differs from one of the combined instruments for postmarking and cancelling, which was made in your father's manufactory, for sale?

(Complainant's counsel objects to any and all questions with referenence to this alleged model, on the ground that it is not in evidence in this cause, and second, it having the appearance of recent construction, cannot be received in the evidence in this case; therefore it is improper and incompetent to put this or any other question to this witness about the same.)

1838

A. This is substantially the same as was made at that time, excepting the form or shape of mortise; sometimes they were made a little larger, as was customary at that time.

26. Q. I notice that neither the acting face of the canceller, nor the postmarker, is engraved with any device or lettered, and that there are no dating type in the mortise of the postmarker; are these respects in which this model differs from one of the instruments, actually made?

(Complainant's counsel objects to the question for the reasons last above stated; and second, as leading; and third, it is wholly immaterial as to what defendant's counsel notices or does not notice, as stated by him to the witness, so long as he himself is not on the witness stand.)

A. They are.

27. Q. In all other respects except those which you and I have pointed out, is this model, Defendant's Exhibit 139, a perfect representation of an instrument made in your father's manufactory and sold by him?

(Objected to by complainant's counsel and each and every of the objections above assigned against this model, and against all questions put to this witness concerning it, are here interposed as objections to this question, with the further objection that the question does not correctly state the fact in denominating this model as "Defendant Exhibit 139," as there is no such exhibit in this case on the part of the defendant.)

A. I think it is.

28. Q. Have you any doubt about it?

1839 (Same objections as last above.)

A. With the above exceptions it is the model as near as can be made.

Defendant's counsel here offers the Exhibit 139 in evidence, it being marked as above indicated. To the introduction and reception of this model in evidence in this cause, complainant's counsel here objects, and for his objections here assigns and interposes each and every of the objections taken when this newly-made model first made its appearance upon this record, and he further assigns as objections each and every objection taken by him to the several questions put to this witness by defendant's counsel concerning the same.

(Complainant's counsel further objects that the model has not yet been brought as an exhibit in this cause other than for the purposes of identification, and if marked at all as an exhibit in evidence it can only be marked by the examiner after the objections to it have been stated by complainant's counsel, which has not yet been done by the examiner.)

29. Q. In what respects, if any, does the handle in this model, Defendant's Exhibit 139, differ from the handles of the other instruments which you have described?

(Objected to by complainant's counsel upon the same grounds already stated as objections to this model.)

A. It is similar in shape and form to the others.

30. Q. Will the brass ring which you have testified encircled some of the separate postmarkers and cancellers come up as high on the body of each postmarker and canceller as the brass tubes do in Defendant's Exhibit 139.

1840 (Complainant's counsel objects to the question on the same grounds as already assigned as objections to this model and all questions relating to it.)

A. They did.

31. Q. Have you a model of either of the other sort of combined postmarker and canceller, which you have described?

A. I have.

32. Q. Please produce it.

A. Witness produces model, and it is marked Defendant's Exhibit 140, J. H. Zevely, March 4, 1878, H. F., sp'l examiner.

(Complainant's counsel objects to the model and to its being marked in the manner in which it has been marked by the examiner, and the grounds of his objection are the same as those assigned and interposed against

the model alleged to have been marked "Defendant's Exhibit 139," and complainant's counsel objects to any question being put to this witness concerning the said alleged model, and assigns as objections therefor as those already assigned to the model called Exhibit 139, and all questions that were put with reference to that model.)

33. Q. Like which of the three sorts of combined in statements described by you in your answer to question 8 is this model (Defendant's Exhibit 140), if it is like any of them?

(Answer to Q. 8 read as part of this question.)

(Complainant's counsel objects to the question, and assigns therefor each and every objection heretofore taken with reference to the defendant's so-called Exhibit No 139, and all questions relating thereto, and as has been already assigned with reference to this model called De-
1841 fendant's Exhibit 140, and a special objection is assigned to the question as to the impropriety of defendant's counsel incorporating into his question a previous answer, and then reading it to the witness himself as part of his question.)

(Examiner's note.)

(Witness inspects answer to question 8, to which entry on the record complainant's counsel objects.)

(Examiner's note.)

(Complainant's counsel states that the reading of the answer by the witness was after the defendant's counsel had previously read it to him, and after the objections taken by complainant's counsel were made upon the record, and requests the examiner to note the same on the record.)

A. It is like the second kind described in my answer to question 8.

34. Q. Like which of the sorts of combined instruments described by you in that answer is the model Defendant's Exhibit 139?

(Complainant's counsel objects to the question and assigns as reasons each and every of the objections heretofore taken with reference to these models and all questions put in respect to them.)

A. Like the first.

35. Q. Point out all the respects which you notice in the model (Defendant's Exhibit 140) in which it differs from an instrument in your answer to question 8, belonging to the second class, described by you, actually made in your father's manufactory and sold.

(Complainant's counsel objects to this question, and assigns as reasons the objections last-above stated.)

1842 A. In general form and shape it is the same, excepting that the name of the post-office and State is not engraved on the face, and the design on the canceller is not engraved, and that there are no dates inserted in the model, or a thumbscrew to hold dates.

36. Q. The model (Defendant's Exhibit 140), exclusive of the handle, seems to consist of two blocks of boxwood glued together; is that the fact?

(Same objection as last above.)

A. It is.

37. Q. Was that the case with the instruments actually made for sale, of which this is a model?

(Same objections as last above.)

A. They were generally made of one piece, but sometimes of two.

38. Q. In all other respects except those which you have pointed out, is this model (Defendant's Exhibit 140) a perfect representation of a class of instruments actually made in your father's manufactory and sold?

(Question objected by complainant's counsel for the grounds last above stated.)

A. It is as near as a model can be made.

39. Q. Please describe a little more in detail the third sort of combined instruments referred to by you in your answer to question 8; use, if you please, the models (Defendant's Exhibits 139 and 140), or parts thereof, to illustrate what you say.

(Same objection as last-above stated, and further as incompetent, improper and leading.)

A. The third kind was similar to the first kind, with the exception of the brass circle to which was attached, by a wire cord or screw, a piece of boxwood or other hard wood with device engraved thereon, for the purpose of cancelling. This was attached to the right
1843 hand side of the stamp, one side of the stamp being flattened below the outer circle, and the attachment being flattened on one side so as to fit up close and secure. This attachment had a shoulder on one side so as to throw it out, that is the face of it, about one-eighth of an inch from the circle of the office-stamp face.

40. Q. You say the third-class was like the first-class, "with the exception of the brass circle to which was attached, by a wire cord or screw, a piece of boxwood," what does that mean exactly?

(Objected to on the grounds last above stated, and for the further reason that complainant's counsel claims the exclusive right of cross-examining the witness.)

A. That means it was like this first class, leaving off the brass tubes, or like the boxwood part and handle only. To the boxwood part the canceller attachment was made.

41. Q. You say that this canceller was attached by cord or wire sometimes; were cord or wire capable of holding the postmarker and canceller securely together, and did they so hold them?

(Objected to on the same reasons as last above stated, and as incompetent and immaterial, and leading and improper.)

A. They were, and they did.

42. Q. Fix the earliest date you can at which a combined instrument belonging to the first class referred to by you in your answer to question 8, and represented by the model (Defendant's Exhibit 139), was made in your father's manufactory and sold.

(Objected to on the grounds last above stated, and further for all the reasons heretofore stated.)

1844 A. To the best of my recollection they were made and sold as far back as the winter of 1860 and 1861; I cannot give the exact time.

At 6 o'clock p. m. adjourned to 9 o'clock a. m., March 5th, 1878.

HANNIBAL FORBES,
Sp'l Examiner.

To which adjournments complainant's counsel object on the grounds that the examination of this witness did not commence until 2 o'clock this afternoon, and because the time beyond that provided in the 69th equity rule has been extended for 30 days at the request of defendant's counsel. In view of these facts, complainant's counsel proposes an adjournment until 7 o'clock this evening for a session of two or three hours' work.

The defendant's counsel dissents from the above statement of facts.

MARCH 5, 1878.

Present, pursuant to adjournment, the same counsel as before.

43. Q. Fix the earliest date you can at which combined instruments of the second class described by you, represented by the model (Defendant's Exhibit 140), were made in your father's manufactory and sold.

(Same objection as last above stated.)

A. To the best of my recollection they were made as early as the latter part of 1860.

44. Q. Fix the earliest date you can at which combined instruments of the third class described by you, were made in your father's manufactory and sold.

(Same objections as last above stated.)

A. About the same time the others were made.

45. Q. Do you mean as early as 1860?

1845 (Same objections as last above stated, and further that the court will have no trouble in ascertaining what this witness means in his last several answers. They are in good English, and therefore the witness needs no stuffing from defendant's counsel by the putting of leading questions.)

A. I do.

Q. 46. Fix the earliest date you can in which the separate cancellers made of boxwood and having brass rings on them in the manner you have described, were made in your father's manufactory and sold.

(Same objections as last above, and further as having about as much to do with this case as a proclamation by the Tycoon would.)

A. To the best of my recollection, about the same time the others were.

Q. 47. Fix the earliest date you can at which the separate boxwood post-marker having the brass ring round it as you have described, was made in your father's manufactory and sold.

(Same objections as last above stated.)

A. To the best of my recollection, about the same time that the others were.

48. Q. What can you say on the question of whether these instruments that you have described, all or any of them, were made and sold by your father prior to 1860?

(Same objection as last above stated, and further, that it is immaterial what the witness can or cannot say on that subject, and as incompetent and improper. and further, the witness has already answered fully with reference to time.)

A. I recollect of my father having made and used in the post-office, at Pleasant Grove, Maryland, a stamp similar to the third class
1846 or kind mentioned in answer to question 8, as early as 1853; but as to their being made and sold, I have no recollection.

49. Q. What position did your father have in that post-office?

A. He was postmaster.

50. Q. When did he cease to be postmaster?

A. That I can't answer.

51. Q. Come as near it as you can.

(Same objections as last above stated.)

A. It was about the year 1853.

(Defendant's counsel here offers the model Defendant's Exhibit 140, in evidence, the same being marked as heretofore indicated, and renews the offer of Defendant's Exhibit 139.

Complainant's counsel objects to the same, and to each of those models being introduced and received in evidence in this cause for any purpose

whatever, excepting to show the fact of their recent construction, and that they were manufactured for the purpose of attempting to use them as evidence in this cause.

Complainant's counsel here interposes as objections against each of these models, each and every objection taken with reference to them on this record during these proceedings before this special examiner.

And also the several objections taken to any and all questions having reference to these models, or either of them.)

Cross-examination of the witness de bene esse, with reference to Def't's Exhibits 139 and 140, by complainant's counsel, MARCUS P. NORTON:

(Defendant' counsel objects to a conditional cross-examination.)

1847 52. X Q. Do you know Mr. A. M. Zevely, of Washington, D. C.?

A. I do.

53. X Q. Is he a relative of yours; and, if so, in what degree?

A. He is my uncle.

54. X Q. Was he ever Third Assistant Postmaster-General of the United States?

A. He was.

55 X Q. When was he appointed, and when did his term of office cease?

A. His term of office ceased in the spring of 1869, and I think he held that position about or from eight to ten years; he was in the Post-Office Department from 1835, or about, until the spring of 1869.

56. X Q. Did you ever have any conversation with your uncle, Mr. A. N. Zevely, concerning the matters, or any of them, which you have testified about on your direct examination?

A. No.

57. X Q. You never did?

A. No.

58. X Q. How old were you in the year 1853?

A. I was in my eighth year.

59. X Q. In what business were you engaged at that time?

A. Not in any business.

60. X Q. State some particular thing outside of post-office matters that happened during that year, of which you have as vivid a recollection, as you now swear you have, concerning the third class of contrivances described by you in your answer to the eighth question of your direct examination, recollecting at the same time that you make your answer that you were then but seven years old, and in the eighth year of your age.

A. During that year my father moved from the country into the town of Cumberland, five miles off.

61. X Q. What enables you to make the statement you made in your last answer?

1848 A. My father lived in Cumberland about seventeen years; he left Cumberland in the winter of 1870 and 1871.

62. X Q. How do you know your fat' er lived in Cumberland seventeen years, as you have stated?

A. I know I was then about eight years old, and lived seventeen years in Cumberland and about seven years here, making my present age.

63. X Q. How do you know that at that time you were about eight years old. as stated in your last answer?

A. The family records show I was born in the year 1846.

64. X Q. Is that the only answer you are willing to give and can give to the last question?

A. I think so.

65. X Q. Have you any doubt about it?

A. I don't doubt the record.

66. X Q. What record?

A. The family record in the Bible of my birth.

67. X Q. Now please explain to the court just what the records of your birth in your family Bible, or anywhere else, has to do with your recollection of events or things that happened during the year 1853, and while you were but a little more than seven years old?

A. By that means I fix the date of the occurrences just mentioned.

68. X Q. And from the record of your birth you are enabled to state your recollection of events or things that happened during the year 1853, is that it?

A. By that record I fix the date; I recollect the facts very distinctly.

69. X Q. Now state the means and by what it is, that enables you now to say, "I recollect the facts very distinctly"?

A. By certain associations connected therewith.

70. X Q. What associations have you reference to in your last answer?

A. My recollection of playmates and associates and family friends enable me to recall the facts.

1849 71. X Q. Recall what facts?

A. The facts above stated.

72. X Q. What are those?

A. The use of this stamp and the removal of my father to Cumberland about or in the year 1853.

73. X Q. Describe the hat, the coat, vest, pants, boots or shoes worn by you during that eventful year of 1853.

A. I can't describe them exactly.

74. X Q. Describe the hat, coat, vest, boots or shoes worn by your father during that same year.

A. I cannot describe them exactly.

75. X Q. Describe anything that you saw your father do during that year.

A. One thing I recollect of, his sending out a great many circulars, and of my having to assist in folding them; I also recollect who did the printing and who directed these circulars, or assisted in doing it.

76. X Q. What are those circulars about, and how many were sent out in that year?

A. Circulars were about the stamps and other things; just how many were sent out I don't recollect.

77. X Q. What kind of stamps were those mentioned by you in your answer to last question?

A. All the kinds that were made at that time.

78. X Q. What kind of stamps were those?

A. Post office marking and dating stamps.

79. X Q. Any others?

A. That includes all kinds.

80. X Q. To whom were those circulars sent?

A. To the postmasters.

81. X Q. Informing them of what?

A. That he was prepared to furnish those kind of stamps and other matters.

82. X Q. What kind of stamps and what kind of other matters did your father inform postmasters that he was prepared to send out?

A. I think I answered that question in substance before.

1850 83. X Q. Point to the answer by the number of the question where in substance you have answered the last question before, as stated by you.

A. In answer to questions 78 and 79 of cross-examination.

84. X Q. You have now stated everything that you recollect as having happened during the year 1853, have you not?

A. I don't know that I have.

85 X Q. Proceed and state everything you now remember that happened during that year when you were little past seven years of age.

A. My answer is, I don't think they would be pertinent to the question.

86. X Q. Do you know of anything that took place during that year that would, in your opinion, be pertinent to any of the issues in this case?

A. Not any more that I have stated.

87. X Q. Well, what is that?

A. What I have stated in answer to questions 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and to 86, inclusive, of my cross-examination.

88. X Q. How many inhabitants were there in the town of Cumberland in the year of 1853, when you were but little past seven years of age?

A. Being so young I did not take the census of the town.

89. X Q. About how many letters were daily received by and delivered from the post-office at Cumberland in the year 1853, and when you were a little over seven years of age?

A. I don't know, as I have no recollection of ever being in the Cumberland post-office during that year.

90. X Q. State how many letters were daily received by and delivered from the post-office at Pleasant Grove, State of Maryland, in and during the year 1853, when your father was postmaster there, and when you were but little more than seven years of age.

A. That I cannot answer.

91. X Q. About how many?

1851 A. I cannot state.

92. X Q. To what post-office did you refer when you stated about the circulars being sent off during the year 1853?

A. Pleasant Grove, Maryland.

93. X Q. For what length of time was your father postmaster at that office?

A. I can't say exactly.

94. X Q. Why not?

A. Because I don't know when he was appointed.

95. X Q. What year did your father move from Cumberland to Pleasant Grove, or what year did he move from Pleasant Grove to Cumberland?

A. He moved from Pleasant Grove to Cumberland in the year 1853.

96. X Q. What part of the year?

A. It was during the spring, summer, or fall—no winter about it—during warm weather.

97. X Q. In answer to question 48 of your direct examination, you state in words and figures as follows: "I recollect of my father having made and used in the post-office at Pleasant Grove, Maryland, a stamp similar to the third class or kind mentioned in answer to question 8, as early as 1853." Describe the exact construction of that so-called device, and each and every part of it.

A. That stamp had a handle similar to that on Defendant's Exhibit 140; the face part of the stamp was made, I think, of mountain laurel, the name of the post-office, county, and State being engraved on the face of the stamp; the face of the stamp was mortised for the reception of dates; these dates were made of the same material as the face of the stamp; the face of the stamp was in a circular form, about one and one-half inches in diameter; the dates were held in their place by a thumb-screw; to one side of this stamp was attached a separate piece of wood by means of a screw and glue, on which was engraved the word "paid."

1852 98. X Q. What was the form or shape of that piece of wood glued to and screwed upon the side of the postmarker and having the word "paid" engraved upon its acting surface, as stated in your last answer?

A. Well, it was oblong in shape and curved out on one side, so as to fit up close to the side of the office stamp.

99. X Q. The curving was on the same circle as the post-office stamp, was it not?

A. Of course it was curved out so as to fit the circle of the stamp.

100. X Q. On the acting surface of that piece glued upon and screwed to the circular side of the postmarking stamp was engraved the word "paid," was it not?

A. Yes.

101. X Q. For what purpose was that word "paid" used?

A. At the time postage could be paid in money and when paid in money the word "paid" was required to be stamped upon the face of the letter or envelope.

102 X Q. What was the size of the letter used in forming the word "paid?"

A. To the best of my recollection it was about $\frac{3}{16}$ of an inch, and a black-faced letter.

103. X Q. And that attachment was only sufficiently large enough to engrave upon its acting surface the word "paid."

A. Yes.

104. X Q. Upon which side of that circular or postmarking stamp was that word "paid" affixed in the manner and by the means described by you; I now have reference to the air line of printing that would be done by the type forming the month and day of the month?

(Objected to by counsel for defendant, because it assumes that the standard given in the question is so fixed that the witness can answer intelligibly to it.)

1853 A. My recollection is that it was at the top, over the date; the reason of that was to make the stamp more symmetrical in form, and to make the impression look neat.

105. X Q. You could more easily read it when thus arranged; I mean the post-office dating, the name of the post-office, and also the word "paid," could you not?

A. Yes.

106. X Q. Now, how many of that kind of stamp did you see your father have and use in the post-office at Pleasant Grove, in the year 1853?

A. I only recollect of this one.

107. X Q. What became of that one stamp?

A. I don't know.

108. X Q. When did you last see it?

A. I think it was in 1870.

109 X Q. Where was that?

A. In Cumberland, Maryland.

110. X Q. When was its use discontinued with the post-office at Pleasant Grove?

A. When the office was discontinued.

111. X Q. When was that?

A. When my father removed from Pleasant Grove to Cumberland; it was established through the influence of my father.

112. X Q. What were the dimensions of that post-office, inside and out, as to business or anything else, and in whose house was it kept, if in anybody's?

A. The building that it was located in was one story high and about 20 by 30 feet in size, the front part of it being used for the post-office.

113. X Q. What was the back part of it used for?

A. For storing of wood and turning.

114. X Q. How large was the business transacted at that post-office during that year?

A. I cannot say.

115. X Q. What was the salary of your father as postmaster of that office during that year?

(Objected to as immaterial, and not within the scope of the direct examination.)

1854 A. I don't know.

116. X Q. Was that post-office located in a village, on a farm, or in the woods?

(Same objection.)

A. Neither one.

117. X Q. Where was it located?

A. It was located on the National Road, and there was no house nearer than one-fourth of a mile, except the one we lived in; that was not more than ten yards off.

118 X Q. Was there any Baptist or other churches, school-houses, stores, manufactory, or other buildings for industries in that immediate neighborhood?

(Same objection.)

A. There was one church, and one school-house, each about one-quarter of a mile off.

119. X Q. I observe that you are now holding in your hand a letter; where did you get that letter, and when was it handed to you?

A. I got it from Samuel B. Clarke a few minutes ago.

120. X Q. And while you were under cross-examination?

A. Yes.

121. X Q. The Clarke referred to by you is defendant's counsel, and now present, is he not?

A. I believe so.

122. X Q. Have you any doubt about it?

A. Not any.

123. X Q. Look at the handwriting on the back of that envelope and state in whose handwriting it is, and to whom it is addressed.

A. It is my father's writing, and addressed to Samuel B. Clarke, esq.

124. X Q. And your father is expected to be a witness in this case, is he not, for the defendant?

A. He is.

Recess for dinner until 2 o'clock p. m.

1855 2 O'CLOCK p. m.

Examination resumed.

Present, same counsel as before.

125. X Q. Have you had a conversation with the defendant's counsel, during the intermission for dinner, concerning this case or anything appertaining to it?

A. Not any except in relation to the attendance of my father as a witness in this case.

126. X Q. State if you know who constructed Defendant's Exhibits 139 and 140, J. H. Zevery, March 4, 1878?

A. I did.

127. X Q. When and at whose request, if anybody's?

A. No. 139 I have had on hand for some time; I made No. 140 yesterday by request of Mr. Clarke, defendant's counsel; I sold the two to him.

130. X Q. How much did he pay you for them, separately considered?

A. I don't think it is material.

131. X Q. Question repeated.

A. He is to pay me $2.50 for both.

132. X Q. For what purpose did he buy them of you, if you know?

A. He said he wanted them for models to use in this case.

133. X Q. Did he at the same time say anything to you about your being a witness in this case?

A. He did.

134. X Q. What did he tell you he wanted to prove by you?

A. I didn't understand him to say.

135. X Q. State what you did understand him to say about those models, and about your testimony.

A. I understood him to desire to know any information or knowledge I might have in relation to this class of stamps represented by the models.

1856 136. X Q. How did he know you had any information on the subject?

A. I don't know positively how he knew it.

137. X Q. Have you had any conversation within the last three or four months with anybody on this subject as to what you knew, or didn't know about it?

A. I have.

138. X Q. With whom?

A. The postmaster of Wheeling.

139. X Q. Who else?

A. No one else, except the defendant's counsel.

140. X Q. What did the postmaster at Wheeling say to you about it?

(Objected to as immaterial, as asking hearsay, and not proper on cross-examination.)

A. He stated to me he had received a communication from New York in relation to this case, and asked me to be kind enough to state to him what I knew about these stamps, if anything.

141. X Q. Did you see the letter he had reference to, as having received it from New York?

A. I did.

142. X Q. State whether that letter was in the following words and figures, or substantially so, to wit:

OFFICE OF UNITED STATES ATTORNEY
FOR SOUTHERN DISTRICT OF N. Y.,
New York, Dec. 6, 1877.

To the Postmaster at Wheeling, West Va.:

SIR: A suit is pending against Postmaster James, of this city, on a patent granted to Marcus P. Norton in 1863.

In preparing the defense, it has become very important for me to know at what date a hand instrument by which the letter can be post-marked wholly on the envelope and apart from the stamps, and the postage-stamp cancelled at one blow, was first used in your office. I have therefore the honor to request that you kindly furnish me with information on this point, and give me at the same time the names
1857 and addresses of the witnesses by whom your information can be substantiated. An early reply will greatly oblige,

Your obedient servant,

STEWARD L. WOODFORD,
United States Attorney Southern District of N. Y.

(Same objections, and also that the circular letter itself should be produced or its loss accounted for before secondary evidence of its contents can be given.)

A. To the best of my recollection it was.

143. X Q. Was that letter part in print and part in writing, or wholly in print or wholly in writing.

(Same objections as last above.)

A. It was partly in print and partly written, to the best of my recollection.

144. X Q. How many times did the postmaster at Wheeling show you that letter?

A. Once.

145. X Q. What answer did you make to him with reference to it?

A. I told him about what I knew about those things.

146. X Q. What did he tell you that it was desirable to prove by the defendants so as to defeat the patent on which Postmaster James had been sued?

(Objected to as immaterial, and as asking for hearsay.)

A. He said it was desirable to prove, if possible, that this class of stamps, or similar stamps, had been made and used prior to the date of the Norton patent.

147. X Q. On receiving that information from the postmaster at Wheeling, what steps, if any, did you take with reference to that matter?

(Objected to as immaterial.)

1858 A. Not any, except what I have stated above.

148 X Q. Did you write to anybody on the subject then, or since then?

(Same objection.)

A. No.

149. X Q. State, if you know, the kind or the construction of the instrument now used in the post-office in this city for post-marking letters and the cancellation of postage-stamps thereon.

(Same objection, and that the question is not within the scope of the examination.)

A. I don't know of my own knowledge.

150. X Q. On your direct examination you have stated in substance

that you father had been engaged in the manufacture of wooden post-office stamps for post-marking letters; is he still in that business, or in any way connected with it?

A. No.

151. X Q. When did he discontinue that kind of business, if you know?

(Objected to as immaterial, and as not within the scope of the direct examination.)

A. In June, 1870.

152. X Q. Where was it?

A. At Cumberland, Maryland.

153. X Q. You have stated on your examination-in-chief that you are a stamp and seal manufacturer; how long have you been engaged in that business, and where—what place or places?

A. About eight years; about one year in Cumberland, Maryland, and about seven years in Wheeling, West Virginia; that is, on my own account.

154. X Q. You were your father's successor in that business in Cumberland, were you not?

A. I was.

155. X Q. You bought out his interest in the business, did you not?

1859 A. I did.

156. X Q. On you direct examination you state in substance that you have been a manufacturer of stamps and seals for twenty years; how old were you when you went into that business?

A. About twelve years of age when I commenced working for my father

157. X Q. What was the first business you did when you commenced that employment?

A. The first thing I did was to make horizontal bar cancellers.

158. X Q. In what year was that?

A. About the year 1858.

159. X Q. What did you next do after that in that shop?

A. I made the "paid," "free," and "due" stamps, of which we had a great many to make.

160. X Q. Those were each separate stamps, were they not, and for the purposes designated on their acting faces?

A. They were.

161. X Q. Look at Defendant's Exhibit 139, and also to your answer to question 42 of your direct examination, and state whether that exhibit is the device you refer to in that answer.

A. It is.

162. X Q. State the precise time when you first saw an instrument represented by Defendant's Exhibit 139, and where it was.

A. In my father's manufactory, and about the year 1860, in Cumberland, Md.

163. X Q. What do you mean when you say about the year 1860?

A. It might have been the last part of the year 1860, or it might have been the first part of the year 1861.

164. X Q. Can you state positively whether it was in the last of 1860 or the fore part of the year 1861? I desire a direct and positive answer to this question one way or the other.

A. It was about the latter part of 1860; I cannot give the exact date.

1860 165. X Q. Why are you unable to give a positive answer as to

the time when you first saw, anywhere, an instrument like Defendant's Exhibit 139?

A. Because we made but few of them at that time, and not having any books or orders to refer to I am unable to give a more exact date.

166. X Q. How many of such instruments were made during the time referred to in your last two or three answers, and also referred to in your direct answer to question No. 42?

A. I can't give the exact figures, but there were not very many of them.

167. X Q. Give your best recollection of the number?

A. I can't do that.

168. X Q. What became of those instruments?

A. They were sent out to postmasters.

169. X Q. To what postmasters, and where?

A. Not having any records I cannot give the names.

170. X Q. Where are those stamps now?

A. I don't know.

171. X Q. Were they furnished by directions of the Postmaster-General at Washington?

A. No.

172. X Q. Were they furnished by any authority of any one of the Post Office Department at Washington?

A. No.

173. X Q. Who paid for those stamps, if anybody?

A. The persons ordering them, or the persons to whom they were sent.

174. X Q. Did you send any to anybody without being paid for them.

A. The rule of the business was cash in advance; no stamps were sent out without being paid for.

175. X Q. Now give the names, residences, and names of the post-offices to whom those stamps were sent, or any one of them.

A. Not having any records I cannot give the names.

1861 176. X Q. What do you mean by records?

A. Book of orders received and filled.

177. X Q. Where is that book of orders received and filled, referred to in your last answer.

A. To the best of my knowledge they have been destroyed by fire.

178. X Q. By what fire and when was it?

A. I think they were burned about the time I bought my father out; they were burned by a bonfire, and lot of old papers at the same time.

179. X Q. Not being able to state, either on your direct examination or your cross examination, the time when you first saw a contrivance like Defendant's Exhibit 139, can you state the time when you saw such a device a second time, if at all?

(Objected to as misconstruing what the witness has stated.)

A. In the winter of 1860 or 1861.

180. X Q. And that was the same stamp of which you say there were a very few made, was it?

A. It was.

181. X Q. After that first lot, of which you say there were a very few made, were there any more of that kind of instrument made at your father's manufactory?

A. Yes.

182. X Q. In what year and how many?

A. They were made from time to time, whenever ordered?

183. X Q. Down to when?

A. To the time he sold out to me.

184. X Q. State the names of any persons or postmasters ordering any such kind of device as Defendant's Exhibit 139.

A. Not having any records, I cannot answer.

185. X Q. You cannot state the name of a single person ordering such a kind of an instrument as Defendant's Exhibit 139, during that time, can you?

A. I cannot.

1862 186. X Q. State the name of a single person for whom and to whom your father made and sold, or caused to be made and sold, an instrument represented by Defendant's Exhibit 139.

A. Not having any records, I cannot answer.

187. X Q. Your recollections of events and things that took place when you were seven or eight years old are more bright and to be depended upon than events or things that may have taken place in 1861, are they not?

A. I don't think they are.

188. X Q. About the same thing, are they not; if not, which do you remember best?

A. About the same.

189. X Q. Are you at the present time engaged in the business of making and selling instruments like Defendant's Exhibit 139?

A. I make or furnish all kinds of post-office stamps.

190. X Q. Did you understand my last question the time you made answer to it?

A. I think I did.

191. X Q. Have you any doubt about it?

A. I think not.

192. X Q. Having stated that you understood ques. No. 189 at the time you made answer to it, and that you had no doubt on that subject, the question is here repeated to you and the examiner requested to read it for your further information, and you are respectfully requested to answer it by "Yes" or "No."

(Objected to as immaterial and not as within the scope of direct examination.)

A. My answer is the same as to question 189, with the word "all" underscored.

193. X Q. Do you refuse to answer the last question as therein requested?

(Same objection.)

A. I think I have answered it.

1863 194. X Q. The question is whether, since you have been in business you have made and sold to anybody an instrument like, or substantially like, Defendant's Exhibit 139, which I now show you.

(Same objection.)

A. I think my answer to question 189 is an answer to this question, and further, I think these questions are not pertinent to the question or case now under consideration.

195. X Q. Without evasion, and without an attempt on your part to dodge and to refuse a fair and manly answer to a question which you say you understand, question 194 is now and here repeated, and the examiner is requested to read you that question, and you are kindly invited to give it a fair, square, and manly answer, because you know, if you know anything, whether you have made and sold, since you have

been in business, an instrument like, or substantially like, Defendant's Exhibit 139, which I now show to you for your inspection.

(Same objection.)

A. I think I have answered the question in a fair manner.

196. X Q. Is that the only answer you can and will give to the subject matter of the inquiry?

(Same objection.)

A. That is my answer.

197. X Q. What is your answer?

(Same objection.)

A. My answer is the same as above given.

198. X Q. Did you, at any time since you were seven years old down to the present time, make and sell an instrument like, or substantially like, Defendant's Exhibit 139 which I now show you for your inspection, other than this exhibit itself?

(Same objection.)

1864 A. I made them for my father.

199. X Q. Have you ever made them for yourself of that kind?

A. My answer is the same as to 189.

200. X Q. Is that the only answer you can and will give to the last question.

(Same objection.)

A. That is my answer.

201. X Q. During the last eight years that you have been in business in this city and in Cumberland, how many instruments have you made like, or substantially like, Defendant's Exhibit 139, which I now show you for your inspection?

(Same objection.)

A. I have made many kinds, and cannot tell how many of any one kind I have made.

202. X Q. Do you keep books of account at your establishment here in this city?

(Same objection.)

A. do.

203. X Q. Will those books show the kind of instruments that have been made by you since you have been in business?

(Same objection.)

A. They will.

204. X Q. Will they show how many have been sold of each kind?

(Same objection.)

A. They will.

205. X Q. Will you bring those books before this special examiner, for the sole and only purpose of ascertaining whether you have made and sold any instrument or instruments like, or substantially like, Defendant's Exhibit 139, which I now show you for your inspection?

(Same objection.)

1865 A. Believing that these questions are not pertinent to the case now pending, I cannot consent to bring my books before this special examiner.

206. X Q. You refuse, then, to bring your books here for the purpose stated in the last question, do you?

(Same objection.)

A. I do, unless it is required by the special examiner.

207. X Q. What do you think the special examiner has to do with the matter stated in questions 205 and 206?

(Same objection.)

A. What I mean by that is that I will not produce my books for the purposes mentioned unless it is shown clearly to me that I must do it, or can be compelled to do so by law.

208. X Q. Look at Defendant's Exhibit 140 and state whether that is the instrument referred to in your answer to question 43 of your direct examination, and also referred to by you in your answer to question 8 of that same examination as the second class.

A. It is.

209. X Q. When and by whom, if you know, was Defendant's Exhibit 140 made?

A. It was made yesterday by myself.

210. X Q. For whom and for what purpose was it made?

A. For Mr. Clarke, defendant's counsel, to be used as a model in this case.

211. X Q. On your direct examination, defendant's counsel asked you the following question, to wit (No. 44): "Fix the earliest date you can at which combined instruments of the second class, described by you, represented by the model (Defendant's Exhibit 140), were made in
1866 your father's manufactory and sold." Under objections to the question, you made the following answer, to wit: "To the best of my recollection they were made in the latter part of 1860." How do you know, and by what means are you enabled to state, that a device like that exhibit was made in the latter part of the year 1860?

A. Well, I associate with that the fact of the beginning of the war in the spring of the year 1861; my recollection is it was some months before that time.

212. X Q. In what month did the war of 1861 commence?

A. In the month of April.

213. X Q. Now, how many months before that time was it that you first saw an instrument like, or substantially like, Defendant's Exhibit 140, which I now hand to you for your inspection?

A. I cannot give the exact time.

214. X Q. How many such instruments as that did you ever see?

A. I can't say, exactly; not very many like that one.

215. X Q. About how many, and where was it?

A. It was in Cumberland, Md.; just how many I could not say.

216. X Q. What has become of those you did see at Cumberland, Md.?

A. I don't know.

217. X Q. Do you know where they now are?

A. No.

218. X Q. When did you last see them and where was it?

A. It was in the same place, Cumberland, Md., and within a year or two after I first saw them.

219. X Q. State the name of any person to whom any such device as Defendant's Exhibit 140 was ever sold.

A. Not having any records I cannot give it.

220. X Q. State the place and time where any instrument like, or substantially like, Def't's Exhibit 140 was ever used.

1867 A. Well, not having any records I can't say, excepting what we used ourselves.

221. X Q. What do you mean by the words "used ourselves," in the last answer, as there stated?

A. I mean the stamps used in my father's manufactory as samples.

222. X Q. And your last answer is all you know upon the subject inquired about, is it?

A. It is.

223. X Q. How many classes of stamps do you refer to in your answer to question 8 of your direct examination?

A. Three.

224. X Q. Is Defendant's Exhibit 139, which I now show you, class 1?

A. It is.

225. X Q. Is Defendant's Exhibit 140, which I now show you, class 2?

A. It is.

226. X Q. Have you, during this examination, produced or offered to produce a model representing what you call class 3 of these post-marking instruments?

A. No.

227. X Q. But you describe' that in your answer to question 8, did you not?

A. I did.

228. X Q. During your direct examination defendant's counsel put *to* question No. 44, which is in these words, viz: "Fix the earliest date you can at which combined instruments of the third class described by you were made by you in your father's manufactory and sold." And under objections you answered as follows: "About the same time the others were made." Thereupon defendant's counsel put to you this question, to wit: "Do you mean as early as 1860?" And under objections your answer was, "I do." In what part of the year 1860 do you have reference to in those several answers?

A. To the latter part.

1868 229. X Q. How do you know, and by what means are you able to state, that it was during the latter part of the year 1860?

A. The answer to this question is the same as the answer to a former question, viz: By association at the beginning of the late war, in the spring of 1861, with the fact that these stamps were made a few months prior to that time.

230. X Q. Will you swear positively whether it was the latter part of the year 1860, or the fore part of the year 1861?

A. No; I will say it was about the latter part of 1860.

231. X Q. You mean by that, do you not, that you cannot now positively say whether it was in the months of November and December of 1860, or the months of January and February of 1861?

A. That is as near as I can fix the date.

232. X Q. How many of this third class of stamps mere made at your father's manufactory at the time, of which you have no positive recollections, as already stated by you?

A. I can't say how many, but there was very few of them.

233. X Q. What has become of those stamps?

A. It is beyond my recollection.

234. X Q. Have you seen them since that time?

A. I saw them for some time after they were finished, probably, a year or two, when they were sent out or lost; I don't know what became of them; they were only made occasionally after that.

235. X Q. State the name of any person who ever used, and where used, one or more of the stamps of the third class you have described?

A. I cannot say, excepting the one that was used in the Pleasant Grove, Md., post-office; as to the others I don't know to whom they were sent or were used, not having any records to show.

Six o'clock p. m. having arrived, this examination is adjourned to tomorrow, March 6, 1878, at 8 o'clock a. m.

HANNIBAL FORBES,
Special Examiner.

1869 MARCH 6, 1878—8 o'clock a. m.

Met pursuant to adjournment.

Present, same counsel as before.

236. X Q. Which of the three several classes of stamps described by you, in answer to question 8, and also in answer to question 39 of your direct examination, were first made some time during the last part of the year 1860, or the first part of the year 1861, which you state on both your direct and cross examination you do not remember and cannot swear positively as to the time in which they were made?

A. They were all three made about the same time, i. e., to the best of my recollection, about the latter part of 1860; I cannot say which was made first.

237. X Q. You do not remember which of the three contrivances were first made, or when they were made, do you?

A. My answer to that is the same as to the previous question.

238 X Q. Did you understand the last question at the time you made answer to it?

A. I think so.

239. X Q. State what that question required of you to state.

A. I understand it was intended to get me to say which of the three kinds was made first and when.

240. X Q. It did not require of you any such thing; it simply inquired of you to state whether you remembered which of the instruments referred to was first made, and whether from your memory or anything else you could tell the time, I mean the exact time, in which they or either of them were made.

A. I think that question was answered.

241 and 242. X Q. I desire you to answer it again, although you may have answered it fifty times previously in your own opinion—you are not to be both court and witness in this cause.

A. My answer is they were all three made about the same time, i. e., to the best of my recollection, about the latter part of 1860; I
1870 cannot say which was made first; this is as definite answer as I can give to this question.

243. X Q. While answering the last question you read from a paper held in your hand; what paper was that, and what did you read to the examiner as a part of your answer?

A. It is sheet No. 49, and my previous answer to cross-question 236 of this record, and was what I read to the examiner as part answer to last question.

244. X Q. You have now given your most positive as well as your best recollections concerning the matter about which you have been inquired of during your cross-examination this morning, have you?

A. I have.

245. X Q. Then I understand you to say that you will not swear positively as to which of those three instruments was first made, nor as to the time in which they or either of them were first made; do I understand you correctly on those matters? I ask you to state your answer categorically, and without any reference whatever to any other matter or thing than that contained in the question, and when you have thus answered you are requested to say no more until you are farther interrogated by examining counsel.

A. No.

246. X Q. Please state, in view of your last answer, which of those three instruments were first made; I now refer to Defendant's Exhibits 139, 140, and the other contrivance described by you on your direct

examination, without the use of any model, and, whatever answer you give, I desire you to be positive in it.

A. To the best of my recollection the only stamp of either kind that I know of having been made and used prior to the latter part of 1860 is the one referred to in my answer to question 48 on direct examination; that stamp was similar to class 3, mentioned in answer to question 8; as to which of the kinds were first made and sold in the latter
1871 part of 1860 or the fore part of 1861, I cannot swear positively.

247. X Q. At the time you answered the last question did you understand it?

A. I believe I did.

248. X Q. Do you know whether you did or not?

A. Yes.

249. X Q. Which is it?

A. Well, I understood it.

250. X Q. Then if you did understand that question as you swear you did understand it at the time, why did you not answer it as examining counsel requested you to do in the question itself, which the examiner will please read for your further information?

A. Well, my answer was a direct and positive answer to that question 246, as requested.

251. X Q. I again ask you, and for the third or fourth time, to state to this court which of the devices described by you in answer to the several questions put to you on your direct examination, was first made. If you remember, say so, and if you do not remember, say that.

A. The stamp referred to by me, in answer to question 48 I think it is, on direct examination, is the one that I referred to as having been used in the Pleasant Grove, Md., post-office, it being of the third class or kind mentioned in answer to question 8 on direct examination; therefore the third class or kind was first made.

252. X Q. On your direct examination, in answer to questions 1 and 2, you state in substance that for the last past eight years your business has been and now is a manufacturer of "stamps and seals" and "seals and stamps." I desire you at this time to describe with a great deal of care the construction of each and every stamp or seal made by you, as stated by you in answer to those questions, giving the several parts thereof, their relations to each other, and the functions performed or the results attained by the same.

1872 (Objected to as immaterial, and as not coming within the scope of his direct examination.)

A. I don't desire to describe any or all of the "stamps or seals" or "seals and stamps," because I do not consider it pertinent to the question or to this case.

253. X Q. You have now stated your sole and only reasons for refusing to answer the last question, have you?

(Same objection.)

A. I have, with the additional reason that I do not care to make known any matters of my private business.

254. X Q. You have not been inquired of concerning your private business, but you have been inquired to state concerning that which you swear on your direct examination is your business, and has for eight years been your business, which in your own words is as follows: "I have been manufacturing stamps for twenty years, and seals and stamps on my own account for eight years." I again ask you to describe in detail, and with a great deal of care, the construction of those devices or instruments which you say you have been engaged in manu-

facturing during the past twenty years, and up to the time you were sworn as a witness in this cause.

(Same objection.)

A. I am not disposed to describe any of the articles manufactured by me.

255. X Q. With painful anxiety during your cross-examination I have observed that you have several times undertaken to teach this court what is and what is not "pertinent" to the issues or matters involved in this cause. Do you regard it as a part of the business of a witness to refuse to answer questions as you have several times refused, because you did not regard the question as a proper one or pertinent to any of the matters involved in this cause?

1873 (Same objection.)

A. I will leave that matter with the court.

256. X Q. Have you at the present time any contract or contracts with the Post-Office Department at Washington for the manufacture of seals, stamps of any kind, mail bags, locks and keys, postal railway cars, postage-stamps, letter envelopes, or any other kind of thing that you can remember as being required by that department for use in the postal service of the government?

(Same objection.)

A. No; neither directly or indirectly.

257. X Q. Have you ever had any such contract directly or indirectly?

A. Yes.

258. X Q. When was that?

A. Indirectly from July, 1870, to April 1st, 1871, and directly for four years beginning April 1, 1871.

259. X Q. What did you manufacture for the Post-Office Department at Washington during time stated in your last answer?

(Same objection.)

A. I manufactured what was known as the Class 3 stamps—Class 3 stamps made of boxwood, in circular form, about one inch in diameter, with the name of the office and State engraved on the face, mortised for the insertion of type for the days and months, with a brass thumb screw to hold the type in, and a black-walnut handle; also what was known as miscellaneous rating stamps, such as "Due 3," "Due 6," "Forwarded," "Missent, "Held for postage," "Not called for," and similar words or figures. These stamps were made with a boxwood face and a black-walnut handle.

260. X Q. Please state, if you remember, how the third class

1874 of stamps which you named compare in construction with Def't's Exhibit 139, which I now hand you.

(Same objection.)

A. It is like it in general form and shape, leaving off the brass tubes; it had no canceller attachment and no brass rings.

261. X Q. Since April, 1863, and until now, have you submitted any bids or propositions to the Post Office Department at Washington for the manufacture of the combined post-marking and postage-cancelling instrument since then and now in general and continuous use in the postal service, by order of the Postmaster-General, or anything substantially the same?

(Same objection.)

A. No.

262. X Q. Has your father ever submitted a bid or proposition of the

kind inquired about in the last question, and within the time there stated?

(Same objection.)

A. I can't say positively.

263. X Q. Give your best recollections about it.

A. I would not like to trust to memory on that question.

264. X Q. Were you in the city of Washington in the month of April, 1863, in company with your father?

(Same objection.)

A. To the best of my recollection I was not there in April.

265. X Q. Well, were you there at any other time during that year?

A. I think I was there some time in the month of March. My father was along.

266. X Q. Did your father submit a bid that year to the Post-
1875 Office Department to manufacture for the postal service the kind of instrument last above inquired about?

A. I know he submitted a bid for the making of stamps, but whether class or kind last inquired about were included I cannot now say.

267. X Q. Do you know whether since that time and until the present time he has at any time submitted a bid or proposition to that department of the kind above inquired about?

(Same objection.)

A. I don't know whether he has or not.

268. X Q. Has your father been a contractor with the Post-Office Department for the manufacture of, and to use in the postal service, the kind of miscellaneous stamps which you have described to-day during your cross-examination?

(Same objection.)

A. He has.

269. X Q. Do you remember when that kind of business commenced, and how long and through what years it continued with that department?

(Same objection.)

A. My first recollection of the making of those stamps was when I first commenced making them, about the year 1858; through each year and up to the spring of 1871, with the exception of an interval of four years; when that was I don't remember.

270. X Q. Since April, 1871, and until the present time, state, if you know, who has manufactured that kind of stamp for the Post-Office Department at Washington.

A. I made them for four years. I do not know who has made them since.

271. X Q. Did you at any time since "the latter part of 1860 or the fore part of 1861," in any manner whatever, communicate to the Post-Office Department, or any officer in that department, in Wash-
1876 ington, any matter or thing concerning the devices referred to in your answer to question 8, two of which devices you say are represented by Def't's Exhibit 139 and 140.

A. No.

272. X Q. To your knowledge, or from any information received by you from your father, did he ever communicate any information in the manner or of the kind or character inquired about in the last question?

(Objected to, asking for hearsay.)

A. I don't know of my own knowledge.

273. X Q. Since April 1st, 1860, how many times have you been to

your uncle's, A. N. Zevely's, house in the city of Washington; about how many times, up to 1870?

A. Probably 3 or 4 times, certainly not more than 5 times, to the best of my recollection. I also saw him at my father's house one time.

274. X Q. During those times, did you ever have any conversation with your uncle, A. N. Zevely, concerning the matters, or any of them, about which you have testified during this examination?

A. No.

NOTE BY EXAMINER.—Any questions put to this witness while under cross-examination with reference to a letter handed the witness by defendant's counsel and from E. S. Zevely to the counsel are hereby eliminated from this record by complainant's counsel, and no reference whatever shall be made to them, or either of them, during the final hearing of this cause, those questions having been put to witnesses by complainant's counsel under what has since appeared to be a misapprehension by counsel of the purpose of the handing of that letter to the witness while under cross-examination, the witness not having read the letter.

1877 Redirect by Mr. CLARKE:

275. Re D. Q. Have you, either on your direct or cross-examination, meant to convey the impression that the combined instruments which you have described were not made and sold in your father's shop prior to 1860, or has your intention been simply to convey the idea that you cannot recollect with certainty of their having been made before the latter part of 1860?

(Objected to by complainant's counsel on the following grounds: 1st, as leading; 2d, as asking the witness to sum up his own testimony before this court; 3d, as expressing a want of ability and integrity of this court to understand and pass its judgment upon the testimony of this witness already rendered; and, 4th, the witness having been already thoroughly examined, both by the direct and cross-examination, upon the various subject matters stated in the question, that testimony must stand as recorded for the inspection and judgment of this court, unless the witness shall desire to make mere verbal corrections—the question is therefore inadmissible and improper.)

A. My intention was to convey the idea that I could not recollect of their having been made and sold prior to that time.

Recross-examination by Mr. NORTON:

276. Re X Q. Is there anything you have testified to during your cross examination that you now and here desire to change, modify, or in anywise alter?

A. There may be after I have heard it reread.

277. Re X Q. Have you any doubt about having testified to the truth, the whole truth, and nothing but the truth on and during your entire cross-examination in this case?

1878 A. Not any, according to the best of my knowledge and belief.

278. Re X Q. Shall I understand you to state by your last answer that you cannot now tell whether you testified to the truth, the whole truth, and nothing but the truth upon and during your entire cross-examination in this cause?

A. No.

EXAMINER'S NOTE.—The deposition having been read to the witness, he states he desires to make no correction.

JOHN H. ZEVELY.

Subscribed and sworn to before me this 6th day of March, 1878.

HANNIBAL FORBES,
Special Examiner.

Recess till 2 o'clock.
Met pursuant to recess.
Present, same counsel as before.

EDMUND S. ZEVELY, a witness on behalf of defendant, being first duly sworn, deposes and says:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Edmund S. Zevely; I am in my fifty-ninth year; reside at Cairo, West Virginia, and am a printer and publisher. For about twenty years I was in the stamp business, from 1850 onward.

2. Q. What sort of stamps, and for what purpose?

A. My principal business was making post-office stamps. I made all kinds of stamps, however, for private use.

1880 3. Q. Did you make instruments for the cancellation of postage stamps?

A. Yes, sir; various kinds.

4. Q. Describe some of the earliest sorts of cancelling stamp.

A. They were usually made at first with parallel cross-bars, cross the surface or acting face, then with concentric circles afterwards. Then we attached a tube on a handle, and put cork in it or any other substance. These were separate cancellers.

5. Q. Make a drawing of the canceller having the tube in which cork was put.

EXAMINER'S NOTE.—Witness makes drawing and presents it to the examiner, and it is marked Defendant's Exhibit 141; E. S. Zeverly, March 6, 1878; H. F., sp'l examiner.

(Here follows diagram marked page 1879.)

6. Q. In this drawing you have made certain letters and numbers. State what they each designate.

(Objected to for two reasons: 1st, defendant's counsel told the witness to put letter C on to represent cork; 2d, defendant's counsel told witness to make a heavy line to represent cork. The exhibit having been manufactured under such instructions, is an incompetent and an improper paper to submit to the court for any purpose.)

A. Fig. 1 exhibits the whole stamp; fig. 2 represents the end view of it with cross-bars; and fig. 3 the concentric circles on the end; from A to A is the wooden handle; B is the brass tube driven over that handle; C is the cork in the brass tube; the word "cork" is also written; fig. 1 represents the shape of a canceller either with or without the brass tube.

(Defendant's counsel offers drawing in evidence, marked as above indicated.)

1881 (Complainant's counsel objects to it as incompetent, improper, and inadmissible, and objects to any and all questions concerning it for the same reasons.)

7. Q. What was the object of the brass tube?

A. To make it more durable, and to afford a receptacle for cork, if so used.

8. Q. Mention some other substance that was used beside cork, that was used with the brass tube.

(Same objections, and as leading, and also as assuming.)

A. Wood and solid gum were sometimes used.

9. Q. India rubber, you mean?

(Objected to for same reasons as last above, and on ground of "cramming" witness with an answer.)

A. Yes; I mean' India rubber when I said gum.

10. Q. State when a canceller of the shape exhibited in Defendant's Exhibit 141, having a brass tube containing wood for a canceller, was first made by you.

(Objected to as leading, improper, and inadmissible.)

A. As soon as the postage stamps were adopted by the department we commenced to make such things.

11. Q. Where were you at the time said canceller was made?

A. At Pleasant Grove, Allegheny County, Maryland, five miles from Cumberland.

12. Q. Did you have any connection with the post-office at that place; if so, what?

A. I was postmaster, and had a contract with the department for making stamps.

13. Q. When did you cease to be postmaster?

A. I think it was in 1853.

14. Q. What was done with the canceller that was made while you were postmaster at Pleasant Grove?

1882 A. I don't exactly understand that question. If it is meant that particular canceller I used as postmaster, it was afterwards turned over with other rubbish when I resigned, to my son. I presume my son has it yet; but a similar stamp was exhibited in the department by me.

15. Q. Did you use a canceller like that represented by Exhibit 141 while you were postmaster at Pleasant Grove?

(Objected to for the same reason as last above stated, and for the further reason the witness has made full answer above. It is therefore improper to continue to worry this witness into answers he would not give if proper questions were put to him.)

A. I did.

16. Q. Having cork in a brass tube?

(Same objections as last above.)

A. I did.

17. Q. Did you make any others of the sort while you were postmaster there?

A. Yes, sir; I did.

18. Q. What did you do with them?

A. Some were sold, some exhibited in the department, and others perhaps left in this mass of rubbish I spoke of before as turned over to my son.

19. Q. Did you make, while you were postmaster at Pleasant Grove, postmarking stamps—I mean stamps for printing dates and the names of post-offices on envelopes?

(Objected to as not only leading, but as a monstrous proposition for a man who calls himself a lawyer to submit to a witness on his examination-in-chief.)

A. Yes; I made many of them, hundreds of thousands of them.

1883 (Answer objected to on the ground that it is not the evidence of the witness on the stand, as by reference to the question will fully appear.)

20. Q. Describe one of them, referring for illustration, if you please,

to the models marked Defendant's Exhibits 139 and 140, J. H. Zevely, March 4, 1878, H. F., spl. examiner, now lying on the table.

(Objected to as being improper to put this question to this witness after examining counsel has himself not only described what he wants to show by a previous question, but improperly produced and put upon the table before the witness two models proven by the last witness to have been constructed recently, and which the witness never saw until now.)

A. I was the first to originate this sort and one or two other combination stamps.

Defendant's counsel interrupts witness, and states that his question did not refer to the models in order that the witness might testify about combination stamps, but in order that, by referring to the different parts of one of these models, he might describe intelligently to the court, who will inspect the model, the sort of postmarking stamps of which the witness has testified that he made many while he was postmaster at Pleasant Grove.

(Complainant's counsel objects to this interruption of a witness when giving an answer to the question, as being highly improper in conducting the examination of the witness.

Complainant's counsel suggests the propriety of excusing the further attendance of this witness from the stand and that de-
1884 fendant's counsel be examined in his stead and place if this sort of illegal and improper mode of conducting the examination of a witness-in-chief is to continue.)

A. I meant I made many like this Exhibit 139, excepting the canceller was not on it, and mostly made of wood without the brass.

21. Q. Did you ever make these postmarking stamps in combination with any other sort of stamp while you were postmaster at Pleasant Grove?

(Objected to by complainant's counsel as being improper and leading.)

A. I did.

22. Q. With what other sort?

A. With cancellers attached, attachable or detachable at pleasure, with the words "free," "paid," and all that sort of thing.

23. Q. Describe one of these combinations in detail.

(Objected to as improper, for the following reasons: First, defendant's counsel, by previous questions, has described to the witness what he desires him to testify about on this subject; and, second, defendant's counsel has improperly and with impropriety produced two new models of a recent construction, and spread them out on the table before the witness, where they now are.)

A. Well, one of these stamps was made similar to this Exhibit 139, without the canceller attached, but with a solid fixture of wood glued and screwed to one side of it, having on the face of it, in a line with the face of the first stamp or principal stamp, the word "paid," or "free," or anything of the kind that might be wanted to mark on the letter at one blow with the post-marker.

24. Q. Was that combination used in your post-office?

1885 (Objected to as immaterial and incompetent, as no matter of that kind is involved in this suit.)

A. It was.

25. Q. Did you ever manufacture combined post-markers and cancellers?

A. I did.

26. Q. Describe the sort or sorts so manufactured.

A. Must I describe them fully, or can I refer to these models?

(Any further answer to the above question is objected to by complainant's counsel, for the reason that witness has already made his answer.)

Defendant's counsel says to the witness to go ahead in any way you please.

A. Well, then, the shortest way to say is I made them similar to these, Defendant's Exhibits 139 and 140.

27. Q. When?

A. Commencing in the year 1850 onwards, and other years thereafter.

28. Q. Mention the earliest year you can in which you made a combined post-marker and canceller, constructed precisely like either Defendant's Exhibit 139 or Defendant's Exhibit 140.

(Objected to as leading, and as a monstrous proposition to submit to this witness in view of the questions and answers spread on the record already.)

A. I think it was not later than 1859.

29. Q. How many did you make, and what did you do with them?

A. I can't answer that exactly. What were made were sold.

30. Q. Did you make any in 1860?

A. Yes.

31. Q. Did you make any in 1861?

1886 A. Yes, and every year after that.

32. Q. Do you know John H. Zevely, the witness who preceded you in this case?

A. I do.

33-4-5-36-7-8-9-40-1-2 and 43. Q. Any relative of yours?

A. He is.

44. Q. What?

A. A son.

Cross-examination by Mr NORTON:

45. X Q. Where do you now reside, Mr. Zevely?

A. At Cairo, Ritchie County, West Virginia.

46. X Q. How far distant is that?

A. It depends on how you travel, whether by air line, cars or balloon; it is 175 miles by cars the way I came and have to travel.

47. X Q. How did you first come to become a witness in this cause?

A. I was first written to by Steward L. Woodford, of New York, and I was then telegraphed to by Mr. Clarke, now present.

48. X Q. Have you Mr. Woodford's letter with you?

A. I have.

49. X Q. Will you allow me to examine it?

A. I don't know that I have any objections.

(Witness produces paper.)

50. X Q. This letter which you have handed me contains an inclosure in print; will you here produce both the letter and that enclosure as a part of your cross-examination in this case?

A. I have nothing to do with it; I simply gave it to you because you asked me for it; I have no interest in it.

51. X Q. In view of your last answer are you willing that I should offer in evidence at this time and place both the letter and the two sheets of paper with the print thereon, and inclosed in the said letter.

1887 A. I don't think I am authorized without Mr. Woodford's consent; Mr. Clarke, for him, consents, and therefore it is offered.

Complainant's counsel requests the examiner to mark the letter referred to, dated New York, February 2, 1878, as Complainant's Exhibit CC, E. S. Zevely, March 6, 1878, and being so marked the same is now offered in evidence and for the purposes of evidence in this cause. The same is so received and marked.

Complainant's counsel also offers in evidence, and for the purposes of evidence, two sheets of printed paper inclosed in the above described letter, and requests the examiner to mark each sheet Complainant's Exhibit DD, E. S. Zevely, March 6, 1878. The same is so received and marked. The examiner is requested to note that the letter above described contains three sheets.

52. X Q. Have you any other letter or letters purporting to be from Stewart L. Woodford, of New York, about this matter?

A. One more.

53. X Q. Will you allow me to examine it?

A. I will.

Letter handed to complainant's counsel by the witness.

54. X Q. Will you allow me to put this letter in evidence, as I have the one above described?

A. With Mr. Clarke's consent I will.

Letter offered in evidence, and for the purposes of evidence, by complainant's counsel, and examiner requested to mark the same Complainant's Exhibit EE, E. S. Zevely, March 6, 1878; H. F., Sp'l Ex., and the same is so received and marked.

1888 55. X Q. In what year did you first commence to manufacture stamps, and where was it? I now refer to what you call "stamp business" in your answer to question No. 1 of your direct examination.

A. In 1850, at Pleasant Grove.

56. X Q. How many stamps did you make at Pleasant Grove in 1850, and what were they used for, if for anything?

A. I made a good many hundred; they were sold to the department and to private parties.

57. X Q. Do you mean, in your last answer, the Post-Office Department at Washington?

A. I do.

58. X Q. What kind of stamps did you make for the Post Office Department in 1850?

A. They were what we call the office stamp, with dates.

59. X Q. During the year of 1857, did you make any stamps for the Post-Office Department at Washington?

A. I did.

60. X Q. What kind of stamps were those, and what were they for?

A. They were office stamps and rating stamps used in post-offices.

61. X Q. What is a rating stamp?

A. A stamp to mark the rate or price of postage on the letter.

62. X Q. You mean the unpaid postage?

A. Yes.

63. X Q. What is an office stamp?

A. That's a stamp to mark the name of the office and date.

64. X Q. The name of the post-office where the letter was mailed, and the date showing the time at which it was mailed; is that it?

A. It is.

65. X Q. Did you in 1852 manufacture stamps for the Post Office Department?

A. I did.

66. X Q. What were they, and what were they for?

1889 A. The same kind above described, and for the same purpose.

67. X Q. Did you during the year 1853 make stamps for the Post-Office Department at Washington?

A. I did.

68. X Q. What were they, and what were they for?

A. The same answer as the last.

69. X Q. Did you during the year 1854 manufacture stamps for the Post-Office Department at Washington, and if you did, what were they, and what were they for?

A. I did, and they were the same kind and for the same purposes as above mentioned.

70. X Q. Did you during the years 1855, 1856, 1857 and 1858 manufacture stamps for the Post-Office Department at Washington? and if you did, state what they were, and what they were for.

A. I did, and they were the same kind and for the same purposes as before stated.

71. X Q. Did you during the years 1859, 1860, 1861 and 1862 manufacture stamps for the Post Office Department at Washington? and if you did, what were they, and what were they for.

A. I did not; I failed to get the contract for those four years.

72. X Q. What business were you engaged in during those four years?

A. I don't care about answering the question.

73. X Q. Why do you refuse to answer the last questions?

A. Because it would occupy too much space, and it is irrelevant to the question. I would like to make one addition. I will say I made many stamps on private orders during those four years; I wasn't out of the business.

74. X Q. For whom did you make stamps during those four years on private orders?

A. I made them for my own benefit for hundreds of people in all parts of the United States, as I had been doing for years before. They were same kind of stamps as I had been making.

1890 75. X Q. Returning to the years when you say you made stamps for the Post-Office Department at Washington, did you have a contract in writing with that department under which you made and furnished to that department the stamps inquired about within each of those years?

A. Yes; I had regular written contracts in duplicate for four years at a time, except for the year 1850, I had only a trial order. Then after that I had the regular contracts in writing.

76 & 77. X Q. How many such written contracts did you have with the Post-Office Department?

A. I had four such contracts in all, with an interregnum of four years from April, 1859, to April, 1863.

78. X Q. Have you any of those contracts in your possession, or any duplicates of them?

A. I have not, for the reason that I sold out every thing at Cumberland, Md., and gave up my business to my son John. I don't know what became of the papers; they were all destroyed so far as I know.

79. X Q. Those contracts with the Post Office Department would specify the kind and quality of the stamp you were to make under them, would they not?

A. They would and did show.

80. X Q. You obtained these contracts in the usual way of bidding, or rather I may say by submitting a proposition in writing accompanied

by a sample model of the kind of stamp you were to make, did you not?

A. Yes, sir; I did.

81. X Q. Of what material were such stamps generally made by you under those contracts?

A. Made of wood, a certain class being brass bound, and others of electrotype acting faces. The wooden ones had metal type for the dates, and the dates were held in by thumb-screw.

82. X Q. If you know will you state the reason why you did not obtain the contract from the Post-Office Department covering the time between April, 1859, and April, 1863?

1891 A. I was underbid—it was let out to the lowest bidder.

83. X Q. During the year commencing April 1st, 1863, and ending April 1st, 1867, did you have a contract with the Post-Office Department to furnish for it stamps; and if you did, what were they, and what were they used for?

A. I had such a contract—making all kinds of stamps used in post-offices.

84. X Q. Well, state whether that contract described in detail the kinds of stamps you were to make under it.

A. It did.

85. X Q. Under that contract, did you make for the department the combined postmarking and cancelling instrument then and now in use in the postal service, by direction of the Postmaster-General?

A. I think I did, for a certain class of offices; I made a stamp similar to defendant's "Exhibit 139," under that contract, I think, and I certainly did under the next contract.

86. X Q. How many combined stamps did you make for the Post-Office Department under that contract?

A. It is impossible to say; I made a good many of them—hundreds, and maybe thousands.

87. X Q. At the time of letting of that contract, and in your bidding or proposition to furnish that department with such combined stamp, did you furnish a sample model of the kind you were to make under that contract?

A. Yes, sir; I did.

88. X Q. How would that sample model campare with Defendant's Exhibit 139, now before you?

A. It would be almost precisely a copy of it exactly.

89. X Q. Previous to this contract under consideration, did you make for the Post-Office Department, for use in the postal service, postmarking and postage cancelling stamp such as your last answer to and the last question describes?

1892 A. I am not certain about that; I think I did; I know they ordered some few, but they did not order them largely till the last.

90. X Q. In your last answer you have said "they ordered them"; what do you mean by that, and who do you mean?

A. The post-office official gentlemen having charge of that particular business at Washington, the stamp agents, one of the officers, First Assistant Postmaster-General, under whom the stamp agent acts, and the Postmaster-General; I mean these gentlemen when I use the word "they."

91. X Q. Under what contract with the department were those combined stamps made, to which you have reference in your last two or three answers; state the month and year when it commenced, and the month and year when it terminated.

A. I think I have already answered that question in effect; they were made under those last several contracts; they all commenced in April and ended in April in the years already mentioned.

92. X Q. Is that the best answer you can give to that question?

A. I think it expresses all that is necessary; I could make it more extended, giving the years myself, but I thought the years had been already mentioned; those two contracts commenced in the years 1863 and 1867.

93. X Q. Those orders you received from the officers named by you in the Post-Office Department, were they for you to make those combined postmarking and cancelling devices under your contract ending in April, 1863?

A. I had no contract for those four years ending April, 1863.

94. X Q. Were those orders given you by that department, under your contract ending April, 1859, to make for the postal service such combined instrument?

A. If I understand the question, I think they were not; I don't
1893 think I made them at that time; that was before they were introduced; I had made and exhibited those instruments in that department before that time.

95. X Q. Before what time?

A. Before April, 1859, I exhibited that device in that department.

96. X Q. Now, that you may not be misunderstood, I ask you to state what kind of a combined stamp you exhibited in the Post-Office Department previous to April, 1859.

A. I had exhibited the two or three kinds already mentioned.

97. X Q. Describe one of those; state how they were combined, for what purpose they were combined, and for what purpose they were intended to be used.

A. One of them was made by screwing on a piece of wood to the side of an ordinary office stamp, so as to postmark the letter and cancel the stamp at the same motion.

98. X Q. In what year did you exhibit that in the Post-Office Department at Washington?

(EXAMINER'S NOTE.—Before answering question, witness requests to hear the previous question read.)

A. I think it was in the previous fall, just before that, when the advertisement wanting these things had just come out.

99. X Q. What advertisement have you reference to in the last answer?

A. The one inviting proposals for stamps.

100. X Q. Inviting proposals for what kind of stamps?

(Objected to as asking for the contents of a document of a secondary evidence.)

A. Proposals for post-office marking and rating stamps.

1894 101. X Q. Did that advertisement call for combined instruments of the kind you have been testifying about to-night?

(Same objection.)

A. I am not sure whether it did or not; I don't remember.

102. X Q. You are sure and you swear, do you not, that previous to April, 1859, you exhibited in the Post-Office Department a postmarking and postage-stamp cancelling instrument like or substantially like Defendant's Exhibit 139 which I now hand to you?

A. I didn't say that; I say this in addition to that, that the exhibiting a stamp in the Post-Office Department does not mean officially exhibiting it.

103. X Q. Did you in a clandestine manner, or in any other manner whatever, exhibit or show to any person or persons in the Post-Office Department at Washington, prior to April, 1859, a postmarking and postage-stamp cancelling instrument like, or substantially like, Defendant's Exhibit 139, which I now show you?

(Objected to as asking for the opinion of the witness on the subjects of equivalents.)

A. I say there was nothing said about that brass bound stamp at that early day; I spoke of the wooden stamp.

104. X Q. Did you in a clandestine manner, or in any manner whatever, exhibit or show to any person or persons in the Post-Office Department at Washington, prior to April, 1859, a postmarking and a postage-stamp cancelling instrument like or substantially like Defendant's Exhibit 140, which I now show you?

(Same objection.)

A. I had frequent talks with my brother, who was then in the department, and exhibited to him both models and drawings of various devices for this purpose.

1895 105. X Q. When was that?

A. Before 1859.

106. X Q. What did your brother say to you about it?

(Objected to as immaterial, and as asking for hearsay.)

A. He said a good many things; I don't remember what all.

107. X Q. What was the official capacity or relations of your brother in that department, at that time?

A. He was Third Assistant Postmaster-General, and interested in this matter because he had charge of the postage-stamp business, and was anxious to see some good device adopted for cancelling postage-stamps, some labor-saving machine, and therefore he was justifiable in interesting himself about marking-stamps, although those kind of stamps were not actually under his control.

108. X Q. Now, in what year was that?

A. In the same year you have already mentioned and have been talking about all the time.

109. X Q. Name the year referred to in your last answer.

A. It was the fall of 1858, after that advertisement appeared inviting proposals for marking and rating stamps.

110. X Q. Well, what steps, if any, did you take with reference to the matter after that clandestine interview with your brother of which you have just spoken?

A. I never had any clandestine interview with my brother, and took no steps in the matter, because I failed to get the contract that term.

111. X Q. To whom else besides your brother did you make the exhibition, showing description or disclosures, which you say you made to him at the time spoken of?

A. I don't remember to whom else I made it.

1896 112. X Q. Did you ever at any time show to any person in the Post-Office Department at Washington an instrument like Defendant's Exhibit 139 which I now show you?

A. Yes, sir; I made hundreds of them, and exhibited these like that.

113. X Q. When and to whom did you exhibit hundreds of them like Defendant's Exhibit 139, as stated by you in your last answer, in the Post-Office Department at Washington?

A. During those last years of my contract, as rapidly as they were ordered, I sent them to the blank and stamp agent in the Post-Office Department.

114. X Q. During what years was that?

A. From 1863 to 1870.

115. X Q. Did you ever have any there before 1863?

A. I have already said that I had wooden ones there before 1863.

116. X Q. Did you ever exhibit to any person or persons in the Post-Office Department an instrument like Defendant's Exhibit 140, which I now show you?

A. I did.

117. X Q. When was that?

A. It has already been answered; it was in the time between the issuing of the proposals by the department for marking and rating stamps and prior to the letting in the spring of 1859.

118. X Q. To whom did you show it?

A. I have already said to my brother, A. N. Zevely.

119. X Q. To whom else beside A. N. Zevely, your brother?

A. I have already said I don't remember to whom else I showed it.

120. X Q. Did you show it to any one else at that time, or at any other time, in that department?

A. I am pretty sure I did; either I or my brother did.

121. X Q. Name those persons or any one of them?

1897 A. I have already said I could not remember.

122. X Q. How many years ago was it that you showed it to your brother in that department, as you have stated you did show it to him?

A. It makes about nineteen years ago.

123. X Q. You are sure you are not mistaken about this matter, are you?

A. To the best of my recollection I am stating what I think to be the truth; it is a long time ago, you know.

124. X Q. Have you any doubt on the subject?

A. None at all.

By consent the further taking of this testimony is adjourned to tomorrow morning, March 7, 1878.

HANNIBAL FORBES,
Special Examiner.

MARCH 7, 1878.

Met pursuant to adjournment.

Same counsel present as before.

125. X Q. From April 1st, 1867, to April 1st, 1871, did you have any contract with the Post-Office Department for the manufacture of marking stamps for use in the postal service?

A. I did.

126. X Q. By the terms and specifications of that contract, what kind of marking stamps were you to make for them in the postal service in the United States?

(Objected to as asking for secondary evidence.)

A. Same kind of stamps that were made under the other contracts, I think, were mentioned.

127. X Q What were those?

1898 A. Post-office stamps with dates, and separate cancelling stamps; those two kinds were mostly made, I believe.

128. X Q. Those were the kinds mostly made under all those contracts, were they?

A. I believe these mostly; there were other kinds, though.

129. X Q. Name and describe the other kinds referred to in the last answer.

A. "Missent," "Forwarded," "Dec. 3," "Due 6," "Advertised;" a great many things of that sort; I can't remember all of them.

130. X Q. You have now named so far as you can, as well as described according to your best recollections, the various kinds of stamps you were to make under those contracts for use in the postal service by the Post-Office Department, have you not?

(Objected, as asking for secondary evidence of the contents of those contracts.)

A. I think I have.

131. X Q. Have you had any contract or contracts with the Post-Office Department for the manufacture of any kinds of stamps for use in the postal service of the United States since April 1st, 1871?

(Objected to as immaterial, irrelevant, and improper on this cross-examination.)

A. I have not.

132. X Q. Since April 1st, 1870, have you submitted any bids, or any proposals of any kind, to the Post-Office Department for a contract to make any kind of stamps for use in the postal service?

(Objected to as last above.)

A. I have not.

133. X Q. Do you know whether your son, who has been a witness in this case, during the time inquired about in the last question, or during any other time since then, has submitted any bid or pro-
1899 posal for a contract of the kind specified in the last question?

(Same objection.)

A. I do not know that he has, but think he has. I don't know anything about his business.

134. X Q. After July 1, 1862, and before May 1, 1863, did you submit a bid or proposals to the Post-Office Department for a contract to manufacture for use in the postal service any kind of stamp?

(Same objection.)

A. Not that I know, as that was the time in which I had no contract; none that I remember.

135. X Q. Will you swear that during the time specified in the last question that you did not submit bids or proposals for a contract to manufacture each and every kind of stamp then in use in the postal service?

(Same objection.)

A. I don't remember that I did. There might have been some special bids, or some special kind of stamp wanted, and I don't remember anything about it.

136. X Q. Between April, 1863, and April, 1867, did you have a contract with the department for the manufacture of any kind of stamps for use in the postal service?

(Same objection.)

A. I had.

137. X Q. In what way did you obtain that contract?

A. In the usual way—by putting in proposals in compliance with the advertisement of the department inviting proposals.

138. X Q. At what time previous to the making of that con-
1900 tract would you be required, and when did you submit your pro-
posals upon which you say that contract was obtained in the usual way?

(Same objection.)

A. The proposals were to be received up to a certain day. I put in my bid according to the tenor of the advertisement, which went through the usual form; that's all.

139. X Q. Would that be between the first of July, 1862, and the first of April, 1863?

(Same objection.)

A. It was either in the fall of 1862 or the spring of 1863; I don't remember.

140. X Q. In that bid or proposal of yours did you include a post-marking and postage-stamp cancelling instrument, so constructed as to give the post-mark on the envelope, and at the same time cancel the postage stamp in ink by one operation of the instrument?

(Objected as above, and on the ground of asking for hearsay.)

A. I think I did.

141. X Q. At that time did you submit a model for such instrument as a sample of the kind that you desired and offered to make for the department?

(Objected to as immaterial and not within the scope of the direct examination.)

A. I expect I did.

142. X Q. Did you at any time previous to that time submit a bid or proposal, in writing or otherwise, to the Post-Office Department for a contract to make an instrument or a device for post-marking letters on the envelope, and at the same time cancel the postage stamp thereon at one operation of the instrument?

(Same objection.)

A. As far as I remember, I think I did.

1901 143. X Q. In what year was it?

A. In 1859.

144. X Q. In what year did the Post-Office Department adopt and put into use in the postal servicce an instrument or device for post-marking letters and for cancelling the postage stamps thereon in ink at one blow or operation of the instrument?

(Same objections.)

A. In 1863.

145. X Q. Commencing in April of that year, was it?

A. Yes, sir.

146. X Q. Was your brother A. N. Zevely at that time Third Assistant Postmaster General?

A. I think he was.

147. X Q. Do you know whether he was?

A. I am sure of it.

148. X Q. Did you have the contract for the Post-Office Department for making that instrument which you say was first adopted by the Post-Office Department and put into use in the postal service the month of April, 1863, for post-marking letters on envelope, and for cancelling the postage stamp thereon by one blow or operation of the instrument?

A. I had, for making a certain kind of stamp for that purpose for a certain class of offices.

149. X Q. Will you swear you had a contract with the Post-Office Department to manufacture for use in the postal service of a combined post-marking and cancelling stamp, so arranged as to post-mark the letters with the name of the post-office and the date, and at the same time cancel the postage stamp in ink by one blow or operation of the instrument; and before you answer this question I ask you whether you understand it or not?

A. I think I understand it, and they certainly ordered many such of me.

150. X Q. Who ordered such instruments of you?

A. The proper officers of the Post Office Department.

151. X Q. Well, who would they be?

1902 A. The orders were always signed by First Assistant Postmaster-General, and were made out by the blank and stamp agent.

152. X Q. Were those orders made in pursuance of any contract you then had with the department on that subject?

A. They must have been, or they would not have been ordered.

153. X Q. State the year or years in which those orders were made by the department and delivered to you.

A. From the year 1863 onward through each year to April, 1871, when my contracts with the department ceased.

154. X Q. All the contracts you had on that subject were in writing and signed in duplicate, were they not?

A. Yes, sir; as far as I remember.

155. X Q. What did you do with the combined post-marking and postage cancelling instruments which you say you made under contracts with the Post-Office Department between April 1, 1863, and April 1, 1871?

A. I delivered them to the stamp agent of the Post-Office Department, according to orders.

156. X Q. What was the name of that agent?

A. It changed several times; I think it was "Deacon" Grey most of the time; it changed several times, but he was there most of the time.

157. X Q. Of what material were those instruments made?

A. Wood, brass, type metal, and cork combined in the one stamp.

158. X Q. In what class of post-offices were they to be used?

A. In the second class, I think; they put them where they pleased; I had no control over what they did with them.

159. X Q. Between April 1, 1863, and April 1, 1871, about how many of that kind of instrument did you make for and deliver to the

1903 Post Office Department for use in the postal service of the government?

A. I have no means of knowing; can't remember; a great many, though.

160. X Q. About how many, as near as you can remember?

A. Hundreds, and I think thousands, during those eight years.

161. X. Q. I think I understood you to state during yesterday's examination that you had made yourself generally useful in advertising and showing throughout the Post-Office Department of the government an instrument or device of the kind about which you have given testimony this morning. I mean the combined post marking and postage-stamp cancelling device, by which the post-mark and the cancelling were done by one blow or operation of the device, and that that was done by you during the years of 1858 and 1859. State the name of every person or persons to whom you exhibited or showed such a contrivance.

A. You must have misunderstood me, as I stated no such thing.

162. X Q. Do you personally know, or have you other information, of a letter signed A. N. Zevely, Third Assistant Postmaster-General, addressed to Marcus P. Norton, attorney at law, Troy, N. Y., dated Post-Office Department, Finance Office, October 7, 1862, and in the following words and figures, to wit:

SIR: Your letter of the 2d instant to the Postmaster-General has been referred to me.

Your post-marking and cancelling stamp as originally presented seems to be approved at New York and other large offices where it has been tested.

The improvement which you now speak of evidently makes the instrument still more effective, and, indeed, fully attains the end
1904 desired by this department, namely, the destruction of the postage stamp.

The only doubt about it arises from the danger of cutting through the envelope and damaging letters and enclosures.

If you expect soon to visit Washington on other business, please call at this department.

The Postmaster-General is now absent, but I think he will view your invention favorably; and, while he might not be able to make you any direct allowance, he might possibly arrange with you to manufacture stamps for the larger post-offices.

Very respectfully,

(Objected to on the grounds: 1st, question assumes such a letter was written; 2d, that if written it is utterly irrelevant and immaterial to this suit, being impossible to bind either the defendant or this witness by the declarations of A. N. Zevely; 3d, because the supposed letter has nothing to do with the subject matter of this suit, since it plainly refers to a cutting device for cancellation; 4th, because the existence and genuineness of the letter should first be proved before any question can be properly based on it; 5th, because the letter or those parts of it concerning which counsel desires information should first be submitted to the witness before any question based on it can be asked; 6th, because the question does not directly or indirectly touch upon any matter raised by the direct examination nor by the cross-examination, being plainly consistent with all that the witness has testified to.)

A. I have no personal or other knowledge of such a letter.

163. X Q. Have you any personal knowledge or other informa-
1905 tion of a letter signed Abram Wakeman, postmaster, and dated post-office, New York, Jan. 3, 1863, and addressed to A. N. Zevely, Third Assistant Postmaster-General, Washington, D. C., and in the following words, to wit:

SIR: Some time since you requested that I should test the utility of Norton's double postmarking and cancelling stamping iron, and report my opinion thereon. It was in use in this office when I first entered upon my duties. Since then the cancelling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation, but it is liable, even if used with the greatest care, to injure the contents of the envelope, especially if the enclosures are cards, photographs and the like. We have also used cork by inserting it in the cylinder of the canceller.

This has proved successful, and cancellation is now peformed in this way. I am confident no office in the country performs cancellation more thoroughly. The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interests of the department would be subserved by securing its general use.

We are now testing a stamp and canceller, on Norton's plan, made of

boxwood. It promises well, and can be made at a very trifling expense. I am fearful, however, its liability to yield to the wear to which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obedient sevant.

(Same objection as to last question, and also the objection that counsel has no right to ask for anything but the personal knowledge of the witness.)

A. I have no knowledge of any kind whatever, personal or otherwise, of the letter.

1906 164. X Q. In answer to question 4 of your direct examination you use the following words: "With parallel cross-bars"; what did you mean by that?

A. In the face of the stamp are cut grooves so as to leave the cross-bar standing across the face of the stamp. They were across the stamp and not across each other.

165. X Q. In the same answer you use the following words, "Then we attached a tube on a handle and put cork in it or any other substance." That's a correct description of another kind of cancelling stamp, is it not?

A. It is intended so to be.

166. X Q. Do you know whether it is or not?

A. As well as I understand the English language, I say it is a correct description.

167. X Q. On your direct examination the following question was put to you: "What was the object of the brass tube," to which you made the following answer: "To make it more durable, and to afford a receptacle for cork, if so used." When did you first make a device of that description?

A. It was probably very soon after the cancelling stamps of any kind were first ordered.

168. X Q. Ordered by whom?

A. By the Post-Office Department.

169. X Q. When was that?

A. Just as soon as the Post-Office Department adopted cancelling stamp of any kind; just what year that was I don't remember.

170. X Q. Did you ever make, for the Post-Office Department, any postage-stamp cancelling device consisting of a wooden handle, inserted in one end of a brass tube, while in the opposite end of the same tube there was inserted a piece of cork by which to cancel postage stamps?

A. I did make a few such.

171. X Q. In what year did you make "a few such?"

A. It is very difficult to state the precise year, but I was experimenting with similar devices from 1869 to 1873.

1907 172. X Q. Do you remember the exact number of such cancelling instruments, or device made by you for the Post-Office Department to use in the postal service?

A. I do not.

173. X Q. Precisely the time when you made them, can you state that?

A. I cannot.

174. X Q. Were those postage-cancelling devices made for the Post-Office Department under the contracts about which you have testified, or either of them?

A. They were special trial orders.

175. X Q. Orders made by whom?

A. By the proper officers of the Post-Office Department.

176. X Q. Name one or more of such proper officers of the Post-Office Department.

A. The orders were alw ays signed by the First Assistant Postmaster-General.

177. X Q. Were those orders in writing?

A. They could not have been otherwise if signed.

178. X Q. Were those orders in writing, and were they signed by the First Assistant Postmaster-General?

A. They certainly were, of course.

179. X Q. Have you those orders or any of them in your possession at the present time?

A. I have not; I have moved away and quit the business years ago, and all these papers have been destroyed, so far as I know.

180. X Q. By what First Assistant Postmaster-General were those orders signed? State his name.

A. St. John B. L. Skinner was First Assistant most of the time, and in his absence Mr. Marr, his chief clerk, signed them.

181. X Q. From what room in the Post-Office Department did those orders originate?

A. From the blank and stamp room, I suppose; but I don't know.

1908 182. X Q. On your direct examination this question was put to you, to wit, "Mention some other substance that was used beside cork, that was used with the brass tube," and under objections you made the following answer, "Wood and solid gum were sometimes used," whereupon defendant's counsel put to you this question, "India rubber, you mean," and your answer was, "Yes, I mean India rubber when I said gum." State when you first made a postage-stamp cancelling device constructed of wooden handle inserted in one end of a brass tube, while in the other and opposite end of the same tube you inserted a piece of rubber for the purpose of cancelling the postage stamp.

A. It must have been about the same time that I said in a few answers back that I had been experimenting with all sorts of devices of this kind; the time was mentioned there.

183. X Q. You clearly and correctly mentioned that time in your former answer to which you refer, did you not?

A. I think I did.

184. X Q. Have you any doubt about it?

A. No doubt.

185. X Q. Did you ever make for the Post-Office Department any postage-stamp cancelling device of the kind now under consideration? I mean the one containing the rubber in the brass tube.

A. I don't know that I did; I exhibited such as samples.

186. X Q. The question is, whether you ever made a single device of the kind stated in the last question for the Post-Office Department or for use in the postal service of the United States?

A. It is partly answered in the last question; but I certainly made one or more.

187. X Q. How many more than one did you make for that purpose?

A. I don't know.

188. X Q. You state on your direct examination, in answer to question eight, in substance, that you made a postage-stamp cancelling de-
1909 vice, consisting of a wooden handle inserted in one end of a brass tube, while in the other and opposite end you inserted a piece of wood for the purpose of cancelling the postage stamp. When did you first make a device of that description?

(Objected to, because the counsel misstates the testimony, the witness

having testified substantially that the end of the wooden handle projected through the tube, and having said nothing about a separate piece of wood stuck into the tube.)

A. That refers to the canceller attached to the office-stamp, and not to a separate canceller; because when the separate canceller was made in this way it was in effect a mere wooden handle with a brass ferule or tube.

189. X Q. What do you mean by a "brass tube," as stated by you in your last answer?

A. A brass tube is a hollow brass cylinder.

190. X Q. What do you mean by the word ferule, as used by you in your answer to question 188?

A. I mean that a ferule is the same thing as a tube, and a tube is a ferule.

191. X Q. You then never made a separate postage stamp cancelling device of the description stated in question 188 of your cross examination, did you?

A. I never did.

192. X Q. You are positive about that, are you not?

A. I am.

193. X Q. What has become of those postage stamp cancelling devices having a cork inserted in a cylinder, of which you say you made a "few" for the Post-Office Department for use in the postal service of the United States, under "special orders"?

A. I don't know what has become of them.

194. X Q. When did you last see them, or either of them, and where was it?

A. I don't know when it was or where it was.

1910 195. X Q. What has become of that kind of postage stamp cancelling device of which you say you made at least one, having inserted in the brass tube a piece of rubber to cancel the postage stamp with, and which you say you do not think any were ever used in the postal service of the United States?

(Objected to as misstating the evidence.)

A. I don't know what has become of it; I never said none were used in the service; they were used.

196. X Q. How many of that kind were used in the postal service, and made by you?

A. I don't know how many were made, but there were some made by others, with India rubber in the tube.

197. X Q. Give your best recollection about it, Mr. Zevely.

A. Well, these things were all used very soon after cancellers were first ordered by the Post-Office Department; many ingenious post-office officials contrived various things of this kind themselves.

198. X Q. Name a single post-office official who made any contrivance mentioned in your last answer, and state how you come to know anything about it.

(Objected to as going too far a field, unless counsel limits the scope of the question to some particular time, as for instance about the time when cancellers were first required.)

Complainant's counsel states that the question is a plain one, which any intelligent man can understand and correctly answer, but in view of the unwarranted and indecent remarks of defendant's counsel by way of objections, in the presence of this witness while under cross-examination, suggesting to the witness the kind of answer he desires him to give to the question, the question is withdrawn.

Defendant's counsel disclaims any intention such as imported
1911 by complainant's counsel, and insists that the objection is well taken.

199. X Q. Do you know where the single postage-stamp cancelling device, having rubber in one end, as you have stated, and which you say you made for the Post-Office Department under special orders from Post Office Department, now are?

(Objected to because the witness has not stated that he made cancellers having rubber in the tube under special orders.)

A. I don't know what has become of them.

200. X Q. To whom did you deliver those cancelling stamps, if to anybody?

A. Such a stamp was among the stamps I exhibited to the department.

201. X Q. Is that the very one you know anything about as having been made by you?

A. I must have made others; I don't know what I did with them now.

202. X Q. That one that was submitted to the department among your samples of which you testify was the first one made by you, was it not?

A. I suppose it was, and that might have been made on the suggestion of somebody, or post-office official.

203. X Q. On what occasion, and in what year was it that you submitted those samples among which was this separate postage-stamp cancelling device having rubber in one end of the brass tube?

A. I believe it was both in 1859 and 1863, and besides that, I was called upon at various times, in an informal way, to get up and exhibit certain things, or stamps, suggested by others in the Post-Office Department.

204. X Q. Name a single person who, in the Post-Office Department, ever requested you to do as you stated in your last answer you were frequently requested to do.

A. Mr. Guest was formerly stamp agent, also my brother A. N. Zevely.

1912 205. X Q. Anybody else?

A. Don't remember anybody else.

206. X Q. You have never seen, since then, and do not know what has become of the separate postage-stamp cancelling device, with rubber inserted in the tube, which you say you submitted to the Post-Office Department among other samples?

A. I have never seen them since then, and don't know where they now are.

207. X Q. Did you ever make any after that time?

A. I made several on private orders; postmasters sometimes preferred them, but I can't remember who they were for, I made stamps for so many people over the United States.

208. X Q. You mean in the last answer—do you not—that you made a few of this kind of cancelling device, and not that you made so many as to send them all over the United States, as stated in your last answer?

A. I stated in my last answer I made stamps, and sent them all over the United States, and among them were a few of this rubber kind of cancelling device.

209. X Q. What has become of the "few" separate cancelling stamps mentioned by you in your last answer?

A. I don't know; sent them through the mail, and haven't seen them since.

210. X Q. In what year did you make those "few" and send them through the mails, as stated in the last answer?

A. I don't remember; impossible to say.

211. X Q. Have you ever made any of that kind of separate cancelling stamp since the time referred to in the last few questions and answers?

A. I don't remember anything about what I have done.

Recess to 2 o'clock this p. m.

1913 2 O'CLOCK P. M.

Met pursuant to adjournment.

Present, same counsel.

212. X Q. You have stated on your examination-in-chief that you were postmaster at Pleasant Grove, in the State of Maryland, five miles from Comberland, and in the year 1853. When were you appointed postmaster of that important post-office?

A. In 1850.

213. X Q. How long did you continue postmaster at that place?

A. For three years, with an interregnum for a little while.

214. X Q. When was that post-office established?

A. In 1850.

215. X Q. Was it by your ingenuity and assistance it was established in 1850?

A. I don't know that there was much ingenuity about it; we got up a petition in the usual form and had the post-office established.

216. X Q. How many persons signed that petition besides yourself?

A. I don't remember.

217. X Q. Well, give your best recollections about it.

A. That is the best I can do.

218. X Q. In whose handwriting was it?

A. I don't remember that either.

219. X Q. Did you sign it?

A. I don't know whether I did or not.

220. X. Did that post office have box delivery for mail matter?

A. I don't know what you mean by box delivery; it had one or two pigeon holes, I believe.

221. X Q. I mean by box delivery a case with one or more pigeon holes to contain the mail matter for the various persons doing business with the post office?

A. I had a regular desk with lock and key to it, and pigeon holes.

1914 222. X Q. Were the pigeon holes on the inside of the desk?

A. Yes, certainly; when the leaf of the desk was turned up against them they were closed in, under lock and key, and locked up.

223. X Q. When the leaf of that post-office was closed up against the pigeon holes, and the door locked, all was darkness within, was it not?

A. I didn't say the post-office had a leaf to it. I——

224. X Q. What did you say?

A. I said the desk I had in the post-office had a leaf to it.

225. X Q. When that leaf was closed up against those pigeon holes, was it light or dark inside?

A. I was never inside to see, but suppose it was dark.

226. X Q. How large was that desk?

A. About four feet long, twenty inches high, and ten inches deep, and on legs.

227. X Q. All the mail matter coming to that office was kept in that desk until it was delivered, was it not?

A. Yes, sir; it was.

228. X Q. That desk was also big enough to contain your private and public official papers, was it not?

A. Large enough.

229. X Q. Any spare room after the post-office, your private and public official papers were provided for?

A. No, sir; none.

230. X Q. What was the size of the building where that post-office was kept?

A. House 30 or 40 feet long and 16 feet wide, and one story high.

231. X Q. How many rooms in that building?

A. Four rooms.

232. X Q. Four rooms on the first floor?

A. Yes; only one floor to it.

233. X Q. What kind of business was carried on in those four rooms in 1852 and 1853, if any?

A. No business; it was a dwelling house. My business was carried on in a separate building a few feet off.

1915 234. X Q. The post-office, then, was kept by you in your dwelling house, was it not?

A. Yes, it was.

235. X Q. And in one of the front rooms?

A. Yes, sir; that's so.

236. X Q. About how far from this house was the building where you carried on your manufacturing business?

A. Five or six steps off—about that.

237. X Q. How many times a week did the United States mail come to that office, and from what directions?

A. Twice a week from east and west—twice from east and twice from the west.

238. X Q. And on what days of the week?

A. Wednesdays and Saturdays.

239. X Q. What would be a fair average of the number of the letters that came to that office during each of those days while you were postmaster there?

A. From 50 to 100, I expect—something like that.

240. X Q. How many letters did you send out from that office on each of those days while you were postmaster there?

A. About as many sent out as received, and I used to send out thousands of circulars and packages of all kinds.

241. X Q. What was your salary per year while postmaster at that office?

A. I got the usual commissions under the then existing laws; I cannot say what the amount was.

242. X Q. You cannot tell the yearly salary you received while postmaster at Pleasant Grove, Maryland?

A. No salaries paid; I received the usual compensation by commissions upon the business of the office.

243. X Q. How much was that per year? Give your best recollections about it.

A. I am entirely unable to remember what it was.

242½. X Q. How much of your time was occupied during each week you were postmaster there, in carrying on the business of that post-office?

1916 A. Several hours on each mail day, besides a little attention on other days.

243¼. X Q. About how many hours on each of the mail days were your services required as postmaster?

A. Three or four.

243½. X Q. The Pleasant Grove you refer to in your answer to question 11 of your direct examination was at that time a large and flourishing village, was it not? I mean in the years 1852 and 1853.

A. I never said it was a village.

244. X Q. I did not say in the question that you said it was a village; but I ask you to state whether at that time it was a village and in a flourishing condition.

A. It was no village at all.

245 X Q. That place, during 1852 and 1853, was a large manufacturing place, was it not?

A. Yes, it was a large manufacturing place. I did all the manufacturing excepting the blacksmith shop down near to it.

246 X Q. How many churches, schoolhouses, academies of learning, and academies of music did that place have while you were postmaster there?

A. It had one church and one schoolhouse, and no other higher institutions.

247 X Q. Was that a "Baptist" church?

A. It was not.

248 X Q. How many people would that church accommodate and comfortably seat?

A. About 200.

249 X Q. About how many would the schoolhouse accommodate and comfortably seat?

A. Forty or fifty.

250 X Q. How many miles would one have to travel from that post-office to reach a village of any size where a man could comfortably rest for the night and get something to drink?

A. Five miles.

251 X Q. What was the length of the postal route passing that post-office?

1917 A. About thirty miles—from Cumberland to Robinsonville, Pa., there were three post-offices on the route.

252. X Q. Were those three post-offices as large as the one at Pleasant Grove of which you had command?

A. I am unable to say what was the amount of their business.

253. X Q. Who was your successor as postmaster at Pleasant Grove post-office?

A. I had no successor.

254. X Q. What in the deuce became of that post-office after you terminated a career of three years as postmaster there?

A. It disappeared—went where the woodbine twineth, I guess.

255. X Q. You were present at the time when this post-office came into existence, were you?

A. I was.

256. X Q. And you were present when it disappeared, as you think, where the woodbine twineth, were you?

A. No; I was absent at that time.

257. X Q. Was it discontinued by the order of the Post-Office Department?

A. I resigned the place, and nobody else cared about taking it, and it was discontinued by the Post Office Department.

258. X Q. How came you to resign so important a trust?

A. Because I moved entirely to Cumberland.

259. X Q. You have stated on your direct examination, substantially, that you had a postage stamp canceller of various forms, sizes and descriptions, which you used in the post-office at Pleasant Grove while you were postmaster, which cancelling instrument you had described in previous and subsequent answers on that same examination; what became of that or those contrivances?

A. After laying around several years in Cumberland, all those old stamps were turned over to my son John, who has been a witness in this case.

1918 260. X Q. When did you discontinue the use of those contrivancies at Pleasant Grove?

A. At the time the post-office was discontinued.

261. X Q. What year was that?

A. In 1853.

262. X Q. At question 20 of your direct examination, defendant's counsel put to you this question, to wit: "Describe one of them, referring for illustration, if you please, to the models marked Defendant's Exhibits 139 and 140, J. H. Zevely, March 4, 1878, H. F., Spl. Examiner, now lying on the table." To which you made this answer, under objections of counsel: "I was the first to originate this sort, and one or two other combination stamps." State when, for the first time, and where, you saw the exhibits referred to in that question.

A. I never saw them till I saw them here, but I saw similar ones many years ago.

263. X Q. Now, did you understand that last question when you answered it?

A. I think I did.

264. X Q. Have you any doubt about it?

A. None.

265. X Q. What did that question require you to state?

A. Whether I had ever seen those particular stamps, and I said "no, I hadn't," before that time.

266. X Q That is all you intended to answer?

A. That's all I did answer, except an explanatory remark.

267. X Q. Didn't you in answering the last question state, while answering, that you put in that explanatory note "whether or no," or in substance the same?

A. Oh, yes; I suppose there is no necessity to waste more time about it.

268. X Q. The time you first saw those exhibits was on the examiner's table, the other day, during your direct examination, was it?

A. Yes.

1919 269. X Q. Were they there when your examination first commenced?

A. I didn't notice; don't remember.

270. X Q. Did you see anybody put them there; for instance, the defendant's counsel, now present, and at the time he put to you question No. 20?

A. I saw them at the time he directed my attention to them.

271. X Q. When was that—was it just after he put question 20 to you?

A. I suppose it was; I don't remember what question it was, or moment of time it came in.

272. X Q. Immediately after seeing those exhibits on the table, after defendant's counsel drew your attention to them, as you have stated, did you proceed to make, and did you make, an answer to some question of his concerning them, or either of them?

A. So soon as I was allowed to proceed, I did, objections having been made by complainant's counsel.

273. X Q. Now, in your answer to that question, which is question No. 20 of your direct examination, you state, "I was the first to originate this sort and one or two other combination stamps." State what you mean by that answer, and to what you refer in it.

A. First, I mean that, so far as I know, I was the first to get up such a stamp as stated in the answer, and several others of similar style with a little variation.

274. X Q. How do you know, and what are your means of knowing, that you were the first to originate a stamp of the kind referred to in that answer?

A. I knew it just as I think I know anything, and I had had considerable experience in the stamp business, and thought I knew something about stamps.

275. X Q. You have now stated in your last answer all that you know and all the means you have for knowing, that which you stated in your answer to question No. 20 of your direct examination, have you?

1920 A. I have not stated all I know; I have referred to the matter simply; I hardly know what the question meant; it would take a tremendous long answer to state all I know.

276. X Q. From the appearance of Defendant's Exhibits 139 and 140, what in your opinion is the length of time they have been in existence? I now refer to the time, when you first saw them the other day; I do not now exhibit to you those models, I depend upon your memory and recollections, going back to yesterday when you for the first time saw them.

A. It is impossible for me to form an opinion of how long they have been in existence—those particular stamps.

277. X Q. Look at Defendant's Exhibits 139 and 140, referred to in your answer to question 20 of your direct examination, and state whether you claim ever to have invented those instruments, or either of them.

A. I do claim I invented, contrived and designed them, and concocted them, &c.

278. X Q. Where were you at that time?

A. I do not understand the question; do you mean in what particular house, room, field, or city, or place, I was at the time?

279. X Q. I mean in what place were you?

A. I was at Pleasant Grove, and while I was postmaster there.

280. X Q. You mean in that post-office at Pleasant Grove, which had a mail twice a week; post-office kept in a desk four feet long, about twenty inches high, and had one or more pigeon-holes and a cover to cover them up, and a lock to lock up the business, and also your private business that was expressed on papers, as heretofore testified to by you?

A. No; I was in my manufactory, five or six steps off.

281. X Q. In what year was that?

A. About the year 1853.

282. X Q. Do you know whether it was or not?

A. As near as I can remember.

1921 283. Did you ever make any stamp or device like Defendant's Exhibits 139 and 140, which I now show to you while you were postmaster at Pleasant Grove?

A. I think I did.

284. X Q. Do you know whether you did or not?

A. As well as I can remember anything, I think I did that.

285. X Q. Will you and do you swear on your oath that while you were postmaster at Pleasant Grove you made a device like either of the exhibits last above referred to, and now before you?

A. I do so say, as well as I can say or remember to have done anything at any particular time.

286. X Q. I now call your attention particularly to each of those exhibits now before you, and I ask you to state when you for the first time on this green earth, or anywhere else, made a device like either of those exhibits, in form or in substance.

A. It is impossible, at this late time, to say at what particular date I first made this particular kind of stamps in form or substance.

287. X Q. When did you ever make any device of the kind or character specified in the last question?

A. I know I made them prior to 1859.

288. X Q. You are certain of that, are you?

A. I am.

289. X Q. You swear to that on your oath, do you?

A. I suppose I do.

290. X Q. Have you any doubt about that, whether you do or not?

A. No, sir.

291. X Q. How many of such devices did you make prior to 1859, as you have last above stated?

A. Impossible to remember.

292. X Q. For whom did you make them? Give the name of the person or persons.

A. I cannot answer that, because it is impossible to remember who for.

1922 293. X Q. What did you do with those stamps which you swear positively you made prior to the year 1859, how many you do not remember, and for whom you cannot and do not remember, as you have testified?

A. I exhibited them in the Post-Office Department at Washington City.

294. X Q. Where are those stamps now?

A. I don't know, for the same reasons heretofore given to the same questions; I have answered them a half dozen times.

295. X Q. When did you last see those stamps which you swear positively you made before 1859, how many you cannot tell, and who for you do not remember, and which you say you exhibited in the Post-Office Department at Washington?

A. Impossible to say when I last saw them, because I have been out of the business for years, and have had my mind on other subjects.

296. X Q. Did you ever use those stamps for any purpose in the postal service—I mean yourself personally?

A. I used similar stamps.

297. X Q. Describe the "similar stamps" which you say in your last answer you used in the postal service.

A. I largely used an office stamp with side attachments, used not only to cancel postage-stamps but to print the words "paid," "free," &c., at the same time with postmarking the letter; I mean by the same time, at one blow.

298. X Q. Where was it you used a device of the kind described in your last answer?

A. At Pleasant Grove post-office, for marking thousands of circulars and letters, and I sometimes sent out 30,000 of those circulars and letters at one time, and that was what put into my head the necessity of a combination stamp.

299. X Q. And this was while you were postmaster there?

A. It was.

300. X Q. Did you ever use any other kind at that post-office
1923 while you were postmaster there than the one you have last above described for that purpose?

A. No, I suppose I didn't, for that covers the whole. I used also separate stamps.

301. X Q. Now, Mr. Zevely, describe very minutely and in detail the material and the parts, and the arrangement of those parts which went to make up the postmarking stamp alone without the attachments?

A. It was made of boxwood similar to all ordinary postmarking stamps in use. It was in a circular form with letters cut around the edge inside of the ring, showing the name of the post-office, with a mortise in the centre of the stamp to hold type metal dates for the month and day of the month, which dates were in place by said thumbscrew.

302. X Q. Please describe the material and the construction of the piece which you say was attached to the side of the stamp described in your last answer, and the manner and means of securing it to that postmarking stamp; give it in detail and state what was engraved upon the acting face of it, if anything, stating at the same time its locality with reference to the engraved letters and letters on the type metal upon the acting face of the postmarking stamp last described by you?

A. I shaped a piece of boxwood to conform to the outer circumference of the post-marking stamp of such a length that its upper end was on the same plane with the face of the office stamp, and then cut on that face any words I wanted for any use, and attached the piece to the large stamp by an ordinary wood screw, the lower end of this piece, however, for further security, resting upon the projecting flange, which was always turned on to the handle of the post-marking stamp; if this attachment was intended to print the words "paid," "free," or "due 3," or anything of that kind, I put it at the top of the name and dates of the post-marking stamps; if intended for cancellation of postage-stamps I
placed it at the side of the dates; this latter attachment ex-
1924 tended out further from the circumference of the post-marking stamp than did the other attachments for "paid" and "free."

303. X Q. Did you while postmaster at Pleasant Grove make a stamp for post-marking letters having a wooden or other kind of attachment fixed to the side of the dates of the postmarking stamp for the cancellation of the postage-stamp by the same blow of the instrument, and at the time marking out the postmark on the envelope?

A. I meant to make myself so understood in the last answer; this answer amounts to saying I did, I am sure.

304. X Q. Do you swear on your oath that at Pleasant Grove you made a stamp and used it in the post office at that place, while you were postmaster there, of the kind described in the last question?

A. Certainly I do.

305. X Q. How many such devices did you make and use at that place (I mean the particular one described in the last two questions), and used for postmarking letters and cancelling stamps thereon, at the same time or blow of the combined instrument?

A. I don't know that I made but one of that particular kind for that

particular purpose at that particular time and that particular office; that's all.

306. X Q. What has become of that particular stamp constructed at that particular time, used for that particular purpose, and used in that particular office by your particular self?

A. It was turned over in a box with other stamps to my son John, who took the charge of the whole business after I quit in 1870.

307. X Q. At what time did you discontinue the use of that contrivance in the post-office at Pleasant Grove? I mean in the big post-office in the big village of Pleasant Grove.

A. When the office was discontinued, in 1853.

308. X Q. At what part of the year did the Post-Office Department discontinue that office at Pleasant Grove?

1925 A. I am not exactly sure.

309. X Q. State your best recollections on that subject.

A. It might have been in the spring, summer, or fall; somewhere between spring and fall; I say that as near as I can remember.

Recess until 7½ p. m.

7½ O'CLOCK, P. M.

Met pursuant to adjournment.

Present, same counsel as before.

310. X Q. Of all the alleged combined stamps with which you have had to do from your cradle down to the present time, state the number of classes of such kind of instruments; I mean for postmarking letters and for cancelling stamps thereon by one blow or operation of such instrument.

A. I believe I made three kinds or classes.

311. X Q. Look at Defendant's Exhibit 139, and state whether that represents one of the classes.

A. It does.

312. X Q. Look at Defendant's Exhibit 140, and state whether that represents one of the classes.

A. It does.

313. X Q. What represents the other class?

A. A stamp similar to Defendant's Exhibit 139 (to the body part of 139), made of wood, with a piece of wood attached to its side, which I have already described.

314. X Q. Which of the three is class one?

A. I never called them by classes, as one, two, or three, therefore I cannot say which is class one.

315. X Q. Did you ever in any way denominate them in classes?

A. Not to my recollection.

316. X Q. Now, I desire you to state whether at any time you have applied for a patent upon any of the instruments or contrivances
1926 spoken of and described by you during this examination, both on the direct and cross-examination?

A. I never did.

317. X Q. Why not?

A. Because I did not care about it, or did not see the use of it, or did not think of it, or some such reason.

318. X Q. Have you at any time prepared and filed a caveat in the United States Patent Office embracing or covering the several instruments or contrivances, or any one or more of them, which you have described in your direct and cross-examination in this case?

A. Not according to my present recollection.

319. X Q. Do you know whether you have or not?

A. Well, I am entirely ignorant of ever having done so; I don't think I ever did; I know I did not.

320. X Q. You never made an application for a patent, and you never filed a caveat upon any of these combined instruments, or any part or portion of them, described by you on this examination, have you?

A. Never did.

321. X Q. For whose special benefit was the post-office created at Pleasant Grove, in Maryland—I mean the one you kept in one or more pigeon-holes, in a table four feet long, on a desk four feet long, about two feet high, about ten inches deep, having a door with a lock on it, to close up the post-office from the light of day or the gaze of mortal man?

A. It was created for the public benefit.

322. X Q. After three years of unparalleled growth under your administration as postmaster, that office was discontinued for the public good, wasn't it?

A. I don't know that it ever had any unparalleled growth, neither do I know for whose good it was discontinued.

323. X Q. Who was the most distinguished patron of that post-office while you kept it as postmaster—I mean by that, who supplied it with the most letters and most circulars during that time?

1927 A. I don't like to commit myself by making invidious distinctions.

324. X Q. How many circulars did you supply that establishment with while you were postmaster during each year?

A. It is difficult to say the exact number, but I have frequently sent out as many as 30,000 at one time.

325. X Q. Were those circulars sealed?

A. They were not; some were put up in wrappers and others in envelopes with the laps tucked in.

326. X Q. And this was during the years 1850, 1851, 1852, and 1853, or to the summer of 1853, when you left that office, was it not?

A. It was.

327. X Q. How did you pay the postage on those circulars?

A. Prepayment at that time was not compulsory.

328. X Q. How much postage did you pay in that way, in each year, on each of those circulars?

A. I paid nothing, as the last answer intimates; I sent them out without any prepayment.

329. X Q. You sent those circulars during those years without the prepayment of postage, did you not?

A. I have already so said in my last answer, but most of those circulars, so called, were in the form of a small newspaper.

330. X Q. Did you send out those newspaper circulars during those years without prepayment of postage on the same?

(Objected to as irrelevant, immaterial, improper on the cross-examination, because not within the scope of the direct examination.)

A. I did.

331. X Q. Now, how many letters, during those eventful three years in your life's history—I mean when you were pleasantly situated and prospering as the postmaster at that important post-office, open
1928 for the public good, continuing for three years, and closed for the want of a responsible postmaster—were sent out with unpaid postage?

A. I do not remember.

332. X Q. A good many letters were sent out in that way during that time, were they not?

A. I suppose there were.

333. X Q. About how many letters each week with the postage prepaid by a postage-stamp were sent out from that office during those three years?

(Same objection.)

A. Don't remember; can't say.

334. X Q. Do you remember to ever have seen any letters in that office, or go out from that post-office, during those three years, while you were postmaster, with the postage prepaid by postage-stamp or stamps?

A. I have seen a good many go out in that way; can't remember more distinctly.

335. X Q. You have seen letters in that office and letters go out from it, some with the postage unpaid and some with the postage prepaid by stamps, have you not?

A. I have.

336. X Q. And was that during the three years you were postmaster there?

A. It was.

337. X Q. Have you ever been postmaster of the United States, or deputy postmaster, at any other place than at Pleasant Grove?

A. I was an assistant in an office.

338. X Q. When was that, and where was it?

A. Many years ago, in the State of North Carolina.

339. X Q. Was it previous to 1850?

A. It was.

340. X Q. Have you ever been postmaster or a deputy anywhere since 1853?

A. I have not.

1929 341. X Q. In answer to question 32 of your direct examination, and also in question 33, and also in question 44, you state that you know John H. Zevely, the witness preceding you in this case, and that he is a son of yours; how old was he at the time you were the distinguished postmaster at Pleasant Grove?

A. Six or eight years, I believe.

342. X Q. Did he assist you in and about the post-office there as occasion might require?

A. I don't know as he did exactly in the post-office.

343. X Q. Who did assist you to send off those 30,000 circulars, with unpaid postage, every time the mail went from the post-office at Pleasant Grove, when you were postmaster?

A. I am not aware that, and I certainly never said myself, that 30,000 were sent every mail.

344. X Q. You did say, did you not, that you frequently sent 30,000 circulars at a time from that post-office at Pleasant Grove?

A. I did say so, but that did not mean every mail day.

345. X Q. How many mail days did you have each year you presided over that post-office at Pleasant Grove as its head and front?

A. Mails twice a week make 104 in a year, I believe.

346. X Q. How many would that make during the time you were there as postmaster?

A. Impossible to say, because I don't know how long I was postmaster.

347. X Q. You were postmaster at Pleasant Grove, but you do not know when or how long you were postmaster there, do you?

A. I was appointed some time in '50; I don't know what month; I resigned in 1853, but don't remember what month, and within that time there was an interregnum, as I believe I have already mentioned; therefore I can't exactly say how many months I was postmaster.

348. X Q. The light of that post-office, and your light there as postmaster were both extinguished about the same time, were they not?

1930 A. Yes; but with my full knowledge and consent.

349. X Q. All the stamps of any kind you ever used in your life for postal service were used in that post-office at Pleasant Grove, were they not?

A. No, sir; they were not; that was not the only place.

350. X Q. Where else besides there?

A. In that post-office in North Carolina which I have already talked about.

351. X Q. What kind of stamp did you use in that office in North Carolina?

A. Various kinds—markings and rating stamps of all kinds then in use.

352. X Q. The last you used in the postal service of any kind or description were used in the post office at Pleasant Grove, were they not?

A. Yes, sir.

353. X Q. How old was your son John H. Zevely in the fall of 1860 and fore part of 1861?

A. I think he was about 15 or 16, if I am not mistaken.

354. X Q. You and your family resided at Cumberland at that time, did you not?

A. We did.

355. X Q. Your son John H. resided there with you, did he not?

A. He did.

356. X Q. Did he assist you in and about your manufacturing business at that time and place?

A. He did.

357. X Q. Such stamps for use in postal service as you then and there made he assisted you about, did he not?

A. He did.

358. X Q. During the fall of 1860, and during the fore part of the year 1861, he had the full opportunity of knowing what kind of business was being conducted in your manufactory at Cumberland during that time, did he not?

A. He had.

1931 359. X Q. Whose recollections of events and things that took place in your manufactory at Cumberland during that time are the best and the better to be depended upon, yours or his?

(Objected to because the question is one for the court and not for the witness, and because it is plain that one may remember some things, and the other other things, and it is impossible for the witness to determine such a general proposition.)

A. I have no means of knowing whose recollection is best or the most to be depended on.

360. X Q. Your recollections of events and things which happened 25 and 26 years ago, without any memorandum in writing concerning those things, are to be entirely depended upon, are they not?

(Objected to as being plainly improper.)

A. Some things I remember perfeetly well, others not so well.

361. X Q. What kind of things do you best remember which happened so long ago as that, and without the aid of any memorandum in writing?

A. I do not know that I can classify the kind of things.

362. X Q. During your cross-examination you have heard each question read to you once or twice, and your answers thereto read to you once or twice by the special examiner, do you know of anything in that cross-examination that you desire to modify, alter, or amend at this time?

A. There is one point to which my attention has been called, of a mistake in dates, but I don't exactly know in which question or answer it was, where it was said, '69 to '73, instead of '59 to '63; that is all that I know of which I want to change.

363. X Q. Now is there any other matter or thing stated by you during that cross-examination which you desire to alter or modify, other than that you have stated in your answer to the last question, about the changing of the dates?

1932 A. Nothing that I know of.

364. X Q. In your answer to cross-question 362 you state that "there is one point to which my attention has been called of a mistake in dates," which you desired to correct, and which you did correct in that answer; who called your attention to that subject, as stated by you in that answer?

A. First I want to add that I am not aware that any mistake was made, but my attention was called to it by Mr. Clarke, the defendant's counsel, who thought there had been a mistake.

365. X Q. Did Mr. Clarke do that while you were on the stand and undergoing a cross examination?

A. He did not; and if such a mistake was made it will be self-evident on the face of the answer as compared with the other answers on the same subject.

366. X Q. Where were you at the time Mr. Clark called your attention to the matter now being inquired about?

A. On the street.

367. X Q. In this city?

A. Oh, yes; it was not in New York; I could not have got there today, I reckon.

368. X Q. When was it?

A. To day.

369. X Q. What time to-day?

A. I don't exactly know; I believe during the noon recess.

370. X Q. When did your cross-examination commence in this matter?

A. Yesterday some time; I don't know what time.

371. X Q. It is still in progress, is it not?

A. I am sorry to believe it is.

372. X Q. Now state what Mr. Clark said to you about changing those dates during his interview with you at the noon recess to day, and while you were under cross examination.

A. He certainly said no harm; he merely, in a few words, said that he thought such a mistake had been made inadvertently, and that I had better see to having it corrected.

1933 373. X Q. What, if anything, did Mr. Clarke say to you on that occasion about dates, and what dates did he tell you you should see to and have changed?

A. Just what I have said above there, 69 to 73 instead of 59 to 63, with the understanding of 18 before each of those dates.

By consent the further taking of this examination is adjourned to tomorrow, March 8, 1878, at 8 o'clock a. m.

HANNIBAL FORBES,
Special Examiner.

MARCH 8, 1878, 8 o'clock a. m.
Met pursuant to adjournment.
Present, same counsel as before.

Cross-examination of the witness resumed:

374. X Q. On page 31, at folios 120, 121, 122, and 123 of the printed amended bill in this cause, I show to you printed drawings or engravings of the postmarking and postage stamp cancelling instrument, patented to Marcus P. Norton, of Troy, New York, April 14, 1863, No. 38175, by an application to the Commissioner of Patents, founded upon said Norton's caveat filed in the Patent Office in the year 1853, and amended by an additional description, dated August 7, 1854, and reissued October 4, 1870, "Division A," and I desire you to state when you first saw or heard of the letters patent referred to in this question.

(Objected to as assuming that said patent is founded on alleged caveat of 1853, and alleged amendment thereof in 1854, and assum-
1934 ing that there ever was an amendment of said caveat.)

A. I can't say exactly when I heard of it; it was a long time after I commenced the business—some years after; then I never saw the stamp itself till 1855 or 1859; I don't remember seeing it in 1855; I might have seen it in 1859, but I never had my attention directed to it particularly until the spring of 1863, when I met Mr. Norton in Washington.

375. X Q. You may state, Mr. Zevely, if you please, whether you have ever made for the Post-Office Department newspaper postage-stamp-cancelling instrument entirely of wood, and in one piece, with circular bars upon the acting surface, or other form of configuration upon the acting face, to show the cancellation of such postage-stamp.

A. I don't know any such thing as a newspaper stamp-canceller separate from any other canceller.

376. X Q. Did you ever make any postage-stamp cancelling instruments of the description contained in the last question for the Post-Office Department at Washington, and for any use whatever in the postal service?

A. I made thousands of cancellers; I don't know what kind that is.

377. X Q. That you may not be misunderstood about this matter, I again ask you whether you ever made postage-stamp-cancelling instruments of wood, and wholly in one piece, with a handle belonging to the same piece of wood, and the entire instrument turned by means of a turning lathe, in the ordinary manner of turning wood in a lathe, and having on the lower end, or acting face, some kind of a configuration to denote the cancellation of the postage stamp?

A. I have made it.

378. X Q. Have you made such instruments for the Post-Office Department to use in the postal service?

A. I have.

1935 379. X Q. In what year did you first commence that business; through what years did you continue it, and when did you cease

to furnish the Post-Office Department with postage-cancelling instruments of that description or kind?

A. I don't remember the exact year or time I commenced making that particular kind, but I made them under the contract from 1855 to 1859; also, between 1863 and 1871—through all those years.

380. X Q. State about how many of that kind of cancelling instruments you manufactured for the Post-Office Department for use in the postal service during each of the years stated by you in your last answer.

A. I have no possible way to tell that; I can't remember.

381. X Q. You made them in very large quantities during those years, did you not, for the Post-Office Department?

A. I don't know what you mean by large quantities.

382. X Q. I mean several hundreds or thousands of them during each year, and I mean further, whether you did not send that sort of contrivance to the blank and stamp agency division of the Post-Office Department in boxes about the size of your post-office at Pleasant Grove—I mean that part of your post-office containing one or more pigeon holes.

A. I made them by hundreds or thousands, as asked in the question, and sent them to Washington in boxes, according to orders from said department.

383. X Q. And you continued so to manufacture those kind of cancelling stamps and send them to the Post-Office Department until you went out of business, or gave up your contract to your son during the year 1870, did you not?

A. Yes, sir; I did.

Redirect examination by Mr. C. CLARKE:

1936 Re-D. Q. 384. In letter of Gov. Woodford to you, put in evidence by complainant's counsel as his Exhibit "E E," dated Feb'y 11, '78, it is stated, "I am not authorized to pay you for the testimony that is within your knowledge;" if that phrase conveys any meaning in your mind, state what it refers to.

(Objected to because the letter is the higher and better evidence, and it is for the court to determine from the letter itself, and not what the witness may say about it.)

A. I hardly know how to answer, unless I make a long statement.

(Defendant's counsel says "That is what I want.")

A few days or a week before that letter was received by me I received the other letter which is also in testimony as Complainant's Exhibit "C C," and enclosures marked "D D," March 6, 1878, which letter is dated February 2, 1878, signed by Stewart L. Woodford, wanting me to make an affidavit and return it to him concerning this suit about the existence of which I knew nothing till that moment, and as he did not either offer to pay anything for it, or even enclose a postage-stamp to prepay answer, and I was very busy, time fully occupied, I answered by saying as politely as I could that I could not comply unless I was paid for it.

385. X Q. You thought you ought to be paid for the time taken from your business in order to conform to the request contained in Gov. Woodford's first letter; is that it?

(Objected to for following reasons: 1st, as leading; 2d, it is utterly too late at this stage of the proceedings to apologize or explain about any matter contained in that correspondence between the witness and Gov. Woodford; and, 3d, the correspondence is the higher and better evidence, needing no oral declaration to explain it, it being in writing.)

1937 On this defendant's counsel suspends question, and asks the following:

Re-D. Q. 386. Where are the letter or letters you wrote to Gov. Woodford in reply to his letters?

A. I don't know; I kept no copy; I mailed them to New York.

Re-D. Q. 387. Question 385 Re-D. Q. read.

(Same objections to it as to last question, with the further objection that the letters of the witness not having been proved to have been lost, nor in any manner accounted for by the person now holding the same, and the witness not having preserved a copy of those letters, no parol evidence can be given by him of their contents at this time.)

A. Yes, I thought I ought to be paid; I told him I was not able to spend time for nothing; I told him further, that I had, as I thought, lost thousands of dollars by the bad faith of the Post-Office Department toward me, and I was sick, tired, and disgusted with the whole concern.

Re-D. Q. 388. In your answer to cross-question 171, you say you were experimenting with similar devices from 1869 to 1873; is that correct?

A. This is the place spoken of by me yesterday, and is not correct. It was explained yesterday, and should read 1859 to 1863.

Deposition having been read over to witness, he states he desires to make no further corrections.

E. S. ZEVELY.

Subscribed and sworn to before me this eighth day of March, 1878.

HANNIBAL FORBES,
Special Examiner.

I, Hannibal Forbes, the special examiner appointed by the circuit court of the southern district of New York, by an order, of which a
1938 certified copy is hereto annexed, do hereby certify that John H. Zevely and Edmund S. Zevely, witnesses, called for and on behalf the defendant, whose depositions are above set forth, were by me several' sworn to testify the truth, the whole truth, and nothing but the truth; that they respectively subscribed the said depositions, and that each of said depositions is authenticated by my signature, and that the said depositions were reduced to writing by T. J. Hayns, esq., who is not interested in the suit, in the presence of the witnesses respectively, and in the presence of counsel for the complainant and defendant in this suit. In testimony whereof I have hereunto set my hand as special examiner this eighth day of March, A. D. 1878.

HANNIBAL FORBES,
Special Examiner.

Complainant's Exhibit E E, E. A. Zevely, March 6, 1878.—*H. F., Sp'l Examiner.*

OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK.
New York, Feb'y 11th, 1878.

CAMPBELL
vs.
JAMES.

E. S. ZEVELY, Esq., *Cairo, W. Va.:*

DEAR SIR: I have to acknowledge the receipt of your letter of the 6th inst. in reference to your familiarity with the facts of the above case, and

to say in reply that your testimony will be of great service to Mr. James, the postmaster in this city, who is personally liable in this action. The affidavit which I asked for in my former letter certainly cannot take a great deal of your time, and will be very gratefully received by
1939 me as the representative of Mr. James. I am not authorized to pay you for the testimony which is within your knowledge, but I will pay for the procuring of the same the necessary expenses. That is to say, I will agree to pay the amount which can reasonably be charged for drafting and swearing to the statement referred to in my last letter. I trust that you will reconsider the conclusion expressed in your letter and consent to give me the benefit of your knowledge.

Very respectfully,

STEWART L. WOODFORD,
U. S. Att'y. J. D. J.

Complainant's Exhibit D D, E. S. Zevely, March 6, 1878.—H. F., Sp'l Examiner.

Will you oblige me by taking the affidavit in the following manner: Entitle the affidavit as follows:

United States circuit court, southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

STATE OF WEST VIRGINIA,
County of Ritchie, ss:

E. S. ZEVELY, being duly sworn, testifies as follows, to wit: I am, &c.

(Answer the questions contained in the annexed paper, in writing, in narrative form, repeating the substance of the question in the
1940 answer. Go before a notary public, who will administer the oath and attach his official seal.)

(Endorsed:) Complainant's Exhibit D D, E. S. Zevely, March 6, 1878; H. F., Sp'l examiner.

1. Have you ever been employed in any post-office? If so, state in what office, and at what time, as accurately as you can.

2. Have you ever known of the use in any post office of a hand instrument by which the letter was postmarked wholly on the envelope, and apart from the postage-stamp, and the postage-stamp was canceled at one blow? If so, state what office, when it was first used, who made it, and how it was constructed; specifying particularly the manner in which the postmarker and the canceller were attached to each other, and to the handle, and the material of which they were each made.

3. Was the instrument referred to in Question 2 used in the year 1860, or earlier? Speak to the best of your recollection.

4. Who invented or contrived the instrument above referred to? Did you ever know of the inventor using the same? If so, where, and in what year?

5. Did you yourself ever make or partially make such an instrument? If to, state when, and how it was constructed; give the date according to your best recollection.

1941 *Complainant's Exhibit C C, E. S. Zevely, March 6, 1878.—H. F., Sp'l Examiner.*

OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, Feb. 2d, 1878.

S. B. C.
C. H. B.

E. S. ZEVELY, Esq.,
Cairo, Ritchie Co., W. V.:

SIR: There is a suit in equity pending here against Mr. James, U. S. postmaster at this city, which is based on a patent granted to Marcus P. Norton in 1863, for an improvement in post-office stamps.

I am informed by Mr. J. H. Zevely of Wheeling, W. V., that prior to the year 1860 you made of boxwood a combined postmarking and postage-stamp canceller, so constructed that the postmark would appear wholly on the envelope and apart from the postage-stamp, and would be made by the same blow which put the cancellation mark on the postage mark.

Will you do me the great favor to examine the enclosed papers and write out your answers in the manner indicated and take them before a notary public and swear to them? I will see that the fees of the notary are paid.

I request this as the facts as stated by Mr. J. H. Zevely seem to me to have a very important bearing upon the suit.

I request also that you give as early attention to the matter as you conveniently can.

Very respectfully, yours,

STEWART L. WOODFORD,
U. S. Att'y.

J. D. J.,

1942 United States circuit court for the southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
v.
THOMAS L. JAMES.

Present, pursuant to notice, Marcus P. Norton, solicitor, for complainant, and Samuel B. Clarke, assistant U. S. attorney, for the defendant.

Proofs for final hearing taken for and on behalf of the defendant before A. J. Falls, esq., a special examiner appointed for the purpose, at his office, in the city of Washington, D. C., on the 18th day of March, 1878, and following days.

MARCH 18, 1878.

On motion by defendant's counsel, objected to by counsel for complainant, hearing was adjourned until March 19, 1878, at two o'clock p. m.

MARCH 19, 1878.

Present, pursuant to adjournment, Marcus P. Norton, solicitor, and Geo. H. Williams, of counsel for complainant, and Assistant U. S. District Attorney Samuel B. Clarke, for defendant.

JOHN J. WEED, a witness called on behalf of the defendant, being duly sworn, testified as follows, viz:

1. Q. What is your name, age, residence, and occupation?

A. My name is John J. Weed; I am forty-four years of age to-day; I reside at No. 1321 K street northwest, Washington, D. C.; I am a lawyer.

1943 2. Q. Did you ever have anything to do with a case in the Court of Claims in which Jacob Shavor and Albert C. Corse were petitioners?

(Objected to by counsel for complainant, as being immaterial, incompetent, and improper.)

A. I represented the United States in the Court of Claims, as assistant solicitor, in a suit which was brought into that court by Shavor and Corse, during part of the time that I was assistant solicitor for the United States in that court.

3. Q. What time was that?

A. My impression is that it was some time in the year 1867, and part of the year 1868; my official connection with the Court of Claims closed on the 1st day of July, 1868; I think the case was argued and decided by the Court of Claims previous to the time that my connection with the court ceased, but I am unable to give the dates, as I have none of the papers with me.

4. Q. What was the nature of that suit?

(Objected to by counsel for complainant, because it is not the best evidence.)

A. I can only state generally what the object of that suit was, and as I now remember it; it was brought to recover from the United States compensation for the use of the postmarking and canceling stamp, which it was alleged had been used by the United States in the different post-offices, and was also alleged to have been invented by Mr. Marcus P. Norton, and also claimed to have been patented by him; and it was also claimed in that suit that Shavor and Corse were entitled to compensation for the use of that invention by reason of their being the assignees of that patent from M. Norton.

5. Q. What period of time did the alleged use of the invention for which compensation had been asked occur?

(Objected to as not being of the best evidence by counsel for complainant.)

1944 A. It is impossible for me to answer that question, but it must have been for the use of the invention prior to the institution of the suit in the Court of Claims.

6. Q. Can you identify the alleged patentee, Marcus P. Norton, any more particularly than you have done?

A. I have never known but one Marcus P. Norton, and I believe that person is the solicitor for the complainant in this case, and I have known him for ten or eleven years, I think, and he is now present at this examination.

7. Q. Is he the one who is alleged to be the inventor?

A. He is the same man that said he was the inventor.

8. Q. Did he have anything to do with that case of Shavor and Corse against the United States?

(Same objection as above.)

A. I think he was originally the attorney for the claimants in that cause, and that at some stage of the prosecution of the suit A. L. Merriman, esq., of this city, became associated with him in its prosecution; I am not now certain whether Mr. Norton appeared at the taking of any

ented invention, and the claimants to relieve themselves from the effect of those decisions sought to establish the existence of a special contract made by the United States, to make compensation for the use of this patent, but the Court of Claims found, as I remember now, that the evidence did not establish the existence of any contract. That is the substance of one of the facts found by the court, but I cannot remember specifically what other facts they did find.

(Complainant's counsel objects to all the foregoing evidence after the word "detail," as irresponsive to the question.)

23. Q. Do you remember whether or not the court found in that case that Mr. Norton was the first and original inventor of the post-marking and canceling stamp in question?

(Objected to by defendant's counsel as not within the scope of the direct examination, and because it is immaterial whether the court
1949 did or did not find that fact, it not having jurisdiction thereon.)

A. I do not remember what the Court of Claims did find on that question as to whether Mr. Norton, nor whether the question of Mr. Norton's being the first and orignal inventor of that patent, was directly put in issue in the trial of that cause; I have an indistinct recollection that, as a representative of the government, I had some correspondence with some persons as to the originality of that invention, and took, or attempted to take, some evidence on that question, but my recollection is indistinct; I have not examined the record upon that question since that time.

(Objected to by counsel for complainant as above.)

24. Q. Referring to the conversations you say you had with Mr. Norton during the pendency of the suit in the Court of Claims, did Mr. Norton go into details, in his business transactions with Shavor and Corse, or did he simply speak of them as the owners of the patent?

A. He never gave me any of the details of his arrangement with Shavor and Corse; his conversations were upon that subject general rather than as specific.

25. Q. You have stated, I believe, that in the conversations to which you have referred Mr. Norton said that he was the inventor of the post-marking and stamp canceling device in question; is that so?

A. I always understood him to claim that.

JOHN I. WEED.

Subscribed and sworn to before me this 19th day of March, 1878.

A. J. FALLS,
Special Examiner.

1950 MARCH 20TH, 1878.

Present, pursuant to adjournment, Marcus P. Norton, solicitor, and Geo. H. Williams, of counsel for complainant, and Assistant U. S. District Attorney Samuel B. Clarke, for defendant.

BENJAMIN CHAMBERS, a witness called for the defendant, being duly sworn, testified as follows, viz:

1. Q. What is your name, age, residence, and occupation?

A. Benjamin Chambers; I am thirty-six years of age; residence, Washington City; am a manufacturer of post-office stamps.

2. Q. How long have you been a manufacturer of post-office stamps?

A. Twelve years.

3. Q. What did you do before you became a manufacturer of post-office stamps?

A. I was an officer in the U. S. Army immediately before.

4. Q. Well, what did you do before that, if anything?

A. When I did anything I worked at the business of manufacturing stamps with my father, who was the contractor at that time.

5. Q. How long was your father in the business of manufacturing post-office stamps, and what was his name?

A. My father's name was Benjamin Chambers; he began the business in the year 1835; continued at intervals until about 1857; I am not sure about that; I think that was about the time that he stopped; the date could be established by reference to the records of the Post-Office Department.

6. Q. Did he make any stamps after about 1857?

A. I don't recollect the dates; better refer to his contracts on file in the Post-Office Department.

7. Q. Did he ever make any postage stamp canceling instruments to your knowledge?

A. Yes, sir.

1951 8. Q. Describe the earliest sort or sorts that you remember.

A. They consisted of an iron stamp about three-quarters of an inch in diameter, with bars across the face affixed to a wooden handle.

9. Q. About how large is the handle?

A. About four inches long and one and a quarter in diameter.

10. Q. When was this sort of cancelling stamp first made, according to your recollection?

A. I could only guess at the date; the date could *could* be established by reference to the contract for making them.

11. Q. Give the earliest date you recollect.

A. Without being certain, I think it was before 1858.

12. Q. Did your father make any other canceling stamp?

A. I think he made wooden, also.

13. Q. Describe one of them.

A. They were a piece of hard wood turned in the form of a handle, having upon one end rings turned on or bars sawed across.

14. Q. Give the earliest date when this sort was made, that you recollect.

A. They were all made under one order or contract; my recollection may not extend to the making of the first ones, as I was not always at work.

15. Q. What I want is not absolutely the first date, but the first date you recollect.

A. I have given that—about 1857.

16. Q. Did your father ever make a combined canceling and post-marking instrument?

A. He did.

17. Q. Describe the first one that you recollect.

A. It was almost exactly like the one in present use, except that the canceler was of solid metal; it consisted of a post-marking stamp and a solid metal canceler having bars on its face, both set upon a base piece which was affixed to a handle.

18. Q. Give the dimensions of the several parts.

1952 A. The post-marking stamp was about one inch and an eighth in diameter. The canceler about three quarters of an inch in diameter, and the base about two inches and a quarter long; the handle about four inches long. The handle was fixed to the center of the base piece on the side opposite to that occupied by thestamp and canceler.

19. Q. Give the other dimensions of the base piece, and the height of the stamp and canceler.

A. The stamp and canceler was one inch in height. The base was one inch and one-eighth wide. It was one-eighth of an inch thick.

20. Q. When was this instrument made, and why was it made, and what was done with it?

A. I first saw it on being home from the army on leave, I think, in the early part of 1862. I am not perfectly sure as to the date. My father showed it to me, and told me he had made it; thought it was a good thing. He asked me to take it to the Patent Office with me and look among the stamps and see if I could find anything like it. I took it there and found something in the case of models which I thought would prevent him from getting it patented. There were two stamps in the case of models which I thought would prevent him. I took it back to him and told him so; he put it in the drawer; took no further action with it. It remained there several years, and I lost sight of it. It was made because of a desire on his part to make improvements on every line in which he was connected. He was confined to the house. Was not able to get out, and passed his time working upon his inventions, which were many.

(Complainant's counsel objects to all this answer as to what was told to the witness by his father.)

21. Q. Describe those stamps that you saw in the Patent Office?

1953 A. One of them was made of brass, and had a canceler screwed on to the side of it. That was the one that I thought would stop his patent. The other one was more similar to the one he had made still, but I didn't notice it so particularly, having first got hold of the one first above mentioned, but I distinctly recollect that there was two which I thought would interfere.

22. Q. Describe in detail that first one.

A. It had wheels in it for dating, and the canceler was a small piece of brass screwed on its side. I could not now give any of its dimensions, but it was larger than the second one named; the handle was larger. The second one was made of iron; that is my recollection. I cannot more fully describe it; would recognize them if I saw them.

23. Q. Describe that brass canceler that you speak of.

A. I do not know whether I can or not. I remember that it had fine bars on it, much finer than those on my father's model.

24. Q. Did these stamps in the Patent Office have labels on them?

A. Yes, sir.

25. Q. Do you recollect what the writing on the labels was?

(Objected to as not the best evidence.)

A. I only remember the man's name, that is all, and that was Marcus P. Norton, on both of them.

26. Q. Was there anything to indicate the date which either of them belonged?

A. I took no notice of the dates. Their presence there was sufficient for me.

27. Q. Were you then familiar with the business of making post-office stamps?

A. I cannot say that I was entirely familiar with it. Had worked at it as a boy in my father's shop.

28. Q. Was it then your opinion that the instrument having the brass canceler screwed on the side of the postmarker, and having the name of Marcus P. Norton on the label, was substantially the same thing

1954 which you have stated your father made, and which you have described?

(Objected to because witness is not an expert.)

A. It was my opinion that the stamp having the brass canceler screwed on to it would prevent my father from geting a patent for the instrument he had made, and I so told him; and, also, I was further satisfied that he could not get a patent by the presence of the other one.

29. Q. State fully the grounds of that opinion.

(Objected to as above.)

A. The usefulness of my father's model consisted in marking and canceling at one operation; and it was obvious to my mind that either of the instruments in the case would accomplish that end; I therefore considered that sufficient ground for what I said to my father.

30. Q. Is your opinion the same now as it was then?

(Objected to as above.)

A. It is.

31. Q. Supposing an instrument to consist of an ordinary postmarking stamp, with an ordinary handle and a metal canceler screwed on to the side, having sharp edges on its acting face, so that the postage stamp might be cut as well as inked, would that instrument differ substantially, in your opinion, from the combined postmarker and canceler made by your father and described by you?

(Objected to as above.)

A. It would differ only as to the additional function of cutting; the principle contained, that of postmarking and canceling at one operation, would be contained in both; a claim could be maintained for the cutting improvement only in such a case.

1955 32. Q. Supposing that such an instrument as I have described, having a cutting canceler, were to be used, and it was found that the envelope and contents were injured by cutting, can you think of any merely mechanical alteration of the canceler which would leave the instrument still capable of postmarking and canceling at one operation? By merely mechanical alteration I mean such an alteration as would suggest itself naturally to any mechanic.

(Objected to as above.)

A. I would proceed to grind off the cutters smooth with the surface, leaving the instrument only capable of inking and not cutting.

33. Q. That alteration, as I understand you, would be a merely mechanical change; am I right?

(Objected to as above.)

A. That alteration, though a mere mechanical one, would leave the instrument substantially the same.

34. Q. Do you recollect whether the second instrument, which you refer to as having been found by you in the Patent Office, and which you state was more nearly like the one made by your father, had a tube with a cork in it for the canceler?

A. Now, in my examination that day I confined myself entirely to the principle of postmarking and canceling at one operation; having found that my father's instrument was not the first one which would effect that, I withdrew and took no notice of any difference in the construction or material of the canceler, as it was a secondary consideration with me. I, therefore, do not recollect whether it had or not.

Cross-examination by Mr. WILLIAMS:

35. Q. What office in the army did you hold?

A. I was a captain of cavalry.

36. Q. What was the date of your commission?

1956 A. It was in October or November, 1861; I am not clear.

37. Q. Where did you go after you were appointed captain?

A. I went to Virginia, in the immediate vicinity of Washington; removed for a while, afterwards, about the first part of '62, winter; went to Philadelphia; afterwards I returned to Virginia.

38. Q. When did you take your first leave of absence after you were appointed?

A. I couldn't give the date for the reason that I frequently would get one or two days, and ride into town, stay at home over night, and return to my company the day following. I lived in Washington; hence the frequency of my visits.

39. Q. How long did you remain in the army in Virginia?

A. I commanded my company until the end of 1864. I then left the army; my service was all in the State of Virginia.

40. Q. Do you think it is possible that your visit to the Patent Office, with the instrument that your father made, might have been in the early part of 1863, as you state you are not confident of the date?

A. I think it is possible I might have been mistaken for one whole year; since answering the above question as to the date of my commission and my whereabouts, I do think it was possible that it was in 1863 and not 1862.

41. Q. You have stated that you discovered two instruments in the Patent Office when you went there with your father's instrument, one of which you have particularly described, and the other you say was more like the instrument that your father made. Please state, if you can, in what respect the latter was more like your father's instrument.

A. Well, sir, it had the base piece, while the other one had not; in the one the canceler was screwed on to the side, in the other it occupied the place on the base piece.

1957 42. Q. Was the post-marker in that instrument attached to one end of the base-piece or cross-bar, and the canceler to the other end, with the handle in the middle of the cross-bar?

A. It was.

43. Q. Is it not necessary, in your judgment, to make a perfect combined post-marker and post canceler that the acting faces should be exactly parallel with each other, so that they will both strike the paper in the same way and at the same time?

A. If the canceler be made of cork, as at present, the surface of the cork canceler should be slightly raised above that of the postmarking stamp to insure the most perfect result and effectual canceling of the three-cent stamp, because the cork will strike the paper a little in advance of the postmarking stamp, and squeeze out a little larger amount of ink than would be deposited if both were exactly level; it is now my practice to cut the cork in that manner.

44. Q. Suppose the postmarker and the canceler both to be made of iron or steel, what would then be your opinion as to the necessity of their faces being equal?

A. It would be eminently necessary to have them both square and level.

45. Q. Suppose a combined instrument is taken, the canceler having blades or knives on it, and those knives or blades should be filed off so as to make the surface of the canceler smooth, would not that smooth surface of the canceler be somewhat above the surface of the post-

marker, so that when the instrument is used it would tip a little, and not make a full face impression of the canceler?

A. In such cutting cancels as I have seen, the knives or cutters always projected slightly above the face of the canceler; and if they were ground off, it would leave the face of the canceler where it was before in respect to the surface of the marking stamp; if the canceler
1958 and stamp were of one height, removing the knives would not effect their relative position on the base piece.

46. Q. Do you know whether or not the canceler projected below the postmarker the entire width of the knives, or only part of the width of the knives?

A. There has been invented a great variety of cutting cancelers; some have knives, others have knives with broad guards to prevent their entrance through an envelope; others fine teeth as a file and made to revolve with the blow, so as to tear the three-cent stamp; each and all of these devices have been declared mischievous and their use prohibited by the Post-Office Department; I cannot tell to which of these you refer.

(So much of the answer as states trials of cutting devices and the action of the department about them objected to by defendant's counsel as irresponsive.)

47. Q. You say that several kinds of instruments have been made for the purpose of postmarking letters and canceling stamps; is it not necessary to determine their relative value, or whether they have any value at all, that they should be experimented with for that purpose?

(Objected to as not within the scope of the direct examination, and is plainly improper.)

A. To determine the usefulness and value of any mechanical device it is necessary to make an experiment with it.

48. Q. Can you say that in the construction of instruments or machines that the substitution of knives to do cutting is substantially the same as materials for printing or making impressions with ink on articles or paper?

A. Separately considered, cutting devices stand apart and distinct from printing devices.

1959 49. Q. Have the combined stamps which you have manufactured for the government been generally the same in form and in substance?

(Objected to as immaterial and not within the scope of the direct examination.)

A. Since my entrance into the business they have never been changed either in form or material.

50. Q. State, briefly, how and what they are made of.

(Same objection.)

A. They are made usually of steel in the postmarking stamp itself; of cast-iron in the base piece, and of brass in the tube holding the cork canceler, the handle being of walnut wood.

51. Q. You have been familiar with post-office stamps for a long time, as you say; I will ask you if you have not always understood that Marcus P. Norton was the inventor of the combined postmarking and post canceling stamp?

(Same objection.)

A. I have always been aware that he was the patentee, and so regarded him as the inventor.

52. Q. Referring to the instrument that you saw in the Patent Office with the brass canceler screwed on to the postmarker, do you know

whether or not there were knives or bars on the surface of that brass canceler?

A. If you will refer to the question propounded to me as to whether there was a tube with a cork on it on one of the two instruments, you will find in my answer that I did not regard the material of the canceler, or its construction, carefully enough to describe it.

53. Q. Where did your father reside while you were in the army?

A. In Washington City.

B. CHAMBERS.

Subscribed to and sworn to before me this 20th day of March, 1878.

A. J. FALLS,
Special Examiner.

1960 Adjourned by consent of counsel until Thursday, March 20th, 1878, at 10 o'clock a. m.

MARCH 21ST, 1878.

Present pursuant to adjournment—Marcus P. Norton, solicitor for complainant, and Geo. H. Williams, of counsel for complainant, and Assistant U. S. District Attorney Samuel B. Clarke, for defendant.

AMOS L. MERRIMAN, a witness called on behalf of the defendant, being duly sworn, testified as follows, viz:

1. Q. What is your name, age, residence, and occupation?

A. Amos L. Merriman; age, fifty-four years; residence, Washington, D. C.; am a lawyer.

2. Q. Did you ever have anything to do with a case in the Court of Claims in which Jacob Shavor and Albert C. Corse, of Troy, New York, were petitioners, and which was based upon a claim for compensation for the use by the Post-Office Department of a combined postmarker and stamp canceling instrument, claimed to have been patented to Marcus P. Norton?

A. I was employed as counsel in that case by Shavor and Corse, shortly after the suit had been instituted.

3. Q. Do you know Marcus P. Norton, complainant's solicitor in this suit, and now present?

A. I do.

4. Q. Did he ever have anything to do with that suit?

A. His name was signed to the original petition filed in the case as solicitor.

5. Q. What else, if anything, did he have to do with the case?

A. He retired from any active management of the case for the
1961 reason that I supposed the claimants desired to use his testimony. He did not want to act in the double capacity of attorney and witness.

6. Q. Was he a witness in that case?

A. He was.

7. Q. Did you have any conversation with him before his examination in reference to any of the matters about which he was likely to be examined?

A. I presume I did in a general way.

8. Q. Did you have any in regard to the general interrogatory as to whether or no he had any interest in the claim?

(Objected to by complainant's counsel, because it is not competent to give the statement of Mr. Norton as evidence in this case.)

A. I think I did; at least I recollect that either shortly before, or at the time of examination, Mr. Norton, in response to the general interrogatory whether he had any interest, direct or indirect, in the subject matter of the claim, stated in general terms that he could testify that he had no direct interest in it, but wouldn't say that he had no indirect interest in it, and I think he testified in that manner.

9. Q. Did he say anything else; give any reason?

A. I don't recollect that he stated the reason why, but he may have done so; I do recollect the impression left upon my mind, but whether from his statements or Mr. Corse as to the interest he had in the patent I can't say; I had very little conversation with Mr. Norton in regard to that matter.

10. Q. Did Mr. Norton at any other time while the suit was pending make any other statements bearing upon the ownership of the patent, or of the claim, or of any interest in either?

(Same objection.)

A. I don't recollect whether he did.

1962 11. Q. Did he ever claim to own the patent, or that Shavor and Corse had reassigned it to him?

A. Not that I recollect of while I had any connection with that suit.

12. Q. How long were you connected with the suit?

A. Until the suit was tried; I think the suit was tried in 1868, but I am not certain.

13. Q. Did Mr. Norton ever state that Shavor and Corse were entitled to the compensation claimed?

(Same objection.)

A. I think he stated that; I think he swore to it; he never disputed their right to what was claimed in that suit.

Cross examination by Mr. WILLIAMS:

14. Q. Did Mr. Norton claim in the conversation with you, to which you have referred, to be the first and original inventor of this combined marker and stamp?

A. Yes; he always spoke of the invention as being his own originally.

15. Q. Did Shavor and Corse pay you for your professional services in that case?

(Objected to as immaterial, and not within the scope of the direct examination.)

A. They never paid anything for my services in that case, and a part only of the expenses that I incurred.

A. L. MERRIMAN.

Sworn to and subscribed the 21st day of March, 1878, before me.

A. J. FALLS,
Special Examiner.

Adjourned sine die.

1963 UNITED STATES OF AMERICA,
District of Columbia, ss:

I, A. J. Falls, notary public within and for said District, appointed by special order of court, a certified copy of which is herewith annexed, to act as special examiner, under the 67th rule in equity, as amended, in the cause of Christopher C. Campell *v.* Thomas L. James, pending in the circuit court for the southern district of New York, do hereby certify that the foregoing examination was held at my office, No. 613 Fifteenth street, Washington, D. C., on the 18th, 19th, 20th, and 21st of

March, 1878, the adjournments being made at the times in said depositions stated.

I further certify that at the said time and place I was attended by John J. Weed, Benjamin Chambers, and Amos L. Merriman, witnesses produced on behalf of the defendant; that the said witnesses were, previous to the commencement of their respective depositions, by me severally examined, cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the said depositions hereinbefore appearing were reduced to writing by James D. Ryan, a disinterested party, in the presence of counsel for both parties, who assented thereto, and read over to said witnesses respectively, and were thereupon by them respectively subscribed, and were at the same time severally authenticated by my signature. I further certify that I am not of counsel nor attorney, nor relative of either of the parties to this cause, nor in any manner interested in the result of the same.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this 22d day of March, 1868.

[SEAL.] A. J. FALLS,
Special Examiner.

1964 At a stated term of the U. S. circuit court for the southern district of New York, held at the city of New York, on the 2d day of February, 1878.

Present, Hon. Hoyt H. Wheeler, Judge.

CHRISTOPHER C. CAMPBELL
v.
THOMAS L. JAMES. } In equity.

On reading and filing the subjoined consent, and on motion of Stewart L. Woodford, U. S. attorney, and of counsel for the defendant, it is ordered that Nelson K. Hopkins, esq., of Buffalo, New York, be and he is hereby appointed a special examiner of this court, to take the testimony at Buffalo, New York, under the 67th equity rule, as amended, of John Powers, and of such other competent witnesses as may be brought before him on the part of the defendant; and it is further ordered that A. J. Falls, esq., of Washington, D. C., be and he is hereby appointed a special examiner of this court, to take the testimony at Washington, D. C., under the 67th equity rule, as amended, of such competent witnesses as may be brought before him on the part of the defendant herein, or on the part of the complainant herein.

(Signed) HOYT H. WHEELER.

A copy.
[SEAL.] JOHN I. DAVENPORT, *Clerk.*

1965 Circuit court of the United States for the southern district of New York in second circuit. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Depositions of sundry witnesses taken before me, J. G. Pomerene, a special examiner under the sixty-seventh equity rule as amended, appointed by the circuit court of the United States for the southern dis-

trict of New York by an order dated the 11th day of February, A. D. 1878, at my office in the city of Cleveland in the State of Ohio, on the 31st day of May, A. D. 1878, and following days on behalf of the defendant in a suit pending in said court in which Christopher C. Campbell is complainant and Thomas L. James is defendant, in the presence of counsel for both complainant and defendant.

Circuit court of the United States for the southern district of New York.
In equity.

CHRISTOHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Proofs for final hearing taken for and on behalf of the defendants herein at the city of Cleveland, Ohio, before J. G. Pomerene, esq., a special examiner duly appointed for the purpose.

1966 Present pursuant to notice, Marcus P. Norton, esq., of counsel and solicitor for complainant, and Samuel B. Clarke, assistant U. S. district attorney, for the defendant.

W. J. WARNER, a witness called on behalf of the defendant, being by me first duly sworn, testified as follows:

Direct examination by Mr. CLARKE:

1. Q. State your name, age, residence, and occupation.

A. W. J. Warner; age, seventy years old last January; residence, Cleveland, Ohio, and by occupation a builder.

2. Q. State, if you know, who had charge of the construction of the government building on the public square which is used for post-office, custom-house, and for court purposes?

A. I had the entire contract, no partner with me, for all the various kinds of work about the building.

3. Q. State, if you know, when the post-office was moved into that building and from what place it was moved.

A. The post-office was opened on the 29th day of December, 1858; they had begun to move on Christmas day of that year, 1858; it was moved from Water street.

4. Q. State how you fix that date.

A. I distinctly remember it, and also have it on record and the record with me.

5. Q. Just read the entry in your record and state when it was made.

A. "December 29th, 1858; post-office opened at 4 o'clock p. m. in new building; all mud." "December 28th, 1858; post-office folks moving into the new building on the square." These entries were made by me on the day of their date and in the book I read them from.

1967 Cross-examination by Mr. NORTON:

6. Q. How long have you lived in Cleveland, Ohio?

A. I came here in 1831 to make it my home, but was off and on until 1835, and have kept house here ever since then.

7. Q. You say on your direct examination that you were a builder; have you been extensively engaged in that business in Cleveland?

A. I have; I am the oldest builder and contractor, and the heaviest, and employed a large number of men from 1835 until 1868, when I retired from the business.

8. Q. Who furnished the plans for the government building about which you have testified?

A. The government did.

9. Q. Will you state the plan for the first floor of that building now used as a post-office?

A. There were three rooms used for post-office purposes, and there were side and end halls to accommodate the public.

10. Q. State for what purpose the second floor of that building was used.

A. In the second floor there was the custom-house officer; he occupied two rooms, one large and one small; the U. S. judge occupied one room, the marshall and his clerk two rooms, and the middle room was vacant.

11. Q. For what purpose was the third story occupied?

A. United States court-room and jury rooms connected with the court.

12. Q. When you first came to Cleveland to reside how many inhabitants were there?

A. I think there was about twelve hundred in 1831.

13. Q. About how many inhabitants were there in this city in the years 1849 and '50?

A. According to the best of my recollection, about forty-five thousand.

14. Q. About how many inhabitants were there in 1853?

1968 A. I should judge about fifty thousand.

15. Q. About how much room was occupied for the post-office in this city in 1858 previous to the occupying of the new post-office building during the last part of December of that year?

A. About one-third of that occupied by the present post-office floor; I know the office on Water street from which they moved into the new building was very small.

16. Q. About how much room was occupied by the post office in this city in 1853?

A. The same as in my last answer, and it was the same post-office and in the same place at that time.

17. Q. Where was the post-office in this city before it was removed to Water street, the place referred to in your last answer?

A. On Superior street.

18. Q. For how many years was that post-office on Superior street, in this city?

A. I think it was on Superior street when I first came here to live, and remained there until it was removed to Water street, and it remained on Water street until it was removed into the new post office building in December, 1858.

19. Q. If you remember, please state how much room was occupied by the post-office while it remained on Superior street.

A. One or two very small rooms.

20. Q. Describe, as near as you remember, the construction of the post-office while it was on Water street, and give the approximate size of each room, if it had more than one room.

A. My opinion is it was 20x60 feet, and perhaps one-third or one-quarter of it was occupied by an entrance to the front part of the office, and the balance was occupied by the post-office and distributing-room for post-office use.

21. Q. How many windows or openings were there in that office for the purpose of delivering letters or other mail matter to the public?

1969 A. Three openings, two windows and a door, and these were in the front wall of the building to light the room, and the mail

matter was delivered through two openings, one for gentlemen and one for ladies, in a partition back from the front wall, which separated the post-office from the front room.

22. Q. The two windows and door which you refer to in the front wall of the building were of the ordinary kind containing sash and glass, were they not?

A. Yes.

23. Q. The door in that wall was for the purpose of admitting people to the front of the post-office to receive their mail, was it not?

A. Yes, sir.

24. Q. Do you remember about the size of each of those two openings through which mail matter was delivered through the partition separating the post-office from the front or entrance room?

A. About twelve inches square; a little glass door swung on hinges and fastened on the inside, and could not be opened from the outside.

25. Q. Those doors were usually kept closed excepting during the actual delivery of mail matter, were they not?

A. Yes; that was the custom.

26. Q. You, yourself, received mail matter through one or both of those windows, did you not?

A. Yes.

27. Q. Frequently?

A. Yes, sir.

28. Q. About how high from the floor to the underside of those openings was it?

A. About three feet, the ordinary heighth of such places; it might have been three feet and a half, and to the top of the opening it would be about four feet and a half.

29. Q. Do you remember the time when the office was removed from Superior street to Water street, the place about which I have just been inquiring of you?

A. I could not tell exactly; probably about 1850; somewhere along there.

1970 30. Q. It remained there until it was removed into the new post-office building, in December, 1858, did it not?

A. Yes.

31. Q. Do you personally know Mr. Charles E. Wheeler, in this city?

A. I do; he was a clerk in the post-office in this city.

32. Q. When did you last see Mr. Wheeler?

A. I have seen him last within a month.

33. Q. Did he make any inquiries of you about the time the post office was moved into the new building?

A. No; he did not; I have not been asked about that until Mr. Clarke, the defendant's counsel, asked me to day.

Redirect examination by Mr. CLARKE:

34. Q. How many times during the last 28 years has your attention been called to the post-office as it was on Water street and on Superior street in respect to the matters about which you have been cross-examined?

A. A great many times, for I have been employed in making repairs and alterations about the post-office buildings while they were on Superior street and Water street, and also upon the new building since I built it.

35. Q. Do you recollect whether the post-office was ever in the Herald building on Bank street?

A. It seems to me it was, and it seems to me it was not; it might have been.

36. Q. Was not the post-office removed from Superior street to Bank street, in the Herald building in 1850, and did it not continue there for about three years until J. W. Gray was appointed postmaster by President Pierce, and did not Gray remove the post-office to his own building on Water street?

A. I think it was in the Herald building for a short time, and
1971 that it was removed by Gray into his own building when he was appointed postmaster; it was for so short a time I had forgotten it.

Recross-examination by Mr. NORTON:

37. Q. On your redirect examination you have spoken of a post-office in the Herald building on Bank street, what sort of a post-office was that?

A. It was rented by the government for post-offices purposes, and was about twenty to twenty-five feet front by fifty to sixty feet deep, three stories high.

38. Q. On which floor of that building was the post-office?

A. First floor above the basement.

39. Q. How much room of that floor was occupied for post-office purposes?

A. It was about twelve to fifteen feet from the front wall to the partition separating the post-office from the front entrance.

40. Re X Q. How many openings for the delivery of mail matter to the public were there in that partition which separated the public room from the post-office room?

A. Two; one for ladies and one for gentlemen, and they were about the same as those on Water street.

41. Re X Q. Were those openings about the size of those on Water street?

A. Yes.

42. Re X Q. Did those delivery openings have glass doors like, or substantially like, those you described on Water street?

A. I can't say; I incline to think they were of wood, and hung by hinges and fastened on the inside.

43. Re X Q. About how high from the floor were those delivery openings?

A. About three feet and a half; about the same as the others on Water street.

1972 44. Re X Q. Did you receive through either of those windows mail matter for yourself, personally?

A. Yes, sir.

45. Re X Q. Do you remember of having seen the table used for stamping letters anywhere near those delivery openings, while the post-office was either at Bank street or Water street?

A. I never noticed those.

46. Re X Q. Had there been a table for stamping letters and mail matter in either of the post-offices on Water or Bank street, and within from six to twelve feet of those delivery windows, or either of them, you would have been very apt to have seen it, would you not?

A. No; you could not see anything there, I will tell you why; there was a case just behind the boxes containing miscellaneous mail matters, and that shut off all view of the room in the rear.

47. Re X Q. About how far from those delivery windows was this extra case for containing miscellaneous letters and other postal matter?

A. Three to four feet—just to turn around.

48. Re X Q. About how wide was the post-office at the point where the partition, containing the delivery windows, separated it from the front or public room in the post-office on Bank street?

A. About twenty-one or twenty-two feet; it occupied the whole room, including the door which was in this partition to allow entrance to the post-office from the front room.

49. Re X Q. Did that separating partition, including the door, occupy the whole width of the post-office and of the public room?

A. Yes; it did.

By Mr. CLARKE:

50. Q. How do you recollect about the facts connected with the Herald building? How do you distinguish that building from the Water street building?

1973 A. On account of its being a narrow building; I don't think there was any hall there at all, because they put a stairway on the outside to get to the second and third floors, and it remains there yet.

51. Q. Do you remember when they put that stairway there?

A. It was a good many years ago.

52. Q. You think there could not have been a side hall because it would have made the post-office too small?

A. Yes; that is my opinion about it.

53. Q. You may be mistaken, may you not?

A. Yes; I may be.

By Mr. NORTON:

54. Q. Have you any doubt in your own mind about there being no side hall in the Herald building on Bank street, while occupied as a post-office on the first floor, or about the partition extending from outer wall to outer wall on the inside?

A. There might have been a hall there before the post-office went in, but when the post-office went in there was no hall, from the fact that they built a stairway on the outside to get to the second and third stories; I have no doubt about it.

55. Q. By Mr. CLARKE: Do you recollect positively and distinctly, without making any inferences, that there was no side hall when the post-office was in the Herald building on Bank street?

A. I should say when the post-office occupied it there was no hall there at all, and the partition ran across the entire room inside.

56. Q. Do you recollect that?

A. That is my best recollection.

W. J. WARNER.

Sworn to before me, and subscribed in my presence, this 31st day of May, A. D. 1878.

J. G. POMERENE,
Special Examiner.

Adjourned by consent to June first, 10 o'clock a. m.

1974 Met pursuant to adjournment of the 31st of May. Same counsel present as before.

JOHN ALBINGER, a witness called for and on behalf of the defendant, being by me first duly sworn, testified as follows:

Direct-examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. John Albinger; forty-four years old the 20th of May last; residence, Cleveland, Ohio; and a clerk in the post-office.

2. Q. Were you a clerk in the post-office in this city when it was located on Water street, in Postmaster Gray's building?

A. I was.

3. Q. State when you were first employed there, and how long you continued a clerk in the post-office at that place.

A. I cannot state the exact date, but my best recollection is I went in the fall of 1854, October, and continued there until they moved the office into the present building, which was in 1858.

4. Q. State whether Charles E. Wheeler was a clerk in the office on Water street when you went there; and, if he was, how long he continued to be a clerk in the office at that place.

A. He was there when I came in the office, and moved up in the new building; how long he staid in the new building I could not state.

5. Q. You mean that Mr. Wheeler was employed in the Water street office all the time that you were?

A. I do.

6. Q. What sort of an instrument was used for postmarking letters and cancelling postage-stamps while the office was on Water street, if you know?

(Objected to, as the defendant has already closed his case on that subject.)

1975 To the best of my recollection it was simply a cancelling stamp, with the dates and "Cleveland" on it; afterwards there was a bar attached—a small round bar.

7. Q. Make an outline drawing of the latter instrument.

(Same objection.)

A. I don't know that I can; I am no draughtsman.

8. Q. What was the bar for, and how was it attached?

(Same objection.)

A. The bar was for cancelling the stamps, and attached with solder.

9. Q. Attached whereabouts on the dating stamp?

(Same objection, and as leading, and as an improper manner of examining the witness on the subject of the inquiry.)

A. At the side of the dating stamp.

10. Q. About how long was the bar?

(Same objections as to last question.)

A. About an inch long, I should think, and about a half an inch in diameter.

11. Q. Look at the drawing which I have just made, and state whether that represents a sectional outline of that stamp.

(Same objections, and the further objection that it is not proper for the counsel to undertake to "tail up" the witness, and thus force testimony out of him which the witness expresses unwillingness to give in answer to question 7.)

A. It does.

The drawing offered in evidence and marked Defendant's Exhibit 175, John Albinger, Cleveland, Ohio, June 1, 1878, J. G. P., special examiner.

Here follows diagram marked page 1976.

1978 mail dispatcher; the balance of the time I have been a distributer, distributing mail matter for the country at large.

18. X Q. Your first employment by the United States in the Cleveland post-office commenced some time in the fall of 1854, did it not?

A. It did.

19. X Q. Your duties for two successive years thereafter were those of a porter in that post-office, were they not?

A. They were.

20. X Q. Please explain what your duties were as a porter at that time and during those two years?

A. Unlocking and assorting mails, and sweeping and doing work usually done by porters.

21. X Q. During those two years, did you do any postmarking of letters in that office?

A. I was not employed for that business, but did some occasionally on my own account.

22. X Q. How frequently did you do that during those two years?

A. I would not like to answer that; I could not say.

23. X Q. How many years ago since you were employed as a porter in the post-office in Cleveland?

A. It would be 24 years the way I make it.

24. X Q. Give the names of the persons employed in that office during the two years you were porter there?

A. Charles Wheeler, Mr. Wright, Jas. Stacey, Sebastian Everett, Stafford Lynch, Lyman Bennett, James Worley, Gustavus Blausman, James Welsh, E. S. Beardsley; that is all I remember.

25. X Q. What were Wheeler's duties at that time?

A. He was a D. P. O. room clerk, and distributed letters in that room.

26 X Q. How many persons at that time were engaged postmarking letters?

A. I could not answer that.

1979 27. X Q. Do you know anything about a company or anybody having a lottery office in this city in 1854 and 1855?

A. I did at that time.

28. X Q. Where was the office of that lottery concern located?

(Objected to as not germane to the direct examination.)

A. I did not know at that time; I don't know now, and never did know.

29. X Q. Do you know the length of time that lottery office continued to carry on its business in this city?

(Same objection.)

A. I don't know which one you mean.

30. X Q. How many of those kind of concerns were in the city at that time?

A. There were three that I distributed papers for or helped.

31. X Q. Do you remember the name under which either of those lotteries went at that time?

(Same objection.)

A. I do.

32. X Q. Name them.

A. Bangs was one, Norton another, and Kendig another.

33. X Q. Do you remember the time when the Post-Office Department stopped the circulation in the mails of the advertisements and other infamous printing of those lotteries?

(Same objection, and as being immaterial.)

A. I do, but not the year and date.

34. X Q. Give your best recollection as to that time.

A. It must have been between the years of 1856 and 1858.

1980 35. X Q. Do you remember the time when those kind of things first began to circulate through the mails at this post-office by each of those parties?

(Same objection.)

A. I do not.

35½. X Q. When do you remember first to have seen any circulars, papers, or other printed matter in the Cleveland post-office for transportation for those lottery concerns or either of them?

(Same objection.)

A. I could not fix an exact date, but saw some go through the mails all the time I was in the office, from the time I first went in up to the time I told you they stopped.

36. X Q. Did those documents contain postage-stamps for payment of postage?

(Same objection.)

A. They did not; they were paid for in bulk by the companies—a part of them.

36½. X Q. How was the other part paid that was not paid in the "bulk"?

(Same objection.)

A. I don't know how the rest were paid.

37. X Q. Were those circulars, papers, or other documents from those concerns postmarked by the Cleveland post-office?

(Same objection.)

A. Those that were paid in bulk were not.

38. X Q. Those that were otherwise paid, were they postmarked by the Cleveland post-office?

(Same objection.)

A. I don't remember.

39. X Q. About what proportion were paid in bulk and about what proportion were not paid in bulk?

(Same objection.)

1981 A. I don't remember.

40. X Q. Since you have been in the Cleveland post-office, have you ever seen any postage-stamps on letters canceled by the use of the postmarking or dating stamp; I mean by that a stamp having the word "Cleveland, O.," engraved by raised letters within a circle and type with raised letters in the centre that circle for printing the month and day of the month?

A. I have seen so many different ones I could not answer that question.

41. X Q. Did you at any time previous to the first of January, 1861, in the Cleveland post office, make any special or particular examination of any of the various or different contrivances referred to by you in your last answer?

A. No, sir; I did not.

42. X Q. How came you, if you know, to be called as a witness at this time and on this occasion?

(Objected to as immaterial and not germane to this examination.)

A. I was subpœnaed by Mr. Clarke, the defendant's counsel.

43. X Q. Previous to your being subpœnaed, as stated in your last answer, with whom did you have conversation about the subject matter of your direct examination?

(Same objection.)

A. Mr. Wheeler was looking for an old stamp of some kind in the new post office; this gentleman, Mr. Clarke, was with him; Mr. Wheeler told him he had better have me as a witness as I was in the office when the stamp first came out.

44. X Q. When was that that Wheeler and Clark were up at the new post-office looking after a stamp?

(Same objection.)

A. Some time last winter.

1982 45. X Q. Now, when did you last have conversation with Mr. Wheeler with reference to the matter of your direct examination by Mr. Clarke?

(Same objection.)

A. I haven't had any conversation with Mr. Wheeler since that time about the stamp.

46. X Q. Had you had any conversation with him about it before that time?

A. I had not.

47. X Q. Wheeler never said a word to you at any time as to whether you did or did not know anything about the subject matter of your direct examination, did he?

(Same objection.)

A. No; never did.

48. X Q. You are sure of that.

(Same objection.)

A. I am.

49. X Q. You swear to it positively, do you not?

A. I do.

50. X Q. Did Mr. Wheeler ever have any conversation with you about the stamp which counsel for defendant was pleased to make out on a sheet of paper for the purpose of helping you testify in this case, and which I show you as the so-called "Defendant's Exhibit 175"?

(Same objection.)

A. Mr. Wheeler never said a word to me about the stamp since he left the office, but once before I met him with Mr. Clarke.

51. X Q. When was that time to which you refer in your last answer when Mr. Clarke was not present?

(Same objection.)

A. I think it was at the time he was superintendent of railway service.

1983 52. X Q. In what year or years was that?

(Same objection.)

A. Between the years 1863 and 1866, as near as I remember it.

53. X Q. Where was that conversation had?

(Same objection.)

A. I don't remember.

54. X Q. Who were present, if anybody?

(Same objection.)

A. I can't say as to that.

55. X Q. What did Wheeler say to you about it at that time?

(Same objection.)

A. I can't give you the exact words; he carried the idea that he was the inventor of that stamp.

56. X Q. Is that all?

A. That is all I remember.

57. X Q. What was the occasion which led Mr. Wheeler to make that statement to you at that time?

A. I don't remember of anything in particular; we were talking over matters and things in the office in days gone by.

58. X Q. Did you ever hear or know of any person claiming that Mr. Wheeler was not the inventor of that stamp?

A. Yes, I do.

59. X Q. When was that?

A. Mr. Bassett claimed he was the inventor.

60. X Q. Who is Mr. Bassett and where does he reside?

A. He is a hatter in the city and was a clerk at that time, the time the stamp came out, having a canceler attached to it.

Recess until 4 o'clock p. m.

1984 4 O'CLOCK P. M.

61. X Q. How long was the post-office on Bank street?

A. I don't know anything about that.

62. X Q. Where was the post-office taken to from Bank street?

A. That I know nothing about.

63. X Q. While the post office was on Bank street, were you employed there by the government?

A. I told you I don't know anything about that office.

64. X Q. You were never in that office in your life, were you?

A. I never was.

65. X Q. When was the post-office moved from Bank street to Water street?

A. I don't know.

66. X Q. When was the post-office moved from Water street to its present location in the new building?

A. 1858, about Christmas.

67. X Q. How long had you been in the employ of the government at that time?

A. Between three and four years.

68. X Q. You first went into the employ of the government in the Water street post-office?

A. Yes, sir.

69. X Q. In what year was that?

A. In the fall of 1854.

70. X Q. You were two years porter in that office, and you then entered upon what duty or duties?

A. As mail dispatcher.

71. X Q. What do you mean by mail dispatcher?

A. Locking and dispatching mails, sending them away on trains.

72. X Q. How long did you continue that business?

A. Well, I could not tell exactly; it might have been for three years.

1985 73. X Q. You were porter for two years and mail dispatcher for about three years; that would make five years from the fall of 1854, which would bring you down to the fall of the year 1859, would it not?

A. Not the way I intended it, sir.

74. X Q. What is the way you intended it?

A. In all the time I dispatched mails and was porter until I quit in the new post-office.

75. X Q. You discontinued the functions of a mail dispatcher in the new post-office, did you not?

A. Yes, sir.

76. X Q. In what year was that?

A. As I said before, I could not give the exact date.

77. X Q. How long after you moved into the new post-office did you continue to dispatch mails as your principal business?

A. It might have been a year, it might have been more, and it might have been less.

78. X Q. To return to the Water street post-office, what particular part of that office did you occupy as the porter of the institution?

A. The back part.

79. X Q. Did you have a separate room there for that business?

A. I did not.

80. X Q. From what part of that post-office were the mails delivered for transportation?

A. The back part.

81. X Q. Give the names of the clerks that were employed in the Water street post-office during all the time you were at work there.

A. Charles Wheeler, Mr. Wright, James Stacey, Sebastian Everett, James McGough, Stafford Lynch, James Worley, Gustave Blausman, Lyman Bennett, James Welsh, E. S. Beardsley, Pete Phillips, Jacob Hoyt, George Lester, James Hill; that is all I think of now; there might have been some more.

82. X Q. Are your recollections pretty good as to these things you have detailed in your last answer?

A. They are fair.

83. X Q. Which of those persons named in your last answer
1986 but one, was the stamping clerk in the Water street post-office during all the time you were there?

A. Mr. Wright was the general stamping clerk; I don't know his first name.

84. X Q. Anybody else?

A. I guess he did stamping.

85. X Q. (Question repeated.)

A. Not in the Water street office.

86. X Q. You are sure of that?

A. No; I made a little mistake there; I can't tell you who took the stamping after Mr. Wright left, and he left a little while before we left Water street.

87. X Q. How long before you left Water street did he leave?

A. I could not tell you that; it was out of my department and I paid very little attention to it.

88. X Q. While you were in the Water street post office, and during all the time you were there, did you see any letters or other mail matter having postage-stamps thereon for the payment of postage, with such postage-stamps cancelled by the use of the dating or Cleveland post-marking stamp?

A. Oh, yes; I used to see them every day.

89 X Q. Do you know Mr. A. L. Bassett, a merchant on Water street in this city?

A. I know him.

90. X Q. About how long have you known him?

A. About twenty or twenty-two years—somewhere along there.

91. X Q. Was Mr. A. L. Bassett employed in the post-office while it was located on Water street in this city?

A. He was.

92. X Q. In what year or years was that, if you remember?

A. To my best recollection I should say it was in 1855.

93. X Q. About how long was he there during that term of employment as near as you remember?

1987 A. Some time in 1860 he left and went in business on Water street.

94. X Q. Was Mr. A. L. Bassett employed in the post-office where it is now located, in the new post-office building?

A. He was.

95. X Q. What time did he commence that employment?

A. To the best of my recollection it was 1855, on Water street.

86. X Q. And he continued during each year until 1860, when, as you say, he went into business on Water street. Is that what you mean to be understood?

A. He might have been there later than 1860; I would not say as to that; I can't fix the date.

97. X Q. Did he not leave the service in that post-office some time in February, 1863?

A. I know no different from what I have already stated.

98. X Q. You are sure of that, are you not?

A. I am.

99. X Q. You swear to it positively, do you not?

A. I do.

100. X Q. What were Mr. Bassett's duties in the post-office while on Water street?

(Objected to as not germane to the direct examination.)

A. He was what we call a D. P. O. room clerk—distributing clerk, and worked all around the office in the D. P. O. room, and this makes me think that after Mr. Wright left he was stamping clerk.

101. X Q. About how adept was Mr. Bassett in the business of stamping or post-marking letters?

(Same objection.)

A. He was good.

102. X Q. Do you know of anybody that was better than he in that business?

1988 A. No; I do not.

103. X Q. Now, while Mr. Bassett was in the new post-office, was he the stamping clerk there, and known as such at that time?

(Objected to as immaterial and because complainant's counsel has made the witness his own, and it is improper to put leading questions.)

A. Yes; he was.

104. X Q. Whatever Mr. Bassett might say concerning this combined postmarking and postage cancelling instrument could be depended upon as being correct, could it not?

(Same objections, and also because the question is for the court, and not for the witness, and also because it is not proper in this way, and at this time, to bolster up Mr. Bassett.)

A. Mr. Bassett is a man of truth, and I have never had any occasion to disbelieve him in anything.

105. X Q. Would not Mr. Bassett from his experience as a stamping clerk in that post-office be fully as apt to know the kind or character of the instrument used there for postmarking letters and cancelling postage-stamps as you would be, since you have stated already the duties performed by you in the same post-office?

(Same objections.)

A. He would.

106. X Q. And whatever he might say on that subject could be depended upon, could it not, from your long acquaintance with him?

(Same objections.)

A. I have never had any reason to disbelieve him.

1989 107. X Q. That is not my question as you have made your answer. I do not ask you to state whether you have ever had any reasons to disbelieve Mr. Bassett. My question does not touch the truth or veracity of Mr. Bassett, but it does refer to his opportunity and experience as a stamping clerk in that office as compared with your own duties and experiences there, and thus contrasted, my question is, whether what he might state on that subject could be depended upon as against anybody else in that office who did not perform the duties which he performed as a stamping clerk.

(Same objection.)

A. Yes, sir; I should believe Mr. Bassett.

108. X Q. In whatever he might say on that subject?

A. I have no reason to doubt his word at all.

109. X Q. On anything that he might say on that subject?

A. That or any other subject.

110 X Q. Look at a paper I now show you marked "Defendant Exhibit 175 (John Albinger), Cleveland, O., June 1, 1878; J. G. P., special examiner," and state when, for the first time, you ever saw that drawing or any drawing substantially like that?

A. I saw this, here, for the first time to-day; and I saw one similar to it within the last week that was drawn by Mr. Clarke at the time he subpœnaed me; these are the only drawings I have ever seen of this kind as far as I remember.

111. X Q. Do you remember to have ever seen any other drawings than those referred to in your last answer on this subject?

A. I do not.

112. X Q. Who prepared that exhibit?

A. Mr. Clarke.

113. X Q. What Clarke have you reference to in your last answer—is it the Clarke now present as defendant's counsel and who examined you on your direct examination?

A. It is.

1990 114. X Q. Did he prepare that drawing and submit it to you while you were under his direct examination to-day?

A. He did.

115. X Q. And was it after you had said in answer to a question that you could not make one, or words to that effect? I now refer to question 7.

A. It was.

116. X Q. To return to the new post-office building—what were Wheeler's duties in that office previous to the first of January, 1862?

A. He was what we call a D. P. O. clerk; he was engaged in distributing letters principally.

117. X Q. In what room did Bassett do the stamping of letters and other mail matter?

A. In the same room—the D. P. O. room.

118. X Q. And was Wheeler in that room distributing letters while Bassett was there stamping letters and other mail matter?

A. He was.

119. X Q. Do you remember that some time in summer or fall of the year 1860 an order was issued by the Postmaster-General to the Cleveland and other post-offices in the country, prohibiting the use of the post-dating or post-office stamp upon the postage-stamp on letters and

other mail matter, and requiring a separate stamp to be used for cancellation purposes?

(Objected to as not germane, as leading, and as assuming a fact.)

A. I remember there was such an order, but I thought it was earlier than 1860.

120. X Q. It was issued while you were in the new post-office building, was it not?

A. Yes, sir; I think that is correct.

121. X Q. Who is postmaster at the Cleveland post-office now?

A. M. B. Sherwin.

122. X Q. Who is the assistant postmaster, if any?

A. Robert Harding.

1991 123. X Q. Did either of those gentlemen say anything to you about coming here as a witness, either to-day or any other time?

A. They did not.

124. X Q. During the recess to-day, happening in your examination, did you have any conversation with anybody about this case or the testimony you had given or was to give during this examination?

A. Only to the boys at my table; my mails were put back while I was here, and I explained to them where I had been.

125. X Q. Any conversation with anybody else about this matter?

A. No.

JOHN ALBINGER.

Sworn to and subscribed before me, this 1st day of June, 1878.

J. G. POMERENE,
Special Examiner.

JUNE 3D, 1878—4 o'clock p. m.

Present, same counsel as before.

C. CLIFFORD NOTT, a witness called for and on behalf of defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence and occupation?

A. My name is Chauncey Clifford Nott; my age, 52 years; residence, Cleveland, and occupation, a manufacturer of pickles and vinegar.

2. Q. Were you ever employed in the post-office in Cleveland?

A. Yes, sir.

3. Q. When?

A. From about October, 1852, until some time in March, 1853.

1992 4. Q. How do you fix the latter date?

A. From circumstances—my leaving the post office and going to Washington in the month of March, soon after the inauguration of President Pierce. I was in Washington, to the best of my recollection, on the 20th of March. I went to Washington for an appointment as a route agent on the Lake Shore Railroad. I went there to see Mr. Gray as an aspirant for postmaster at Cleveland; that is why I fixed the date of my leaving the office; probably left Cleveland post-office about the 15th of March, 1853. I went to Washington by the advice of Mr. Haskell, who was then postmaster here at Cleveland, under whom I had been serving as clerk in Cleveland post-office; he advised me to go to Washington to see Mr. Gray, he being a personal friend of mine he thought I might get the position I had formerly applied for under Mr. Haskell.

5. Q. Since about the 15th of March, 1853, have you ever been employed in any post-office?

A. No, sir.

6. Q. About when was Mr. Gray appointed postmaster?

A. I should think first of April; I have no means of knowing.

7. Q. Where was the post-office situated at the time you were employed in it?

A. On Bank street, in what is called the Herald building.

8. Q. Was Mr. Charles E. Wheeler a clerk there at that time?

A. Yes, sir.

9. Q. What part of the work of the office did he do?

A. He was a general clerk in delivering letters, papers, and so forth, whatever mail matter was in the post office.

10. Q. Who did the stamping?

(Objected to on the ground that the defendant has long since closed his case on that subject, and all matters relating thereto, and has
1993 no right at this time to make this inquiry, or any other touching that subject. 2d. Defendant, by counsel, was present in this city before Mr. J. G. Pomerene, as special examiner, about three or four months ago, when the case was with the defendant, and after examining several witnesses, among whom was Wheeler, he thereupon closed his case sine die, upon the matter involved in the question, and all such matter as would tend to make a direct case; this is, therefore, an improper inquiry at this time and place.)

A. Mr. Wheeler done the most of it.

11. Q. In what room was the stamping done?

(Objected to as above.)

A. It was done in the same room that the mail matter, papers, and letters were delivered to the public. I suppose in the same room where the boxes that we delivered the letters from were situated, and they were taken from the boxes as they were delivered there by the public to be taken away; it was the room behind these boxes that we delivered the letters from to the public.

12. Q. You say you suppose; don't you know?

(Objected to, as the defendant's counsel has no right to cross-examine his own witness, nor to suggest to him any different statement than that made by the witness in answer to the question.)

A. I do say that I know it was done in that room on the table. I should judge, to the best of my recollection, on this table, about twelve feet in the rear of one of the delivery windows in this room. I am speaking of the delivery—what we call the box delivery.

13. Q. Was it on the same floor of the distributing department?

1994 A. Well, I don't fully understand that question; the distributing department, as we termed it in the post-office, was on the next floor above; I didn't know that there was ever any stamping done in that room; to the best of my knowledge the stamping was all done in the same room that we delivered the letters and received the letters from the public; the letters came to the office, were taken out of the boxes, taken to this table, there stamped, then were taken to the distributing clerks, then I don't know what was done with them.

14. Q. In what room was your work?

A. It was in the room that I speak of, in the general delivery behind the boxes; my principal work was in the alphabet termed "General Delivery."

15. Q. How many windows for delivering mail matter to the public were there?

(Objected to: 1st, as having been proven by defendant's own witness, W. J. Warner, who swears that he is one of the oldest and most

extensive builders in this city; that he was familiar with that post-office and that there were but two general delivery windows, having a wooden door covering their opening, hinged upon the inside; 2d, if defendant's counsel intends to antagonize this witness with the witness he has previously called, Mr. Warner, it is objected to that he has not the right either to impeach his own witness or to raise a conflict of testimony among his own witnesses; 3d, if counsel intends to establish the same facts proven by Mr. Warner, the question is not objected to.)

A. There were three; two from the boxes, and one from the alphabet; two from the boxes were located toward the north side of the building, about ten to twelve feet apart; the alphabet window was located near the front, or Bank street front, near the middle of the front of the office.

1995 (Complainant's counsel objects to the answer and moves the court to strike it out, for the reasons assigned as objections to the question, it being in direct conflict with the testimony of the defendant's witness, Warner, on the same subject matter.)

16 Q. Towards what point of the compass did the front of the office look?

A. About west, fronting west.

17. Q. I infer, then, that there was a side hall looking to the north, and front hall looking to the west for the accommodation of the public, is that right?

(Same objections as to the last question, and the further objection as not only being leading in form, but instructing the witness as to the answer he has to give.)

A. Yes, sir; there was a hall extending along the north side of the building in front of the boxes to the extreme rear of the boxes, of about —I should judge this hall was eight feet wide—running from front to near the rear of the building, for the benefit of the public to get to the boxes and windows, see and get their letters and mails; also on the Bank street front a hall or space of about eight feet from the front of the building to the window of the alphabet; leaving a hall about the same width in front that there was on the north side of the box delivery.

18. Q. What sort of an instrument was used for post-marking letters and cancelling postage-stamps while you were in that office, if you know?

(Complainant's counsel takes the same objections to this question that were taken by him to question No. 10 of the examination of this witness.)

A. We used two; afterwards used a combined stamp; a cancelling stamp was tied along side of a dating stamp, to form one stamp instead of two; they were bound together with a cord or twine, something of that material.

1996 19. Q. Did you see that combined instrument in use while you were employed in the Bank street post-office?

(Same objection as to the last question.)

A. Yes, sir.

20. Q. Whom did you see use it?

(Same objections as to last question.)

A. Mr. Wheeler; I used it very little myself.

21. Q. Whose idea was it, making the combination?

(Same objection as to the last question.)

A. Mr. Wheeler; so he told me.

22. Q. Told you at that time?

(Objected to for all the reasons above, and as leading.)

A. Yes, told me at that time—told me that he put them together.

(Answer objected to as hearsay, in connection with the objections to the question.)

Witness cross-examined by complainant's counsel de bene esse.

(Defendant's counsel objects to any conditional cross-examination.)

23. X Q. How old were you in March, 1853?

A. Twenty seven years.

24. X Q. How many years have elapsed since March, 1853, to the present time?

A. About twenty-four years; over twenty-five years; about twenty-five years and three months it would be to this time.

25. X Q. Since March, 1853, when you say you left the service in the post-office in Cleveland, where have you resided each year, and in what business have you been engaged during each year to the present time?

1997 A. In 1853, soon after I came back from Washington, I went in the employ of the New York and Erie Railroad, at Cleveland; in 1854 I was in the employ of Coe & Spangle; in 1855 I was employed in fitting out vessels, and spar manufacturing from that time until 1869; since I have been employed in the manufacture of pickles and vinegar up to the present time.

26. X Q. About how frequently during each year since March, 1853, have you seen and had conversation with Mr. Wheeler, the person you named in your direct examination?

(Objected to as immaterial and irrelevant.)

A. During the year 1853 I had sometimes every day; he remained in the post-office for a number of years, I couldn't state how many; I have been more or less intimate with him ever since I was in the post-office, both with him and his whole family. I lived neighbor to him during 1857 and 1858.

27. X Q. How far do you reside from Mr. Wheeler at the present time?

(Same objections.)

A. I should think about a mile.

28. X Q. Do you and Wheeler attend the same church?

(Same objections.)

A. No, sir; not at present.

29. X Q. When, if ever, did you attend the same church?

(Same objections.)

A. I never have been an attendant of his particular church; he might have been in the same church that I had attended, but we were not in the habit of attending the same church.

30. X Q. What church do you attend?

(Same objections.)

1998 A. As a general thing, Second Presbyterian.

31. X Q. When did you last see and have conversation with Mr. Wheeler, the person named in your direct examination?

(Same objections.)

A. This morning about 10 o'clock, on Superior street, down near Water.

32. X Q. Who was with Wheeler, if anybody, at that time?

(Same objections.)

A. No one; he was alone.

33. X Q. What was that conversation about that you had this morning with Wheeler? Go on and state the same as near as you remember—what he said to you and what you said to him.

(Objected to as immaterial and irrelevant, and as asking for hearsay.)

A. He asked me if I had been here to give testimony; I said I was to come this afternoon; that's all.

34. X Q. How did Wheeler know that you were to give testimony in this case?

(Same objections.)

A. He asked me some time ago in regard to the time that I was in the post-office, and I told him about the same time that I have stated here. He asked me would I come here and state what I had told him?

35. X Q. What did you tell Wheeler at that time? I refer to that part of your last answer, in which Wheeler asked you to come here and testify to that which you had told him, Wheeler.

(Same objections.)

A. I told him I would do so.

1999 36. X Q. I did not ask you that, although I have no doubt it is true, but I did ask you what you told Wheeler you would swear to in this case, and I refer to that part of your answer to cross-question 34 which reads as follows: "He asked me, would I come here and state what I had told him"?

(Same objections.)

A. He asked me would I come here and state what I had told him in regard to the time that I was employed in the post-office.

37. X Q. All Wheeler wanted you to testify to here to-day was solely and only with reference to the time you were employed in the Cleveland post-office—is that it?

(Objected to as irrelevant and immaterial, and because the counsel, having made the witness his own on this point, cannot ask a leading question.)

A. He asked me if I was confident as to the time that I was in the office. I told him I was, and cited circumstances that made me confident of the time that I was employed in the office.

38. X Q. I desire to treat you fairly as a witness under cross-examination, and I again ask you for the third or fourth time what Wheeler stated to you that he desired you to come here and testify to in this case? And I ask you to state all that he said to you about it.

(Objected to as immaterial and irrelevant.)

A. That was all said at that time.

39. X Q. When you came upon the witness stand to-day and was sworn as a witness, you did not know what you were to testify to or about, did you?

(Same objections.)

A. I was to testify in regard to the time that I was employed

2000 in the post-office; in regard to the location of the office, the duties of the clerks, myself, Mr. Wheeler, and the use of the stamps in the performing of our duties as clerks in the post-office.

40. X Q. Who requested you to testify to those things named in your last answer?

(Same objections.)

A. Mr. Wheeler asked me would I come here and testify in regard to these statements.

41. X Q. What did you tell him?

(Same objections.)

A. I told him I would come and testify in regard to the time that I were in the office, in regard to the use of those stamps.

42. X Q. When did Wheeler make this request of you, and where was it, and who was present, if anybody?

(Same objections.)

A. I have forgotten as regards the time; well, I should think now it was about this last March; I wouldn't be confident; wouldn't swear to that time, whether it was March or April, but I should judge it was about that time; the conversation took place at my place of business, in Sheriff street; I *I* think in the afternoon; there was no one present but Mr. Wheeler and myself.

43. X Q. Did you understand at that time that there was an examination going on here in this case?

(Same objections.)

A. Not until we had had this conversation in regard to my previous testimony.

44. X Q. What "previous testimony" have you reference to in your last answer?

(Same objections.)

2001 A. To the testimony in regard to my being employed in the post-office, and the duties we performed there.

45. X Q. Where and on what occasion, previous to to-day, did your ever render any testimony on the matter stated in the last answer?

(Same objections.)

A. I never have rendered any until to-day.

46. X Q. At the time Wheeler made that request of you about your coming here to testify, and as to what you would testify about, did he say anything to you about combined instruments for post-marking letters and cancelling postage stamps thereon by one blow of the instruments combined for that purpose?

(Same objections.)

A. He asked me did I remember what kind of a stamp was used in the office for marking or stamping; I don't know whether he used the expression stamping, but I think he asked me if I remembered what kind of stamp was used for stamping and cancelling letters.

47. X Q. Is that all he said to you on that subject?

(Same objections.)

A. I think it is.

48. X Q. Are you positive whether it is or not?

(Same objections.)

A. I am not now.

49. X Q. Well, go on and state all that he said to you on that subject at that time that you have not already stated.

(Same objections.)

A. I have nothing more to state.

50. X Q. Why not?

(Same objections.)

2002 A. I have stated all the conversation that Mr. Wheeler and I had in regard to my testimony, or our conversation at that time.

51. X Q. You swear positively, do you not, that on that occasion Wheeler did not say a word to you with reference to the subject of combined instruments for post-marking letters and cancelling postage-stamps upon them at the same time, and by a single blow of the instruments so combined?

(Same objections.)

A. He asked me did I remember what we used for post-marking and cancelling letters; I think he used that expression, but I would not swear positive that it was used—the expression of post-marking and cancelling—it might have been used stamping and cancelling; I am not positive of the expression Mr. Wheeler used.

(Objected to as immaterial and irrelevant, and as asking for hearsay.)

A. He asked me if I had been here to give testimony; I said I was to come this afternoon; that's all.

34. X Q. How did Wheeler know that you were to give testimony in this case?

(Same objections.)

A. He asked me some time ago in regard to the time that I was in the post-office, and I told him about the same time that I have stated here. He asked me would I come here and state what I had told him?

35. X Q. What did you tell Wheeler at that time? I refer to that part of your last answer, in which Wheeler asked you to come here and testify to that which you had told him, Wheeler.

(Same objections.)

A. I told him I would do so.

1999 36. X Q. I did not ask you that, although I have no doubt it is true, but I did ask you what you told Wheeler you would swear to in this case, and I refer to that part of your answer to cross-question 34 which reads as follows: "He asked me, would I come here and state what I had told him"?

(Same objections.)

A. He asked me would I come here and state what I had told him in regard to the time that I was employed in the post-office.

37. X Q. All Wheeler wanted you to testify to here to-day was solely and only with reference to the time you were employed in the Cleveland post-office—is that it?

(Objected to as irrelevant and immaterial, and because the counsel, having made the witness his own on this point, cannot ask a leading question.)

A. He asked me if I was confident as to the time that I was in the office. I told him I was, and cited circumstances that made me confident of the time that I was employed in the office.

38. X Q. I desire to treat you fairly as a witness under cross-examination, and I again ask you for the third or fourth time what Wheeler stated to you that he desired you to come here and testify to in this case? And I ask you to state all that he said to you about it.

(Objected to as immaterial and irrelevant.)

A. That was all said at that time.

39. X Q. When you came upon the witness stand to-day and was sworn as a witness, you did not know what you were to testify to or about, did you?

(Same objections.)

A. I was to testify in regard to the time that I was employed
2000 in the post-office; in regard to the location of the office, the duties of the clerks, myself, Mr. Wheeler, and the use of the stamps in the performing of our duties as clerks in the post-office.

40. X Q. Who requested you to testify to those things named in your last answer?

(Same objections.)

A. Mr. Wheeler asked me would I come here and testify in regard to these statements.

41. X Q. What did you tell him?

(Same objections.)

A. I told him I would come and testify in regard to the time that I were in the office, in regard to the use of those stamps.

42. X Q. When did Wheeler make this request of you, and where was it, and who was present, if anybody?

(Same objections.)

A. I have forgotten as regards the time; well, I should think now it was about this last March; I wouldn't be confident; wouldn't swear to that time, whether it was March or April, but I should judge it was about that time; the conversation took place at my place of business, in Sheriff street; I *I* think in the afternoon; there was no one present but Mr. Wheeler and myself.

43. X Q. Did you understand at that time that there was an examination going on here in this case?

(Same objections.)

A. Not until we had had this conversation in regard to my previous testimony.

44. X Q. What "previous testimony" have you reference to in your last answer?

(Same objections.)

2001 A. To the testimony in regard to my being employed in the post-office, and the duties we performed there.

45. X Q. Where and on what occasion, previous to to-day, did your ever render any testimony on the matter stated in the last answer?

(Same objections.)

A. I never have rendered any until to-day.

46. X Q. At the time Wheeler made that request of you about your coming here to testify, and as to what you would testify about, did he say anything to you about combined instruments for post-marking letters and cancelling postage stamps thereon by one blow of the instruments combined for that purpose?

(Same objections.)

A. He asked me did I remember what kind of a stamp was used in the office for marking or stamping; I don't know whether he used the expression stamping, but I think he asked me if I remembered what kind of stamp was used for stamping and cancelling letters.

47. X Q. Is that all he said to you on that subject?

(Same objections.)

A. I think it is.

48. X Q. Are you positive whether it is or not?

(Same objections.)

A. I am not now.

49. X Q. Well, go on and state all that he said to you on that subject at that time that you have not already stated.

(Same objections.)

A. I have nothing more to state.

50. X Q. Why not?

(Same objections.)

2002 A. I have stated all the conversation that Mr. Wheeler and I had in regard to my testimony, or our conversation at that time.

51. X Q. You swear positively, do you not, that on that occasion Wheeler did not say a word to you with reference to the subject of combined instruments for post-marking letters and cancelling postage-stamps upon them at the same time, and by a single blow of the instruments so combined?

(Same objections.)

A. He asked me did I remember what we used for post-marking and cancelling letters; I think he used that expression, but I would not swear positive that it was used—the expression of post-marking and cancelling—it might have been used stamping and cancelling; I am not positive of the expression Mr. Wheeler used.

52. X Q. The last question is repeated, and the witness is requested to state whether he understands that question or not.

(Same objections.)

A. I don't know that I fully understand that question; I wouldn't be positive whether he did or not.

Adjourned to June 4th, at 2 o'clock p. m.

JUNE 4th, 2 p. m.

Met pursuant to adjournment.

Same counsel, and the witness, Mr. NOTT, present as before.

Mr. Nott states that he was taken sick last night, and that he is not able to stay here for an examination this afternoon, and that he
2003 desires to be excused for to-day, and the defendant's counsel moves that he be so excused.

Motion granted, and the witness excused until June 5th, 9 a. m.

JUNE 5th, 1878.

Met pursuant to adjournment.

Same counsel present as before.

Cross-examination of Mr. NOTT resumed:

53. X Q. I understand you to have testified on your cross-examination the other day, that you came here as a witness in this case at the request of Mr. Wheeler; do I understand you correctly about that?

(Objected to, as irrelevant and immaterial.)

A. Mr. Wheeler asked me would I come here and testify in this case.

54. X Q. Did you make any reply to that?

(Same objections.)

A. I told him I would.

55. X Q. Did he ask you anything concerning a combined postmarking and cancelling stamp at the time he requested you to come here to be examined as a witness?

(Same objections.)

A. He asked me if I remembered what was used; might have said did I know what kind of stamp was used in stamping or postmarking letters when I was in the post-office.

56. X Q. Did he at that time say anything to you or you to him about a cancelling stamp that you have testified about on your direct examination?

(Same objections.)

2004 A. I think at that time he asked me what kind of a stamp was used for cancelling letters with, the postmarking; I think that was the question asked me.

57. X Q. In your answer to cross-question 34 you used these words: "He asked me would I come here and state what I had told him;" and in your answer to cross-question 35 you say: "I told him I would do so." During your examination-in-chief by Mr. Clarke, did you in answer to his questions carry out your promise that you made Wheeler on that occasion?

(Same objections.)

A. To the best of my knowledge I did.

58. X Q. Previous to the conversation which you have stated on your cross-examination you had with Wheeler, had you had any other conversation with him concerning the matters testified to by you on your direct examination—I mean previous to the conversation of Monday last?

(Same objections.)

A. Only the conversation we had that I testified to, some time ago—in March or April. I have reference to the conversation mentioned of March or April last.

59. X Q. That conversation in March or April last was substantially the same conversation that you had with Mr. Wheeler about this matter—that you had on Monday morning last, just previous to your coming upon the stand on Monday last, was it not?

(Same objections.)

A. No, sir.

60. X Q. State what the conversation was in the month of March or April last you had with Wheeler, as near as you remember it.

(Same objections.)

2005 A. Mr. Wheeler asked me if I was in the post-office at Cleveland; when I was in the post-office on Bank street; if I remembered what year it was in. I told him I thought it was from October, 1852, until some time in March, 1853. He asked me how I could locate the time. I recited the instance of my going to Washington to see about an appointment as a route-agent on the Lake Shore Railroad.

61. X Q. Is that all that was said by and between you and Wheeler on that occasion?

(Same objections.)

A. He asked me at that time if I remembered what kind—I think that was the expression, I won't be confident—of a stamp—I think that was the expression, called stamp—it might have been; what did we use for stamping—he might have said stamping and cancelling. I do not remember, but think that was the expression used.

62. X Q. In your last answer you have detailed the conversation and all of the conversation had between you and Wheeler on that occasion, have you not?

(Same objections.)

A. To the best of my knowledge, I have.

63. X Q. Did Mr. Wheeler on that occasion state to you his object in making that inquiry of you?

(Same objections.)

A. I think I asked Mr. Wheeler what it was for; he said to establish the time of the use of a combined stamp for stamping and cancelling letters.

64. X Q. What did he say to you, if anything, as to the motive he had in view for establishing any such matter as stated by you in your last answer?

(Same objections.)

A. That there was a suit—I think that was the expression—pending as to the—I think the expression was used—of the patenting of
2006 this stamp, a combined stamp and cancellor, or cancelling stamp—I won't say how the expression was used, but I think that was the expression; the object of his inquiry was to establish date.

65. X Q. Did he say anything to you as to the necessity of establishing a certain date in order to defeat that patent mentioned by you in your last answer?

(Same objections.)

A. I think he said to me that their patent did not claim until the latter part of 1853; that they wished to establish that it was used in this office—Cleveland post-office—previous to July, 1853. I think that was the conversation.

66. X Q. Did Wheeler on that occasion express to you in words, or

in any other manner, that that sort of evidence would be sufficient to destroy that patent, in case that fact could be established?

(Same objections.)

A. I think that he did.

67. X Q. Did he on that occasion tell you the name of the person or persons who claimed to have a patent on the invention you have briefly described during this examination?

A. I think he did tell me the name, but I could not now say what that name was, for I paid so little attention; besides it is difficult for me to remember names.

68. X Q. Should you hear that name pronounced at this time, would you be likely to recall it to your recollection?

A. No, sir; I should not.

69. X Q. Did he on that occasion say to you, in words or in substance, that that invention was his, and that the government ought to pay him for it?

(Same objections.)

2007 A. I think he said at that time that he claimed it was his, and that we used it in the office previous to the claim of the patentee, but I do not think that he said to me the government should have paid him for it.

70. X Q. What did you understand from him to be the date of the claim of the patentee of this invention?

(Same objections.)

A. I think he said they claimed the patent some time about July, 1853, to the best of my recollection.

71. X Q. Did he use the word "patent" on that occasion, or "invention," as being claimed by the patentee as far back as July, 1853?

A. I think he used both expressions; I would not be confident, but think he said parties claimed a patent or invention on that stamp. I think that was the expression.

72. X Q. As far back as July, 1853; is that it?

A. I think that is it.

73. X Q. Did you on that occasion understand from Mr. Wheeler the name of the party against whom the suit was brought, which you say he spoke to you about?

A. I do not think I did.

74. X Q. That conversation was since this present suit was commenced (which was the first Monday in June, 1877), was it not?

A. This conversation was during the month of March or April, 1878.

75. X Q. How many times between October, 1852, or March, 1853, the time stated in your answer to question 3 of your direct examination, and the month of March or April, 1878, have you had conversation with Mr. Charles E. Wheeler about the invention or instrument referred to by you on your direct examination, and also referred to in your cross-examination?

(Same objections.)

2008 A. I never have had any conversation with Mr. Wheeler in regard to this invention or patent, or instrument, spoken of heretofore, between March, 1853, and March or April, 1878, at the time of our conversation.

76. X Q. How many times during that time have you meditated upon, contemplated, or thought of the matter referred to in your last answer? I mean "invention or patent, or instrument spoken of."

(Same objections.)

A. I haven't had it in mind; no occasion to previous to March or April, 1878, when Wheeler first came to me.

77. X Q. This suit has furnished for you an "occasion" to think of a matter which you say you have never thought of between March, 1853, and March or April, 1878, has it not?

A. Yes, sir.

78. X Q. Had not Wheeler called on you to become a witness in this case, or had not you and Wheeler had the conversation you have detailed as having taken place in March or April, 1878, would you have thought anything or said anything on the subject at the present time and since March or April last?

A. No, sir; for I knew nothing of any such case or controversy until he came to me.

79. X Q. Have you had any conversation with anybody other than with Mr. Wheeler since March, 1853, and the commencement of your present examination (excepting the defendant's counsel) upon the subject-matter about which you have testified on both your direct and cross examinations?

A. No, sir; I have not.

80. X Q. Did you ever make any memorandum in writing between October, 1852, and March, 1853, concerning what you did or what you saw during that time in Cleveland post-office?

A. Not that I remember of.

81. X Q. The only thing, then, that refreshes your recollection as to what took place in that office between those dates was your hungering and thirsting for official place soon after the inauguration of
2009 President Pierce, which seems to be clearly stated in your answer to direct question No. 4?

A. I had not claimed any hunger, dryness, thirst, or contempt for counsel in my answer; but I did not use the expression hunger nor thirst for official position, merely citing this instance of going to Washington to refresh my memory in regard to dates I have given in this testimony.

82. X Q. About what length of time, all told, have you had employment in the post-office at Cleveland?

A. About six months, to the best of my recollection.

83. X Q. Have you had any such employment since March, 1853, to the present time?

A. I have never been employed in the post-office since some time in March, 1853, to the best of my memory and knowledge.

84. X Q. In your answer to direct question 18 you state, "We used two." What do you mean by the word "we," there?

A. I mean the clerks; speaking of the clerks in the post-office.

85. X Q. Do you include yourself in that?

A. Yes, sir; Mr. Wheeler, Duncan Beebe and myself.

86. X Q. You state in answer to question No. 21 of your direct examination, that Mr. Wheeler told you that the idea of making a combination stamp was his idea; when did he tell you that?

A. To the best of my recollection, in February, 1853; somewhere near that.

87. X Q. How do you know that?

A. From seeing it used in the office; I have no other means of knowing.

88. X Q. What has become of that contrivance which you swear you saw and touched a "very little myself" in the Cleveland post-office, between October, 1852, and March, 1853?

A. I do not know.

89. X Q. When did you last see it?

2010 A. To the best of my recollection, in February or March, 1853; could not fix the exact date.

90. X Q. Who were present, if anybody, at the time you took your farewell view of that little instrument, over twenty-five years ago, of which you made no memorandum in writing, and which you swear you never thought of previous to the time when Wheeler first came to you to be a witness in this case, March or April, 1878?

A. I presume Mr. Wheeler; he was a clerk in the post office at the time that I left the post-office.

91. X Q. On that memorable occasion, and over that little instrument, did you and Wheeler drop a tear and bid the thing good-by?

A. To the best of my memory, neither of us, myself personally, never lost any water over the instrument.

92. X Q. Who was postmaster here at that time in Cleveland?

A. D. M. Haskell, I think his name was.

93. X Q. How far from the D. P. O. room was the distributing table on which the stamping of letters was done?

(Objected to as assuming the fact that letters were stamped on the distributing table.)

A. If I remember, the distributing room was up stairs; the next floor above. It was not in the same room where we done the stamping.

94. X Q. In what part of the room was the stamping table to which you refer on your direct examination?

A. In the south or back side of the room, about twelve feet, I should judge—my recollection—from the what we called rear window to the box delivery. It was partially between the two box delivery windows—probably nearer the rear one than what would be called the front box window.

95. X Q. What was the size of the top of that table?

2011 A. About three feet wide, and it might have been six feet long, to the best of my recollection.

96. X Q. What was the height of that table from the floor to the top or stamping surface?

A. I should judge it was two foot and a half to three feet; by bare possibility it might have been three feet, but I should judge about two feet and a half.

97. X Q. What other business was done on that table besides stamping?

A. I think we sometimes assorted letters there.

98. X Q. What was the means of communication between the stamping-room and the D. P. O. room up stairs?

A. I think there was a pair of stairs; I don't know. I would not swear certain that I was ever in the D. P. O. room, but I think I was once.

99. X Q. By what means were letters and other mail matter conveyed to the D. P. O. room?

A. Boxes, bags, I think, and baskets.

100. X Q. Hauled up by rope?

A. I would not state as to that, for my duties did not call me there; had nothing to do outside or away, in any other room but the delivery.

101. X Q. Was that box, bag, and basket business carried on in another room separate from the box-delivery room?

A. All letters that were stamped, I think, were carried into an ad-

joining room from the stamping table, to be carried to the D. P. O. room distributing.

102. X Q. How large a post-office was the Cleveland post-office at that time, Mr. Nott? I mean the business part, as compared with the present business in the same office.

A. I should not think there was over one quarter of the business done then that there is now.

103. X Q. How much time was required each day at that time—I mean between October, 1852, and March, 1853—to post-mark letters that were put into that office for transportation in the mails?

2012 A. From my recollection, I should think it would take three hours each day.

104. X Q. And in that length of time the postage stamps could be canceled, could they not?

A. I don't fully understand the question.

Redirect examination:

105. Re D. Q. Were the clerks who were employed in the same room with you and Mr. Wheeler, including you two, much driven with work at the time you were there, or did they have an easy time of it?

A. They were driven, I considered, hardworked, from seven o'clock in the morning, most of the time on our feet, until twelve o'clock at midday—one hour for dinner, from one o'clock till six in the evening, and from seven until eight to ten in the evening.

Recross-examination by Mr. NORTON:

106. Re X Q. What was the occasion of your having such tremendous work to do in that office at that time, and what was it?

A. Confinement and fatigue—standing on our feet—waiting on the public in putting up letters and distributing them to the public.

C. C. NOTT.

Sworn to before me and subscribed in my presence, this 5th day of June, 1878.

J. G. POMERENE,
Special Examiner.

Adjourned for recess until 2 o'clock p. m.

2013 JUNE 4TH—4 p. m.

Met pursuant to adjournment.

Present, same counsel as before.

ERY S. BEARDSLEY, a witness called for and on behalf of defendant, being by me first duly sworn, testified as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Ery S. Beardsley; age, fifty-two years; occupation, express messenger; and residence, Cleveland.

2. Q. Were you ever employed in the post-office in Cleveland?

A. I was.

3. Q. State when and where the office was then situated.

A. From 1854 to 1867 the office was situated on Water street, when I first went into it; and was removed to the public square, I think, about Christmas, 1858.

4. Q. During all the time that the office was on Water street, and you were a clerk in it, was Mr. Charles E. Wheeler also a clerk in that office?

A. He was.

5. Q. While the office was on Water street did you postmark any letters and cancel any postage stamps?

A. I did.

6. Q. State when and how long.

A. Well, I can't say certain whether it was 1854 or 1855; for about three weeks I done the stamping while another man was sick.

7. Q. What sort of an instrument did you use for the purpose?

(Objected to by complainant's counsel on the ground that the evidence asked for is of that kind, if of any importance whatever, which belongs to the direct case of the defendant, which case has long since been closed, and the complainant has for some time been taking his rebuttal proofs; to attempt to take this class of evidence now is improper and in violation of the rules for taking testimony.

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The defendant has neither asked the court nor the complainant, nor the complainant's counsel, to reopen this case to allow this class of testimony to be given; and no authority has either been given by court or complainant's counsel for any such purpose. Objections are therefore taken to any further examination of this witness on that subject, or of any other witness on the same subject.)

A. We used a combined stamp, for cancelling and postmarking at the same time.

8. Q. Describe it?

(Same objections.)

A. The same was the usual postmarking stamp; round stamp, with the cancelling stamp attached to the side of the postmarking stamp with solder; that's the description of the stamp.

9. Q. What was the configuration of the acting face of the canceller?

(Same objections.)

A. It was a ring on the outside, with cross-bars.

Complainant's counsel cross-examines this witness, de bene esse:

(Defendent's counsel objects to any conditional cross-examination.)

10. X Q. You know Mr. Wheeler?

A. Yes; I do.

11. X Q. How long have you known him?

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A. Since about 1850.

12. X Q. About how well have you known him?

A. Well, about as well as we generally know people in our every-day intercourse.

13. X Q. You could not know him more thoroughly than you now know him, and have for a number of years, could you?

(Objected to as irrelevant and immaterial.)

A. I don't know that I could; for the last ten or twelve years my intercourse hasn't been near as frequent with him as it was before; when I was in the post-office I used to see him every day; since leaving the post office my intercourse or meeting with him has been not very frequent.

14. X Q. When did you last see Mr. Wheeler?

A. I saw him last Sunday.

15. X Q. Of this present month?

A. June 2d.

16. X Q. Where did you see him?

A. At my house.

17. X Q. He came there to see you, did he, on that day?

A. I suppose so.

18. X Q. Did you have any conversation with him on that day about any matter?

(Same objections.)

A. I did not.

18½. X Q. Did he have any conversation with you about any matter on that day?

(Same objections.)

A. He did not.

19. X Q. How long did he remain in your house on that occasion?

(Same objections.)

A. It might have been ten minutes—not to exceed fifteen.

2016 20. X Q. He came to your house to see you last Sunday, looked at you for ten or fifteen minutes, and then went away without speaking a word to you, did he?

(Same objections.)

A. He said good afternoon when he came in, gave me an introduction to a gentleman accompanying him, bade me good afternoon when he left the house; that is all the conversation that passed between Mr. Wheeler and myself on Sunday, June 2d, 1878.

21. X Q. You are positive of that, are you?

A. I am.

22. X Q. To whom did Mr. Wheeler introduce you at your house last Sunday?

(Same objections.)

A. A gentleman by the name of Clarke.

23. X Q. The one who examined you on your direct examination to-day?

A. I believe him to be the same.

24. X Q. Have you any doubt about it in your own mind?

A. I have not.

25. X Q. Was Mr. Wheeler there while Mr. Clarke remained at your house last Sunday?

A. He was.

26. X Q. What was the business upon which those gentlemen came to your house last Sunday, if any?

A. To ascertain what time I would probably be in Cleveland on Tuesday, and to see if my business was such that I could come to the office of Mr. Pomerene, I think it is—I couldn't swear to that, but I think that is the name—to give evidence in this case.

27. X Q. Is that all that took place between you three on that Sunday, with reference to this case.

A. Mr. Clarke asked me some questions relative to the time I was in the post-office.

2017 28. X Q. Did Mr. Clarke tell you there on that Sunday, in the presence of Mr. Wheeler, what he desired you to testify to on this occasion?

A. He did not.

29. X Q. Did he, at any other time or place, state to you what he desired you to testify to in this case to-day, or at any other time that you might be examined?

A. He did not.

30. X Q. Did he ever show you, at any time, any model or drawing of a combined stamp for postmarking letters and cancelling postage-stamps?

A. I think he did, when I was up here before; the date I don't remember.

31. X Q. Did Mr. Wheeler ever show you any such instrument or drawing?

(Same objections.)

A. He did not.

32. X Q. You are positive of that?

A. I swear positively to that.

33. X Q. About how many months ago since you were here to be examined as a witness by Mr. Clarke, if you were here for that purpose?

(Same objections.)

A. I can't tell.

34. X Q. Was it cold weather and snow on the ground?

(Same objections.)

A. I don't remember whether there was or not.

35. X Q. You came here for that purpose, did you not?

(Same objections.)

A. I didn't know for what purpose I was asked to come here; was told that a gentleman by the name of Clarke wished to see me about something in connection with a suit in regard to a postmarking
2018 stamp, and nothing said to me about being used as a witness; but Mr. Clarke wished to ask me a few questions.

36. X Q. Who told you all that?

(Same objections.)

A. Charles E. Wheeler.

37. X Q. When?

A. I think it was two days before I came up here.

38. X Q. You came, but do not remember when you came or whether there was cold weather and there was snow on the ground; is that it?

A. I don't remember the month or day of the month; I think, however, the weather was cold.

39. X Q. Do you remember whether you came clothed in winter or in summer clothing?

(Same objections.)

A. Well, it wasn't summer clothing; I think perhaps I had on an overcoat.

40. X Q. What induces you to think you had on an overcoat at that time?

(Same objections.)

A. I don't know certainly that I did have on an overcoat.

41. X Q. Your memory serves you better with reference to matters and things that may or may not have happened twenty or more years ago than it does with reference to matters and things that may or may not have happened during the present year down to within three months of the present time, does it not?

A. Perhaps.

42. X Q. What do you mean by the use of the word perhaps in your last answer?

A. Have you got a Webster's Dictionary here?

43. X Q. At the time you say Mr. Clarke showed you a model and drawings of combined instruments for postmarking letters and
2019 at the same time cancelling postage-stamps thereon, was Charles E. Wheeler present?

(Same objections.)

A. He was not.

44. X Q. What did Clarke tell you he was going to do with those things, if anything?

A. He didn't tell me that he was going to do anything with them, that I know of; I don't remember of his telling me anything, that I remember.

45. X Q. Did Mr. Clarke tell you anything at that time or have any conversation with you about those devices?

A. He did not, that I remember; he simply showed me the stamp.

46. X Q. Did you see a drawing at that time of anything?

A. I don't remember that I did.

47. X Q. Why can't you remember about that?

A. Well, I don't know, without it is because he didn't show me any drawing.

48. X Q. About how long ago was that?

(Same objections.)

A. I can't give the date.

49. X Q. How came you to meet Mr. Clarke on that occasion?

(Same objections, and also as having been answered.)

A. I answered that question before.

50. X Q. You will please here answer it again.

(Same objections.)

A. By Mr. Wheeler asking me to come here.

51. X Q. Where was Mr. Clarke when you had that interview with him?

A. In the front corner room in this building.

52. X Q. Who introduced you to Mr. Clarke on that occasion?

2020 A. Not anybody.

53. X Q. But Mr. Wheeler did introduce him to you at your house last Sunday?

(Same objections.)

A. He did.

54. X Q. You didn't know Mr. Clarke when you first saw him at your house last Sunday previous to the introduction by Mr. Wheeler, did you?

A. I didn't recognize him as being the gentleman I had met before till his name was mentioned.

55. X Q. If Mr. Clarke had been a combined postmarking instrument for postmarking letters and for the cancellation of postage-stamps thereon at one blow, you would have recognized him at once as something you had seen before, would you not?

(Same objections.)

A. Undoubtedly.

56. X Q. And you would have then remembered that you had seen him in that condition as early as 1854, would you not?

A. Undoubtedly.

57. X Q. You have a very fine and accurate memory with reference to things that may or may not have taken place in the years 1854 and 1855, have you not?

A. May be.

58. X Q. Have you any doubt on that subject?

A. I have not.

59. X Q. During either of those years did you make a memorandum in writing of any event or thing that came under your observation?

A. I might have.

60. X Q. Do you know whether you did or not during either of those years?

A. I can't call anything to mind now.

61. X Q. You have no doubt on that subject, have you, at the present time?

A. I don't call anything to mind now.

2021 62. X Q. (Last question repeated and a categorical answer desired from the witness; either yes or no.)

A. I said I didn't call anything to mind; I have no doubt that I have made memorandums of some things that transpired during that time.

63. X Q. Name such things as you have no doubt you made memorandums of during either of those years.

A. I can't call anything to mind just now.

64. X Q. You say you saw Wheeler last Sunday at your house, in company with Mr. Clarke. When before that time did you last see Mr. Wheeler?

(Same objections.)

A. I don't think I had seen Mr. Wheeler within two months—may be two months, may be a month and a half; not any later than that—until last Sunday.

65. X Q. Where was that?

A. I think it was on Superior street.

66. X Q. Was anything said between you on that occasion?

(Same objections.)

A. He was in company with Isaac Snook, and was speaking in regard to the McGill murder case, Mr. Snook having been one of the jurors in the aforesaid case.

67. X Q. Is that all that was said between you?

A. All that passed between us.

68. X Q. Have you and Wheeler ever had any conversation about this suit or the invention involved in it?

(Same objections.)

A. We have not.

69. X Q. Never a word at any time or place?

(Same objections.)

A. We have not any special conversation in regard to it.

2022 70. X Q. Not even one word?

(Same objections.)

A. We have not.

71. X Q. You are sure of that?

A. I am.

72. X Q. And do you swear to it positively?

A. I am under oath already.

73. X Q. I did not ask you that, or anything about your oath; but I ask you to state positively about a matter of which you said you were sure. I did that in order that there should be no mistake on your part as to what you are testifying to, and I now and again repeat that question, and simply ask of you a fair and non-evasive answer to it.

A. I do.

74. X Q. You do swear to it positively, is that it?

A. I do.

75. X Q. Has Mr. Wheeler ever written you a letter or postal card with reference to this suit, or any matter connected with it?

(Same objections.)

A. He has not.

76. X Q. Not even one letter?

A. Not one single letter.

77. X Q. Nor even one postal card?

A. Not one postal card.

78. X Q. Has Mr. Wheeler ever presented to you any certificate or other paper for you to sign about the invention involved in this suit or any part of it?

(Same objections, and also because counsel does not make it clear to witness what he means by the invention involved in this suit.)

A. He has not.

79. X Q. You are sure of that?

A. I am.

80. X Q. And you are positive about it, are you?

2023 A. I am.

81. X Q. Where were you when you first received information from Mr. Wheeler that your services were wanted in this case for the defendant?

(Objected to as irrelevant and immaterial, and as assuming that the witness has received such information from Mr. Wheeler.)

A. I didn't receive any such information from Mr. Wheeler that I was to appear as a witness; he simply asked me to call at Mr. Pomerene's office; that there was a gentleman by the name of Clarke there who wished to see me; this was in the American Express Office, 103 Bank street, I think it is.

82. X Q. On receiving that kind and polite invitation from Mr. Wheeler to come and see Clarke, you came right up to see him without asking Wheeler what Clarke wanted, did you not?

A. I did not come at that time; but two days after I saw Mr. Wheeler.

83. X Q. Did Mr. Wheeler, while in that express office, state to you what Mr. Clarke desired to see you about?

(Same objections.)

A. He said it was something in regard to a suit about a postmarking stamp; I suppose that's what you call it.

84. X Q. Is that all he said to you on that subject?

A. It is.

85. X Q. Every word?

A. Every word.

86. X Q. Now you swear to that positively, do you not?

A. I do.

87. X Q. When you first met Clarke, at the invitation of Mr. Wheeler, as you have stated, what did you first say to him?

A. Well, I can't remember; the gentleman in this room—fine looking gentleman, with gold specs on, resting on his nose, says, when
2024 Mr. Clarke came into the room, "Mr. Clarke, here is your man that you are looking for;" how he knew it, I don't know; Mr. Clarke invited me into the front corner room in this building, where we had what talk we did have.

88. X Q. Do you remember the first word or words you said to Mr. Clarke after you and he were alone in the front room named by you in your last answer?

A. I do not.

89. X Q. Do you remember what Mr. Clarke first said to you on entering that room?

A. I do not; he might have asked me if my name was Beardsley; that I am not positive about.

90. X Q. When did you first know that you were to be a witness in this case?

A. Last Sunday, June 2d.

91. X Q. From whom did you learn that?

A. Mr. Clarke asked me to come here to-day.

92. X Q. At the time you were sworn as a witness in this case to-day, did you know what you were to testify to or about?

A. I supposed it was in regard to this combined stamp.

93. X Q. How came you to "suppose" that?

A. From what Mr. Clarke said to me.

94. X Q. You knew, then, just what Mr. Clarke wanted of you on this occasion, did you, from what he said to you?

A. Well, I don't know that I knew just what he wanted of me; I knew that he wanted me to come here as a witness, for he so stated.

95. X Q. Previous to your rendering your testimony in your direct examination here to-day, about how much thought, study, or time did you spend in consideration of the matters which you testified about on that examination?

A. Well, I can't say exactly.

96. X Q. Why can't you?

A. I haven't taken an account of the time.

2025 97. X Q. About how much would you judge from what information you now have on the subject?

A. I can't give any specified time.

98. X Q. Well, please approximate to the time as near as you can, either in months, weeks, days, hours, minutes, seconds, or parts of seconds.

A. I can give no stated time.

99. X Q. Well, have you spent any in that direction, or on those matters?

A. I have thought the matter over some; can give no specified time.

100. X Q. When and where did you think the "matter over some?"

A. No particular time or particular place.

101. X Q. Who, if anybody, was present on that occasion?

A. I have had no conversation with any one in regard to it since Mr. Clarke asked me to come here, or before either.

102. X Q. And you were entirely ignorant what you were to testify to when you came here this morning, were you?

(Objected to as irrelevant and immaterial.)

A. I had no idea of the questions which would be asked me.

103. X Q. Or of the subject-matter you were to testify about?

(Same objections.)

A. I supposed it was in regard to the stamp.

104. X Q. What led you to suppose that?

(Same objections.)

A. From having been told that there was a suit in regard to the stamp pending.

105. X Q. Do you ever visit Wheeler at his house, or do any of your family visit there?

(Same objections.)

2026 A. I do not, and they do not.

106. X Q. How far do you live from Wheeler's?

A. That I can't tell.

107. X Q. You say in your direct examination that you have been employed in the post-office in Cleveland, Ohio. When was that, and for what term of time?

A. From 1854 to 1867, with a short intermission during that time.

108. X Q. What special duties, if any, were assigned to you in that office?

A. For the first year and a half or two years—I can't remember exactly—I was attending to the bagging and sending out of mails; after that time I worked at what is known as the round table, distributing mail matter in what is known as the general distribution.

109. X Q. In 1854 or 1855 or 1856, did you know of a clerk employed in that office by the name of A. L. Bassett?

(Objected to irrelevant and immaterial.)

A. I did.

110. X Q. Did you know, during those years, of a clerk employed in that office by the name of James McGough?

(Same objections.)

A. I did.

111. X Q. What were Mr. Bassett's duties in that office during that time?

(Same objections.)

A. Well, he was known as a D. P. O. room clerk, we called him.

112. X Q. Where was the D. P. O. room situated in that office—on Water street?

A. In the rear of the building.

113. X Q. For what purpose was that room used, and about how large was it?

2027 A. Perhaps twenty or twenty-five feet square, and used for putting up letters for the mails.

114. X Q. Were the mails made up in that room for transportation?

A. The letters were assorted for the different routes, put up in packages for the different routes, brought from there out to the general distributing table, distributed in the case preparatory to bagging.

115. X Q. Letters were tied up in small packages in the D. P. O. room, were they not?

A. At that time they were some tied up in packages, some wrapped and tucked without being tied.

116. X Q. Did each of those packages contain a printed or written way-bill?

(Same objections.)

A. They did.

117. X Q. Were those packages first put in wrapping-paper before being tied up?

A. They were.

118. X Q. Did those way-bills contain a postmark made by the dating stamp?

A. My impressson is that they did not; they had a printed heading; the month stamp for the month was usually stamped in, I think; I am not so positive about that, for my duties were not in that room.

119. X Q. At that time, who furnished that office with the postmarking stamp with the words "Cleveland, O.," and the dates in it?

A. I don't know; my impression is they were sent here from Washington.

120. X Q. A stamp of that kind was used in that office during those years, was it not?

A. It was.

121. X Q. Did you ever see any letters in that office during each of those years that had the postage stamp cancelled by means of a postmarking stamp, giving the impression upon or partly upon the

2028 surface of the postage-stamp of the word "Clevland" within a circle, and the month and day of the month at or near the centre of that circle?

A. There used to be such a stamp used; there was a cancelling stamp used; I can't swear that I did, wit out using a cancelling stamp.

122. X Q. You swear, then, do you, that there were no letters in that office postmarked upon the postage-stamp, and thereby cancelling it in the manner or substantially in the manner stated by me in the last question; and during the time stated in the last question—I mean during the years 1854, 1855, 1856, 1857, 1858, 1859, and 1860—during each year down to the first day of August, 1860?

A. There might have been during the first year or two; I couldn't say positively.

123. X Q. You have stated in your last answer all you know about it, have you?

A. I have not for all those years.

124. X Q. Well, what years do you refer to in your last answer?

A. 1856; from that down to 1860, or somewhere between that and 1860.

125. X Q. Why did you not answer as to those years when I put to you Cross-Q. 122 on that subject?

A. Well, I didn't understand it; there was a stamp used during a part of those years with a cancelling stamp attached.

126. X Q. Did I ask you in the last question anything about a cancelling stamp being attached to a postmarking stamp, or to anything else?

A. I don't know that you did.

127. X Q. You made that answer, then, knowing that I had not made any such inquiry of you, did you not? I want your answer to this question, yes or no, without any attempt at smartness or any attempt at pettifogging, as you seem to have done in your answer to cross-question 125.

(Defendant's counsel objects to complainant's counsel using abusive language to the witness.)

2029 A. I didn't answer the question only as I understood it; I should have stated in the answer above there to that long question that, a portion of those years, there was a postmarking stamp used with a cancelling stamp attached.

128. X Q. Have I asked you a single question on your cross-examination to-day that inquires of you to state anything about a postmarking stamp having a cancelling stamp attached to it, and use in the Cleveland post-office, or anywhere else, or by anybody?

A. As I understand it, you have.

129. X Q. State the number of the question.

A. I can't give the number of the question.

130. X Q. Examine the record of your cross-examination; read the question, and give the number of the question where any such inquiry was made of you, either directly or indirectly.

A. It is 122: "You swear then, do you, that there were no letters in that office postmarked upon the postage-stamp, and thereby cancelling it in the manner or substantially in the manner stated by me in the last question; and during the time stated in the last question—I mean during the years 1854, 1855, 1856, 1857, 1858, 1859, and 1860—during each year down to the first day of August, 1860?" As I understand this question, there is an implied inquiry there as to whether there was any other stamp used there during those years; that's as I understood it.

131. X Q. Read from that question the exact word or words where

there is an "implied inquiry" of the kind stated by you in the last part of your last answer.

A. You say, "during the time stated in the last question—I mean during the years 1854, 1855, 1856, 1857, 1858, 1859, and 1860," as I understand the question, whether during all that time the single postmarking stamp was used, or whether there might a part of the time have been something else used; that's as I understand it.

2030 132. X Q. In that question there is not a single inquiry as to any kind of stamp, either postmarking or postage cancelling, and no kind of stamp mentioned excepting a "postage-stamp;" the inquiry was based upon cross question 121; you may read that question, if you will, and if you want to make any further explanation make it.

A. Yes; I would add to that that I had also seen a stamp used during a part of those years (a postmarking stamp it should be, I suppose), with a cancelling stamp attached.

133. X Q. Your understanding of cross-questions 121 to 132 inclusive is about as clear and as correct as any questions that were put to you on your direct examination, is it not?

(Objected to on the ground that the question is for the court, not for the witness.)

A. Not as I understand them.

134. X Q. Did you understand those questions, or either of them, at the time you made answer to them?

A. I supposed I did; but there seems to be a difference of opinion between me and the counsel for the prosecution.

135. X Q. Do you know whether you understood them or not at the time you answered them?

A. I answered them as I understood them.

136. X Q. And that is all you know about it, is it?

A. I know that I answered them as I understood them.

137. X Q. And that is all you know about it, is it?

A. All that I know about what?

138. X Q. About your answers to questions named; 121 to 132 inclusive of your cross-examination?

A. All that I know about it is that I answered them as I understood them.

139 X Q. After I explained to you, in cross-question 132, that I had reference to no kind of stamp excepting a postage-stamp in that question, 121, did you not state these words: "Yes; I would add to

2031 that I had also seen a stamp used during a part of those years (a postmarking stamp it should be, I suppose), with a cancelling stamp attached"?

(Objected to on the ground that counsel does not correctly state what he himself calls his explanation in question 132.)

A. I did.

140. X Q. And you did that after I had explained the question to you, did you?

A. I did.

141. X Q. Were you employed in the post-office in the government building where it now is in the years 1859, 1860, 1861, 1862, and 1863?

A. I was.

142. X Q. In July, August, or September, of the year 1860, did you see or know anything about an order being received at that post-office, made by the Postmaster-General, prohibiting the use of the post-dating stamp for the cancellation of postage-stamps on letters, by striking such post-dating stamp upon the upper surface of the postage-stamp,

and requiring the postmark to be upon the letter envelope, and that the postage-stamp be cancelled by a separate instrument from the post-dating stamp?

(Objected to as irrelevant and immaterial.)

A. I did not.

143. X Q. You never heard or knew or saw anything about any such order, did you?

A. Not at that time.

144. X Q. Did you at any other time?

A. I know there was an order of that kind come from the Post-Office Department; the date of it I can't give.

145. X Q. In what year was that order issued?

A. I couldn't tell.

146. X Q. Where was the Cleveland post-office located at that time?

A. My impression is that when the order was received that the office was on Water street.

2032 147. X Q. And it was in consequence of that order that you used the stamp you named in your answer to question 7 of your direct examination, which reads, "We used a combined stamp for cancelling and post-marking at the same time," was it not?

A. It was.

148. X Q. Where was the combined stamp which you refer to in your answer to question 7 of your direct examination made?

A. I don't know who attached it to the other. It was put on by some tinner—soldered to it.

149. X Q. Who had that done?

A. Mr. Charles E. Wheeler, I think that's his name—I am not positive about the E—suggested the idea, I think.

150. X Q. To whom did he suggest the idea named in your last answer?

A. To those whose duties it was to use the stamps.

151. X Q. Who were they? Name them.

A. Well, I think that a man by the name of Wright—his first name I cannot give.

152. X Q. Well, anybody else?

A. I couldn't say that he suggested it to any one in particular; but it was a general suggestion, perhaps.

153. X Q. All these suggestions were made soon after the making that order by the Postmaster General, were they not, of which you have testified?

A. I presume they were in consequence of that order.

154. X Q. There was no necessity for the use of the combined stamp in Cleveland post-office, and referred to in your answers to questions 7 and 8 of your direct examination, until after the making of that order by the Postmaster-General, was there?

A. I suppose that that order was what led them to combine the two.

155. X Q. Have you any doubt about that?

A. I don't know that I have.

2033 155½. X Q. You are as positive about that as any part of your testimony that you have given to-day, are you not?

A. I don't know that I am; I suppose that that was in consequence of the order.

156. X Q. What led you to "suppose" any such thing?

A. The order of the Postmaster-General requiring the cancelling

stamp for defacing postage stamps, independent of the post-marking stamp.

157. X Q. Immediately after receiving that order at Cleveland post-office, do you mean to say that Charles E. Wheeler had made the combined stamp referred to in your answers to questions 7 and 8 of your direct examination; and that the same was thereupon used in the Cleveland post-office, as stated by you on your direct examination?

A. I do.

158. X Q. Where is that combined stamp now, if you know?

A. I don't know.

159. X Q. You do not know where it is?

A. I do not.

160. X Q. Did Wheeler have any more than that one made that you know of?

A. I am not positive, but I think there is two.

161. X Q. Who was stamping clerk in the Cleveland post-office in the year 1859?

A. I couldn't tell.

162. X Q. Who was stamping clerk in the Cleveland post-office in the year 1860?

A. That I don't know positively.

163. X Q. Who was stamping clerk in the Cleveland post-office in the years 1861 and 1862?

A. I couldn't tell.

164. X Q. Were you employed in that post-office during those four years stated in my last previous questions?

A. I was.

165. X Q. What were your duties there during those years?

2034 A. I was distributing clerk at a round table or a general distributing case.

166. X Q. Was Wheeler there during those years?

A. I think he was.

167. X Q. Was A. L. Bassett there during those years?

A. I think so—I wouldn't be positive as to his being there all the time.

168. X Q. Was Mr. Albinger there during those years?

A. He was.

169. X Q. Who was postmaster at Cleveland during the administration of President Buchanan?

A. Benjamin Harrington.

170. X Q. And who was postmaster here during the first administration of President Lincoln?

A. Edwin Cowles.

171. X Q. In what year did you permanently leave employment at the Cleveland post-office?

A. In 1867.

172. X Q. If you know, in what year did the Postmaster-General commence to furnish the Cleveland post-office with an instrument for post-marking letters separate from the postage stamp while by the same blow and operation of post-marking the postage stamp was cancelled or defaced, independent from the post-marking; or in other words a double and combined post-marking and postage cancelling instrument?

A. I couldn't tell.

174. X Q. Do you know that any such instrument ever was furnished by the Post Office Department to the Cleveland post office?

A. I think I do remember of their furnishing such things.

174. X Q. About how long ago was that? Give your best recollections of it.

A. Well, I couldn't tell; there used to stamps come—they were different kinds of stamps, they were stamps for letters "forwarded"
2035 and post-marking stamps and various stamps they used to use at different times; I couldn't give the dates.

175. X Q. I am only asking you about one kind and that is fully and fairly stated in my previous questions. Fixing your mind upon that kind, I again repeat the last question.

A. I couldn't state what time.

176. X Q. It was some time during the last twenty years, was it not?

A. Probably it was.

E. J. BEARDSLEY.

Sworn and subscribed before me this 4th day of June, 1878.

J. G. POMERENE,
Special Examiner.

I, J. G. Pomerene, special examiner, do hereby certify that W. J. Warner, John Albinger, C. C. Nott, and E. S. Beardsley were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions by them respectively subscribed and severally authenticated by my signature, as above set forth, were reduced to writing in part by myself, and in part by H. W. Bill, who is not interested in the suit, in the presesce of the witnesses respectively, and in the presence of counsel for complainant and defendant, as is within indicated, and were respectively subscribed by the said witnesses in my presence, and were taken at my office in the city of Cleveland and State of Ohio, on the 31st day of May, 1878, and on the following days, as is within indicated; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand this 7th day of June, A. D. 1878, at city of Cleveland, Ohio.

J. G. POMERENE,
Special Examiner.

2036 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 10th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the Hon. Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

Upon reading and filing the annexed affidavit, and upon motion of

It is ordered that Irving Browne, esq., of Troy, New York, be, and he is hereby, appointed special examiner herein, under the 67th equity rule, as amended, to take the testimony of Jacob Shavor, Albert C. Corse, Charles Eddy, Jeremiah D. Greene, F. G. Ransford, and of such other

competent witnesses as may be brought before him on the part of the defendant in this cause.

(Signed) HOYT H. WHEELER.

A copy.

[L. S.] JOHN I. DAVENPORT, *Clerk.*

2037 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES.

SIR: Please to take notice that the defendant herein, by his counsel, will examine witnesses on his behalf, under the 67th equity rule as amended, at the city of Troy, N. Y., before Irving Browne, esq., the special examiner appointed for the purpose, at 10 o'clock in the forenoon of the 3d day of July, 1878, and at the office of said special examiner; and also, that the time and place aforesaid have been fixed by said special examiner for such examination.

Dated New York, June 29, 1878.

Yours, &c.,

STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol.

To MARCUS P. NORTON, Esq.,
Complainant's Solicitor.

Time postponed by consent to July 5th, 1878, at 10 o'clock a. m.

STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol.
MARCUS P. NORTON,
Solicitor for Complainant.

2038 U. S. circuit court S. D. N. Y. In equity.

CAMPBELL
v.
JAMES.

Notice of taking testimony at Troy, July 3, 1878, for defendant.

STEWART L. WOODFORD,
U. S. Att'y and Def't's Sol.

To MARCUS P. NORTON, Esq.,
Compl't's Sol.

Due service of a copy of within hereby admitted. June 29, 1878.

MARCUS P. NORTON,
Solicitor for Compl't.

TROY, N. Y.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN TRUST,
against
THOMAS L. JAMES, U. S. POSTMASTER, NEW YORK.

2039 Proofs for final hearing taken for and on behalf of the defendant, at the city of Troy, on the 5th of day of July, 1878, and following days, 1878, before Irving Browne, duly appointed special examiner for that purpose.

Present, pursuant to notice, Marcus P. Norton, esq., complainant's

solicitor, and Samuel B. Clarke, esq., assistant United States district attorney, for the defendant.

MARCUS BALL, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Marcus Ball. My age is 52; by profession, a lawyer, and somewhat engaged in other business. I reside in the town of Brunswick, Rens. Co., N. Y.

2. Q. Where do you carry on your business?

A. In the city of Troy.

3. Q. How long have you been in business in the city of Troy?

A. Since about 1849, with the exception of a few years, when I was not actively engaged in my profession here.

4. Q. Do you know Marcus P. Norton?

A. I do.

5. Q. How long have you known him, and in what business was he engaged when you knew him, and where?

A. I think I have known Mr. Norton somewhat twenty years or more. He was engaged most of that time, so far as I was acquainted with his business, as a patent lawyer, or engaged in the business of patents at Troy. I have known nothing of his business elsewhere except from report.

6. Q. Do you know his reputation in respect to truth in this community? Is it good or bad? If you do know, state how you know.

2040 A. I don't think I know Mr. Norton's reputation in this community, at the present time, for truth and veracity. For a period of several years past—until within a period of two years past—I have been withdrawn from the society here pretty generally, and at times for quite a considerable period of time, and I don't think I have heard his character for truth and veracity discussed for a few years past. That is the best answer I can give to that question.

7. Q. Did you ever know, and, if yea, when?

(Complainant's counsel objects to the last question for the following reasons:

1st. The last answer of the witness is a bar to any further legitimate inquiry into the subject matter involved in the last question so far as the issues involved in this suit are concerned.

2d. What the witness may or may not have known about the subject matter of the last inquiry is so far remote from any issue in this cause as to render any further inquiry on that subject immaterial and unimportant.)

A. Perhaps ten to fifteen years ago I was acquainted somewhat with the reputation of Mr. Norton in this community.

(Complainant's counsel objects to the last answer and assigns the same reasons as were assigned to the question for objections, to wit:)

8. Q. Have you been acquainted with Mr. Norton's reputation for truth and veracity within ten or fifteen years? If yea, how recently?

(Same objections, and, further, as having been already twice answered by the witness.)

A. It is difficult for me to fix, within the periods of time mentioned, an acquaintance with his reputation for truth and veracity with-
2041 out reference to papers, but I think, perhaps, within fifteen years I have been acquainted with his reputation for truth and veracity.

(Answer objected to for reasons already assigned as objections to both questions and answers.)

9. Q. State what that reputation was at the time you knew it; whether it was good or bad.

(Same objection.)

A. I considered it bad at that time.

10. Q. State how you knew it.

(Same objections.)

A. I knew it from the speech of people in this community concerning it.

(Same objections to answer.)

11. Q. From the speech of people concerning Mr. Norton's reputation for truth and veracity, would you believe him on oath?

(Same objections.)

A. At that time in a matter in which he was interested or his feelings were enlisted, I should not.

(Same objections to this answer as to the last.)

12. Q. Have you had any reason to change your mind on the point since the time to which you refer in your last answer?

(Same objections.)

A. I don't know that I have, except that for the period of time before mentioned, 10 or 15 years, I have seen and known very little of Mr. Norton, and do not remember in that time to have heard his char-
2042 acter discussed perhaps within that time; perhaps I may also add, that a man may have so deported himself since the occasion before referred to, as to sustain, at the present time, a fair reputation.

(Defendant's counsel objects to last sentence as irresponsive.

Complainant's counsel objects to last objection on the ground that defendant's counsel has no right to undertake to throw mud at his own witness, and therefore moves the court to strike out the objection.)

13. Q. In point of fact, do you know whether Mr. Norton has so deported himself the last 10 or 15 years as to sustain now a fair reputation?

A. I do not.

(Complainant's counsel, in view of the objections taken to questions and answers on the direct examination of this witness, proceeds with the cross-examination of the witness de bene esse.

Defendant's counsel objects to any conditional cross-examination.)

Cross-examination by Mr. NORTON:

14. Q. In your answer to the first question you state that you reside in the town of Brunswick, in this county; for how many consecutive years have you so resided there?

A. Some 12 or 14 years, with the exception of perhaps a year's absence, 6 months' absence occasionally during that term.

15. Q. How far is your present residence from the city of Troy?

A. Perhaps 100 rods from the easterly boundary of the city.

16. Q. That part of the city pretty well settled in your immediate vicinity?

A. It is rather sparsely settled.

2043 17. Q. The house in which you now live has been owned and occupied by you during the time stated in your last answer, has it not?

A. No, sir; I think I erected the present house about 3 or 4 years ago.

solicitor, and Samuel B. Clarke, esq., assistant United States district attorney, for the defendant.

MARCUS BALL, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Marcus Ball. My age is 52; by profession, a lawyer, and somewhat engaged in other business. I reside in the town of Brunswick, Rens. Co., N. Y.

2. Q. Where do you carry on your business?

A. In the city of Troy.

3. Q. How long have you been in business in the city of Troy?

A. Since about 1849, with the exception of a few years, when I was not actively engaged in my profession here.

4. Q. Do you know Marcus P. Norton?

A. I do.

5. Q. How long have you known him, and in what business was he engaged when you knew him, and where?

A. I think I have known Mr. Norton somewhat twenty years or more. He was engaged most of that time, so far as I was acquainted with his business, as a patent lawyer, or engaged in the business of patents at Troy. I have known nothing of his business elsewhere except from report.

6. Q. Do you know his reputation in respect to truth in this community? Is it good or bad? If you do know, state how you know.

A. I don't think I know Mr. Norton's reputation in this com-
2040 munity, at the present time, for truth and veracity. For a period of several years past—until within a period of two years past—I have been withdrawn from the society here pretty generally, and at times for quite a considerable period of time, and I don't think I have heard his character for truth and veracity discussed for a few years past. That is the best answer I can give to that question.

7. Q. Did you ever know, and, if yea, when?

(Complainant's counsel objects to the last question for the following reasons:

1st. The last answer of the witness is a bar to any further legitimate inquiry into the subject matter involved in the last question so far as the issues involved in this suit are concerned.

2d. What the witness may or may not have known about the subject matter of the last inquiry is so far remote from any issue in this cause as to render any further inquiry on that subject immaterial and unimportant.)

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(Answer objected to for reasons already assigned as objections to both questions and answers.)

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(Same objection.)

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(Same objections.)

A. At that time in a matter in which he was interested or his feelings were enlisted, I should not.

(Same objections to this answer as to the last.)

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(Same objections.)

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2043 17. Q. The house in which you now live has been owned and occupied by you during the time stated in your last answer, has it not?

A. No, sir; I think I erected the present house about 3 or 4 years ago.

18. Q. The house you now reside in is about how far from the one you occupied 12 or 14 years ago?

A. It's on the very spot and covers considerable more ground than the original house; I have owned the property and resided there, with the exceptions and absences already stated, 12 or 14 years, and perhaps longer.

19. Q. You speak, on your direct examination, with reference to a time about 15 years ago when you considered Norton's reputation bad for truth; do you remember the occasions that led you to those conclusions at that time?

A. I remember no special occasions.

20. Q. Do you remember an interference case in the United States Patent Office, in which William E. Hagan was plaintiff, and against Jacob Shavor and Louis Potter, defendants, and in the early winter and spring of 1863?

A. I do not.

21. Q. Were you in that case and during the time named in the last question, examined as a witness against Marcus P. Norton, and upon the same or substantially the same subject-matter, about which you have been examined to-day, on your direct examination?

A. Several years ago I was examined as a witness in some case or matter, the title of which I do not remember, concerning the reputation of Mr. Norton for truth and veracity; the hearing occurred in this city and before a United States commissioner from Utica, whose name, I think, was Boyce; I understood he was a commissioner.

22. Q. Who conducted your examination on that occasion?

A. I am not positive, but I believe Mr. W. A. Beach appeared on one side, and I think Mr. Norton on the other.

2044 23. Q. Was the law firm of Beach & Smith, then practicing in this city, engaged at that enterprise at impeachment, as attorneys?

A. The law-firm of Beach & Smith were engaged in practicing in this city, at that time, and my recollection is that Mr. W. A. Beach conducted the examination referred to, on one side of the matter or case.

24. Q. Did you ever know or hear, from any source whatever, how those proceedings terminated, as to the question about which you were then and there examined?

(Objected to as immaterial.)

A. I don't think I ever knew, and have no recollection of having heard how they terminated.

25. Q. I will read, for your information, from a certified copy of the decision in that case and on that question, and will then make an inquiry of you: "It has been argued on behalf of Mr. Norton, that it is due to him that this attack should receive judicial reproof and rebuke at our hands."

"So far as the attempt to destroy his testimony by impeaching his character for truth is concerned, we have no hesitation in saying that, in view of the large number of sustaining witnesses, it must be regarded as an unsuccessful one."

After an inquiry by a court consisting of three persons, upon evidence submitted to that court both for and against Norton, do you not think that he was at that time entitled, in this community, to a certificate of good character?

(Objected to for its many assumptions of facts not in evidence.)

A. If that was the opinion of that court, and it was the practice and custom of the court to issue such certificates, it would seem that Mr.

Norton was entitled, from the opinion of the court, to such certificate as the opinion would seem to indicate.

2045 26. Q. About fifteen years ago, or so, you brought several suits against Norton, on several notes, did you not, given to a man named Clark, said to be in the ischuretic business in this city?

A. I brought several suits as attorney, and I believe upon notes of the character indicated by the question; I think they were prosecuted to judgment in every instance.

27. Q. Norton resisted the payment of these notes on the ground that they were obtained without consideration, and in a fraudulent manner, or substantially so, did he not?

A. He defended those suits, and I think substantially upon the grounds suggested, but I cannot on account of the lapse of time state definitely what the defences were.

28. Q. Were not the judgments obtained on those notes subsequently paid and satisfied to your entire satisfaction at that time?

A. They were not paid but were satisfactorily settled, but whether discharged or not, of record, I cannot say, by a satisfaction piece, but they were ended at that time.

29. Q. Norton resisted strenuously for a long time the payment of those notes or those judgments, and you made it correspondingly as hot and heavy for him until they were adjusted with you to your satisfaction, did you not?

A. Norton resisted for a considerable length of time, and I prosecuted the several claims and suits, perhaps as well as I could, until the actions and demands were finally settled, as I have before stated.

30. Q. Since that time to the present time have you in any way, shape, or manner had any difficulty or trouble with Norton, or any occasion for any?

A. Not that I am aware of.

31. Q. He has treated you since that time kindly and politely, has he not, on all occasions?

(Objected to as immaterial.)

A. I don't think he ever treated me otherwise that kindly and politely.

2046 32. Q. Do you now remember any person or persons whom, fifteen years or so ago, you heard speak unkindly or unfavorably of Mr. Norton, or of his character as to truth?

A. I think I do.

33. Q. Please name such as you remember.

A. Judge George Gould, William A. Beach, John L. Flagg, P. W. Bishop; I don't at present remember any others or recall any others, unless it be this man Clark to whom the notes were given.

34. Q. Do you remember that Norton and W. A. Beach had personal difficulties growing out of patent matters concerning Henry Burden, then a client of Mr. Beach?

(Same objection)

A. I remember you had a pretty severe personal difficulty in the hearing or presence of the court at that time, which nearly culminated in blows, but what the original inspiration of it was I do not know.

35. Q. Norton at that time was counsel for the firm of Corning, Winslow & Co., then doing business in this city, was he not?

A. That I do not know.

36. Q. Did you ever hear from anybody or understand that he was counsel for that company?

A. I think I have so heard, or had so heard or understood.

37. Q. Was it not at that time generally known in this city that the firm of Corning, Winslow & Co., Mr. Henry Burden, and the Troy Iron and Nail Factory, were engaged in a severe and bitter litigation upon machinery for the manufacture of railway and other spike, and also upon the machinery for the manufacture of horse and mule shoes? I mean litigation upon letters-patent on such machinery or parts thereof.

A. I had heard of such a litigation between some, if not all the parties named, but how generally it was known I am not able to state.

2047 38. Q. You have been a member of the bar of Rensselaer County for how many consecutive years?

A. Since 1849, I believe.

39. Q. During that time to the present time you have done a considerable business in your profession, have you not?

A. Yes; I have done a considerable business.

40. Q. During all those years you have been well acquainted with the members of the bar in this county, as a general thing, have you not?

A. Not during all of those years, but until within perhaps four or five years; within the last four or five years the bar has received accessions to its numbers, to a considerable extent, of young or youngerly men with whom I am not so well acquainted, and some perhaps with whom I am not at all acquainted.

M. BALL.

Subscribed and sworn to before me this 5th day of July, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned till 3 p. m.

FREDERICK G. RANSFORD, a witness called on behalf of defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is F. G. Ransford; my age in December next, 64 years; I have not done any business for a number of years; my residence is 51 Grand Division street, Troy, N. Y.

2. Q. How long have you lived in Troy?

A. I came here in the year 1831, and have lived here, with the exception of one year, parts of '62 and '63, ever since.

2048 3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. How long have you known him, and what business has he carried on while you knew him, and where?

A. I first saw Mr. Norton, to know him, in the year of 1857, latter part, I think; he was a solicitor of patents and had some inventions of his own; the first place I saw him was in the Union House at Troy.

5. Q. How long did he continue to be a solicitor of patents?

A. I couldn't tell you the exact time; it is not a great many years; I didn't understand the question.

6. Q. How long did Mr. Norton carry on the business of solicitor of patents after you first knew him?

A. The last time I knew anything about his patent, it was in connection with the Stewart patent; I couldn't tell the year it was in; I couldn't say what year; it was in Stewart's patent.

7. Where did Mr. Norton carry on the business of solicitor of patents?

A In First street, and on the corner of First and Congress.

8. Q. In the city of Troy?

A. Yes; in the city of Troy.

9. Q. Do you know Mr. Norton's reputation for truth and veracity in this community; is it good or bad?

A. Bad.

10. Q. State how you know it.

A. I know it from general conversation and dealings with the man.

11 Q. Do you know it from the speech of men in this community concerning it?

A. Yes, sir.

2049 12. Q. On the basis of Mr. Norton's general reputation for truth and veracity in this community, which you say is bad, state whether you would believe him on oath?

A. I would not.

Cross examination by Mr. NORTON:

13. Q. Where were you born?

A. New York.

14. Q. How long have you been in Troy?

A. I came here in 1831.

15. Q. You say you know Marcus P. Norton, and have known him for about 20 years, and that you have had dealings with him; when did you last have any dealings with Norton of any kind whatever?

A. Well, sir; I gave John L. Flagg a note, indorsed paper, to pay for some carpets, and a note to pay for some furniture and pay his house rent for a year, to keep him from being turned out, and I let him have some money on a draft from his wife, to enable him to get home from the West, and a number of other times I could not tell.

16. Q. Did you understand the last question at the time you made answer to it?

A. What was the question?

17. Q. Did you understand the last question but one, at the time you made answer to it?

A. Which question did you say; the last one?

18. Q. I again repeat the last two questions and require of you an answer, yes or no; and the examiner will read for your information those two questions?

A. I did.

19. Q. If you did, state what that question asked of you to state?

A. It asked if I had any dealings with Mr. Norton.

20. Q. Anything else?

A. He asked me my age.

21. Q. Anything more?

A. He asked me where I was born.

22. Q. Anything more?

A. I told him I was born in New York.

2050 23. Q. Anything more in that question that you solemnly swear you understood at the time you made answer to it?

A. I don't recollect.

24. Q. You swear on your oath, do you not, that you have now stated in your last several answers the subject-matter, and only the subject-matter, contained in the question which you solemnly swear you understood at the time you made answer to it?

A. To the best of my knowledge.

25. Q. Is that the only answer you can and will give to the last question?

A. It is.

26. Q. The examiner will now read to you the question which you solemnly swear you understood at the time you made answer to it, and you are requested to make a proper answer to that question. The question is number 15 of your cross-examination.

(Examiner reads question.)

A. I couldn't state the exact time.

27. Q. Why can't you state the exact time?

A. Because I cannot.

28. Q. About how many years ago was it?

A. I could not tell unless I referred to some papers.

29. Q. Have you had any dealings with him since the year 1863?

A. I could not tell without referring.

30. Q. Without referring to what?

A. Papers.

31. Q. Look at the papers you mentioned in your last answer and state when you had any business dealings with Norton whatever?

A. I have not the papers with me.

32. Q. Be kind enough to go where those papers are, examine them, and then answer the question so frequently put to you on this examination, namely, when did you last have any business dealings with Norton of any kind whatever?

(Objected to as immaterial.)

2051 A. Want me to go immediately.

33. Q. Immediately.

(Objected to.)

A. It will take some time to look over the papers.

34. Q. When did you last see those papers and examine them?

A. I could not tell.

35. Q. Do you know where they are at this time?

A. No, sir.

36. Q. Do you at this time refuse to go and examine your papers, which you have sworn were necessary to enable you to correctly answer cross question No. 15, and several subsequent questions substantially the same?

A. I want time.

37. Q. How much time do you want?

A. I can't tell.

38. Q. Why can you not tell?

A. I can't tell exactly the reason why; some accounts I paid to E. W. Johnson; I don't know where to look for his books till I inquire.

39. Q. Give your best present recollections of the time when you last had any business transactions of any kind whatever with Norton.

A. I couldn't tell.

40. Q. Why can you not give your best present recollections in answer to last question?

A. I can't tell you.

41. Q. Is that the only answer you can or will give to the last two questions?

A. That is as near as I can give—all I can give.

42. Q. Have you at any time since the year 1863, in the city of Troy or elsewhere, and to anybody, spoken of Norton in language unfavorable to him, and in terms derogatory to him or his character for truth?

A. I have.

43. Q. To whom and when?

A. I will look at this little document from Washington.

2052 A. 1871, then he put in a paper, called it an assignment from Ransford and Lowe, reported to be made in the year 1859: Ransford & Lowe made to him, which was a forgery, to the best of my knowledge from this paper and copy.

44. Q. Did you understand the last question at the time you made answer to it?

A. I did.

45. Q. What did that question inquire of you to state?

A. It wanted me state if I had any conversation about Marcus P. Norton's character.

46. Q. You are sure of that, are you?

A. Yes.

47. Q. You swear to it on your oath, do you?

A. To the best of my knowledge.

48. Q. The last question is repeated to you, and you are requested to state yes or no as your answer.

A. The best of my knowledge.

49. Q. The examiner will now please read to you question 43, and you will please make a proper answer to that question, having sworn you understand it.

A. I swore in 1871.

50. Q. Question No. 43 is now repeated to you, and if you understand it, as you swear you do, you will please give to that question a proper answer, after it and the one immediately preceding it shall have been read to you by the examiner.

Both questions being read by the examiner, witness makes the following answer:

A. I have answered that once.

51. Q. Answer it again.

A. I have answered it once.

52. Q. Do you decline now and here to state the name or names of any person or persons to whom you have spoken, as you swear you have spoken, of Norton's character in terms derogatory to it since the year 1863?

2053 A. What I have spoken is concerning the conduct of Norton trying to rob me of my interest in the patent of 1859.

53. Q. Did you understand the last question at the time you made answer to it?

A. That's the last one I made here.

54. Q. Did you understand the last two questions at the time you made answer to those questions?

A. I have answered them.

55. Q. Do you decline on your oath to state whether or not you understood cross-question No. 52 of this examination?

A. I have answered it.

56. Q. You have answered what?

A. The question as it was put to me.

57. Q. What question was that which you swear you answered?

A. A number of them.

58. Q. Please refer to those questions by giving their number, and especially to that one you swear you have answered.

A. I never heard no number.

59. Q. You are sure no number was stated?

A. To the best of my knowledge.

59½. Q. Cross-question No. 52 of your examination reads as follows: "Do you decline now and here to state the name or names of any person or persons to whom you have spoken of Norton's character in terms derogatory to it since the year 1863?" Having sworn you understand this question, you are requested to give the name of any person or persons to whom you have spoken of Norton in a derogatory manner since the year 1863.

A. When you say derogatory, what do you mean by that?

60. Q. Don't you know what derogatory means?

A. I have asked the question.

61. Q. The last question is repeated.

A. No.

62. Q. Haven't you already testified that you have "spoken of
2054 Norton in language unfavorable to him, and in terms derogatory to him" and his character for truth since 1863?

A. I have testified so before.

63. Q. Have you testified to any matter in this case that you didn't know anything about when you testified to it?

A. Not to my knowledge.

64. Q. You are positive about that, are you not?

A. Not to my knowledge.

65. Q. What do you mean to be understood by your last answer?

A. I answered.

66. Q. What do you mean the court to understand by your last two answers?

A. I have answered.

67. Q. You have now given all the information to this court about the subject matter of the last two or three questions, have you not?

A. No, sir; the reason why, I want to see some parties concerning a certain check or checks the Troy City Bank held, and some other persons.

68. Q. Do you know a person in this city by the name of Jeremiah D. Green?

A. I do.

69. Q. For what length of time and how intimately have you known him?

A. I have known Jeremiah D. Green down in the years eighteen hundred and fifties; I don't know whether '51, '2, '3, or '5, and from that time to the present; well, I have knowed Jeremiah D. Green and have had more or less business transactions with him; I think it is '68 or '69, from that time up to the present.

70. Q. Did you ever employ him to act as your agent and attorney in any matter whatever?

A. I did.

71. Q. When was that?

A. I couldn't say.

71½. Q. How long did he continue to act as your agent and attorney?

2055 A. I suppose he will act as long as Mr. Norton is trying to rob me of my interest in the patent of 1859.

72. Q. Did you understand the last question at the time you made answer to it?

A. I did.

73. Q. What did that question inquire of you to state which has just been read to you by the examiner?

A. He is acting now, but I can't tell how long he has been acting.
74. Q. Is that the best answer you can give?
A. Unless referring to a memorandum book.

Adjourned till July 6th, 1878, at 8.45 a. m.

JULY 6TH, 1878.

Met pursuant to adjournment.
Same counsel present as before.

75. Q. Did you know Jacob Shavor, of the city of Troy?
A. I did.
76. Q. Mr. Shavor is dead, is he not?
A. He is.
77. Q. When and where did he die?
A. I think it was the 28th of December, 1877, 51 Grand Division street, Troy, Rens. Co., State of N. Y.
78. Q. Who owns the property, No. 51 Grand Division st.?
A. Charity A. Ransford.
79. Q. Who is Charity A. Ransford?
A. My wife.
80. Q. Did you and your family live in that house at the time Mr. Shavor died?
A. Me and my wife did, in a part of it.
81. Q. You lived in the first story, Shavor and his family in the second, did you not?
A. Yes.
2056 82. Q. How long had Mr. Shavor resided in that house previous to the time of his death?
A. He has lived there twice.
83. Q. Go on and state the time—the length of time—each time.
A. I couldn't tell without referring to some papers and memorandum book.
84. Q. Give your present best recollections as to the length of time he occupied that house with you as tenant of yours, or of your wife.
A. I couldn't tell without referring to papers.
85. Q. Was he there one year?
A. Yes.
86. Q. Was he there two years?
A. Yes.
87. Q. Was he there three years?
A. Yes.
88. Q. Was he there four years?
A. Yes.
89. Q. Was he there five years?
A. Yes, sir.
90. Q. Was he there six years?
A. I could not tell without referring.
91. Q. Did you answer the last six questions with or without the aid of a memorandum book?
A. I did to the best of my knowledge.
92. Q. You did what to the best of your knowledge?
A. Answered.
93. Q. Answered what?
A. The question as it was put.
94. Q. The intelligence displayed by you on your cross examination, and your understanding of questions put to you on your cross-examina-

tion, is of the same kind and character as that possessed by you during your direct examination in this case; is it not?

A. No, sir.

95. Q. Now please explain to the court the difference?

2057 A. I referred to a document in the Commissioner of Patents as to dates.

96. Q. Did you refer to that mysterious document on your direct examination in this case?

A. I don't think I did.

97. Q. Have you that document with you?

A. I have.

98. Q. How long have you had it in your possession?

A. The one I have got now, I have not had it long.

99. Q. Of whom did you get it?

A. Jeremiah D. Green.

100. Q. When and where?

A. During the last year.

101. Q. Did you ever show that document to anybody?

A. I did.

102. Q. Give the name or names of persons to whom you showed it.

A. It would be impossible to give them all.

103. Q. Did those persons to whom you showed that document reside in the city of Troy?

A. Yes, sir.

104. Q. To how many hundred persons did you show that within the last few years, in the city of Troy or elsewhere?

A. No hundreds.

105. Q. About how many?

A. Can't tell.

106. Q. To a good many persons you showed it, did you not?

A. I couldn't tell.

107. Q. Name one or more persons to whom you showed it.

A. I showed it to Albert C. Corse, Jacob Shavor, and a small number of other persons; I can't give their names unless I have time to think it over.

108. Q. You have carried that document about your person since it was furnished you by Jeremiah D. Green, have you not?

2058 A. No, sir.

109. Q. Where has it been?

A. In my house where I live.

110. Q. You had it with you at the time of your direct examination, did you not?

A. I did.

111. Q. How came you to have it with you on that occasion, and for what purpose did you bring it?

A. I didn't know but I might want to use it as a reference for dates.

112. Q. During your direct examination you more than once took that document from your pocket, did you not?

A. I could not tell.

113. Q. I require you to produce that document and put it in evidence in your answer to this question, and to have it marked Exhibit A (Ransford).

(Witness produces the paper, which is marked Exhibit A (Ransford), I. B., Exr., July 6th, 1878.)

114. Q. Have you ever had any other document of that kind than the one you just presented?

A. I have had.
115. Q. How many and when?
A. I had one from the department.
116. Q. What department?
A. Some person in the Patent Office, I think.
117. Q. Give the name of that person?
A. I can't do it.
118. Q. What did you do with that document after you received it?
A. I can't tell.
119. Q. You can't tell?
A. I said I couldn't tell.
120. Q. Did you ever show that to anybody in this city?
A. Yes; I think I did.
121. Q. To whom?
A. To Jake Shavor, Albert C. Corse, and others.
2059 122. Q. I observe on the back of Exhibit A (Ransford) figures in pencil mark. Do you know how they came there?
A. I put them there.
123. Q. Did you make and file in the United States Patent Office an affidavit which was used on the occasion referred to in that exhibit?
A. I did.
124. Q. At whose request did you make that affidavit?
A. Well, sir, we had or I had a copy purporting to be an assignment by myself and Peter Lowe, Marcus P. Norton put in as a genuine assignment of a patent of 1859 concerning a patent on post-office stamps.
125. Q. Did you understand the last question at the time you made answer to it?
A. To the best of my knowledge.
126. Q. Did or did you not understand the question referred to in the last question at the time you answered it?
A. Same answer.
127. Q. Do you refuse to give any other answer than that you have just given?
A. Give me the question above.
128. Q. I now repeat to you that question, which is as follows: "At whose request did you make that affidavit?"
A. We had or I had a copy from the department to see or know whether I ever signed a document purporting to be an assignment of the patent of August, 1859; I made an affidavit that I never did.
129. Q. At whose request did you make that affidavit?
A. I could not tell now.
130. Q. In whose handwriting was it?
A. I couldn't tell at present without referring, looking, inquiring.
131. Q. Was it in your handwriting?
A. No.
2060 132. Q. Who aided you in the preparation of that affidavit?
A. To the best of my recollection, Jeremiah D. Green.
133. Q. Was not that affidavit in the handwriting of Jeremiah D. Green at the time you made oath to it?
A. I could not tell; the document will show for itself; it's on record.
134. Q. At that time did not you and Jeremiah D. Green go to other persons in this city and procure from them an affidavit or affidavits to be used on that occasion?
A. I say person.
135. Q. Who sent those affidavits to the Patent Office after you and Green obtained them?

A. I could not tell.

136. Q. They were sent to the Patent Office, were they not?

A. I think they were to the best of my knowledge; the District Attorney had them the last I heard of them; I was so informed.

137. Q. Who so informed you?

A. Jeremiah D. Green.

138. Q. Was Norton present at the time you made that affidavit?

A. I don't recollect what one.

139. Q. Have you been examined about any affidavit but one affidavit this morning, or in this case?

A. No, sir; not to my knowledge.

140. Q. I refer to that one, and you ought to know I refer to no other but that one.

A. When I made my answer I did not know whether it was that one concerning the forgery or not.

141. Q. Were you cross-examined at the time you made that affidavit by anybody?

A. Not to my knowledge.

142. Q. Don't you know whether you were or not?

2061 A. I have no recollection of it.

143. Q. Was the person or persons from whom you and Jeremiah D. Green procured other affidavits to be used on that occasion cross-examined?

A. I have no recollection at present; they may have been.

144. Q. You have spoken several times on this cross-examination, and without being inquired of, about having received from the Patent-Office a copy of a paper purporting to be an assignment; have you that paper with you?

A. No, sir.

145. Q. Where is it?

A. I don't know, sir.

146. Q. Have you and Jeremiah D. Green and Jacob Shavor, in the city of Troy, together discussed Norton's character for truth?

A. We might have spoken of it.

147. Q. Do you know whether you did or not?

A. I presume we did.

148. Q. About how frequently?

A. I could not tell.

149. Q. At what place in this city did those discussions take place?

A. I could not tell—a number of places.

150. Q. Do you know Mr. A. C. Daniels, the person now present?

A. I know him.

151. Q. Have you recently or during the last year spoken to Mr. Daniels about Norton, and about his truth or his character?

A. Yes.

152. Q. What did you say to him on that occasion?

A. Mr. Daniels spoke to me something about Norton; I don't recollect whether he was in town or not; Mr. Daniels spoke of a claim he had against him; I said there was quite a number of them around town; that is all I said to the best of my knowledge; I might have said more.

2062 153. Q. Did you, on that occasion, say anything to Mr. Daniels about the fair prospect of Norton's ending his days in prison, either in words or substance that?

A. Well, I had no knowledge what I did say.

154. Q. Did you, on that occasion, speak to Mr. Daniels in an unfriendly manner of Norton or about Norton?

A. I did.

155. Q. Did you, on that occasion, speak to Mr. Daniels in a manner that, if Daniels had believed a single word you said to him, it would have disgraced and dishonored Norton?

A. I forget what I said to him; I don't know whether I showed him that paper or not; I don't know whether I told him that Norton was trying to rob me out of the rights that I hold in a patent for post-office stamps.

156. Q. What is the date of that patent?

A. 1859.

157. Q. What month and what day of the month of that year?

A. To the best of my knowledge the date of the patent was August 9th, 1859; I think it was.

158. Q. In your answer to question 155 you say you don't know but that you showed Mr. Daniels that paper; what paper had you reference to?

A. Exhibit A (Ransford), I. B., Ex'r, July 6th, 1878.

159. Q. In words or in substance did you say to Mr. Daniels, on that occasion, that Norton would never get a cent out of the claim pending in this suit?

A. No; nor I don't think any one else.

160. Q. Do you mean to say that you did not state so to Mr. Daniels as inquired of you in the last question?

A. I say, if I did say so, I meant all of us that pretend to be interested.

161. Q. You have stated on this examination that Jeremiah D. Green was, and is now, your agent and attorney; what business did you
2063 employ him to do, and what business has he done for you since he became your agent and attorney?

A. He made an agreement with me, for a certain portion, to transact the business of the post-office stamp, which I agreed to give him, which he has attended to as far as I know; that's all I know about it.

162. Q. What post office stamp is that?

A. The one they are using now; that is, 1859 patent.

163. Q. Is that the patent you have referred to as being dated August 9th, 1859?

A. Yes, sir.

164. Q. How much of that patent were you to give to Jeremiah D. Green for his valuable services?

A. If there was anything to be got out of it he was to have one-half of my fortune.

165. Q. What did you say to Mr. Charles Eddy as he was about leaving this room?

A. I told him he would have to come down here to sweat it.

166. Q. What did you mean by that expression?

(Objected to; the remark speaks for itself.)

A. I meant that if he was down here on the stand he would sweat; I never heard anybody say he was coming.

167. Q. I have taken down your words as you spoke them to him. I will read them to you; they are as follows: "We will have you down here;" to which Mr. Eddy replied, "No; you won't;" and in an emphatic manner you replied, "Yes; we will." Did those words pass between you and Mr. Eddy, or words in substance the same?

(Objected to for its assumptions as immaterial.)

A. I think it was I instead of we, for I had no information of his coming here.

168. Q. For what purpose did you want Mr. Eddy here?

2064 A. I don't know of any.

169. Q. What motive had you in making such remark to Mr. Eddy while you were under cross-examination as a witness in this case?

A. I thought it would do him good to come down here and sweat.

170. Q. That is all the motive you had?

A. All I know of.

171. Q. After getting Mr. Eddy here how do you expect to make him "sweat"?

A. Set him by the stove.

172. Q. During the recent war of the rebellion, in what business were you engaged in this city or elsewhere?

A. What time of the war?

173. Q. I mean that time when it was generally known you were a bounty jumper, fraudulently enlisting men, and taking money from the government that did not belong to you; I mean that time.

(Objected to for its assumptions and as a deliberate insult to the witness.)

A. I won't answer the whole; I will a part.

174. Q. During the enlistment of soldiers in this city to suppress that rebellion, did you take any part in enlisting soldiers or filling up what is known as a quota for this city or county?

A. We took a contract of Mayor Thorne, of the city of Troy, county of Rensselaer, and State of New York; I took, or we took, another contract of a portion of Brunswick; I never enlisted, nor I never jumped the bounty, nor I never paid debts with other people's money.

175. Q. How many men did you enlist under the contracts?

A. I couldn't tell; it wasn't limited: so much a *a* man, which every man got.

176. Q. Did you make any money on those contracts?

(Objected to as immaterial.)

2065 A. Not a great deal.

177. Q. That is not my question; my question is, did you make any money on those contracts?

A. Not much.

Q. 178. How long were you enggaged in that business.

A. I could not tell.

179. Q. Who, if any body, were your partners in that business?

A. Quite a number.

180. Q. Name some of them.

A. Landrigan Brothers; I was concerned once with John Akins, of Valley Falls, Pittstown, somewhere out there; P. J. Marsh & Co.; that's all I know anything of now.

181. Q. Returning to the subject matter of Jeremiah D. Green being your agent and attorney, at what place has he conducted your business about the patent of August 9th, 1859?

A. He has conducted my business, some in Washington, some in New York, some in Troy; part of it was connected with Mr. Norton, acting as his agent and mine, and others, getting the patent of 1859 extended seven years.

182. Q. About what portion of his time has he spent in Washington on that business as your agent and attorney during the last seven or eight years?

A. I never kept any time.

183. Q. Has he as your agent and attorney transacted business for you in the U. S. Patent Office during the last seven or eight years?

A. I think he has.

184. Q. Do you know whether he has or not?

A. I think he has.

185. Q. Have you any doubt about it?

A. I think I was interested in the patent of 1859, which he had extended.

186. Q. Is that all the business he done for you in the Patent Office?

A. I don't remember.

187. Q. Why do you not remember?

2066 A. The reason why I do not remember is that considerable business is said to be done there in Washington; some of it was done in Congress, some was done in the Post-Office, so I have been informed.

188. Q. Has Jeremiah D. Green ever appeared for you, as your agent or attorney, under the patent of August 9th, 1859, in the Post-Office Department or before any committees of Congress?

A. I have been informed so.

189. Q. Who gave you that information?

A. Jeremiah D. Green.

190. Q. What was Jeremiah D. Green trying to do in the Post-Office Department, or before any committees of Congress, about the patent of August 9th, 1859?

A. Marcus P. Norton knows more about that than I do. I was so informed that Norton and Green were acting together.

191. Q. Who gave you that information?

A. Jacob Shavor had letters from Jeremiah D. Green to that effect.

192. Q. Jeremiah D. Green, acting for you in Washington, transacted business for you of which you knew nothing; is that it?

A. All I knew was from what information I could get of Shavor, for he was acting for Shavor at the same time, and Green, when he came back, I got information from him. Shavor done the correspondence with Green.

193. Q. Who else did Green act for besides you and Jacob Shavor, on those occasions?

A. In the case of Mr. Wheeler, in New York, Mr. Corse was associated with us.

194. Q. Albert C. Corse?

A. Yes, sir.

195. Q. Will you swear that Mr. Green was ever the agent or attorney of Albert C. Corse in any business whatsoever?

A. He was, to the best of my knowledge.

2067 196. Q. Who was the agent or attorney for Peter Low in the Patent Office, in the Post-Office Department, and before committees of Congress, with reference to the patent of August 9th, 1859, at the time when Jeremiah D. Green was acting for you about the same patent?

A. I was always informed that Jeremiah D. Green was his agent?

197. Q. Who gave you that information?

A. Peter Low and Jeremiah D. Green.

198. Q. Who were the owners of the patent of August 9th, 1859, during the time that Jeremiah D. Green acted as your agent?

A. They were said to be very numerous; the patent before it was extended belonged to Charles Eddy & Co., Jacob Shavor and Albert C. Corse forming the company; Peter Low, W. B. Hatch of New York,

and F. G. Ransford. Now, on the extension, to the best of my knowledge, Charles Eddy, Jacob Shavor, Albert C. Corse, Peter Low, Jeremiah D. Green, and F. G. Ransford, and Marcus Norton.

199. Q. Of whom did you and the persons you name obtain the ownership of that extended patent?

A. I suppose we got it from Norton.

200. Q. What Norton have you reference to in your last answer?

A. Marcus.

201. Q. Who is Marcus?

A. Marcus Norton, that's all I know.

202. Q. Is that the only answer and the best answer you can give to that question?

A. No, sir; I have got some of Norton's notes up in my house and I can go to the Central Bank and inquire.

203. Q. How much money did you pay to "Marcus" for an assignment of an interest in the extended term of the patent of August 9th, 1859?

A. I understood from Mr. Norton, that if Mr. Green, and myself, that we was to have, for getting the patent extended, furnishing the
2068 means, an interest, which interest he assigned to us, and as for the amount I can't tell at present.

204. Q. Did you pay a single cent or any other sum to Norton for an assignment of an interest in that term of that patent?

A. Only according to contract to Patent Office with Norton.

205. Q. How much was that?

A. I can't tell.

206. Q. How much did the other persons you named pay for an assignment of an interest in the extended term of that patent of August 9th, 1859?

A. I could not tell.

207. Q. Was there anything paid by them—say a cent or any other sum?

A. I suppose there was.

208. Q. What leads you to suppose there was anything paid?

A. Norton is the man who always wanted money.

209. Q. Is that your answer?

A. That's my answer.

210. Q. How much money have you, Jeremiah D. Green, Peter Low, William B. Hatch, Charles Eddy, Albert C. Corse, and Jacob Shavor realized on the patent of August 9th, 1859?

A. I never realized a cent. Is Marcus P. Norton's name in there?

211. Q. Have any of the other parties realized anything on that patent up to now?

A. Marcus P. Norton has, to the number of thousands, according to what Charles Eddy, Albert C. Corse say, according to their testimony in the other suit in this case.

212. Q. What do you mean by the other suit in this case?

A. When they were on the stand, if it is another suit, in the case of assignment.

213. Q. You were present and heard their testimony, on that occasion, were you?

A. I did, part of it.

214. Q. And you heard them, and each of them, testify on that
2069 occasion that they had paid Norton thousands of dollars on the patent of August 9th, 1859? Did you?

A. I heard one of them.

215. How much money do you expect to make out of the patent of August 9th, 1859?

A. According to what Mr. Norton used to tell, I thought I was going to be rich.

216. Q. How much do you now expect to make?

A. I never calculate what I make till I have it in my pocket-book; things are very unsartin.

Adjourned till 2 p. m., July 6th, 1878.

(Complainant's counsel moves an adjournment of these proceedings from 3½ p. m. to-day to Thursday, July 11, 1878, at 10 a. m., on account of a matter pending before Judge Cadman, as referee, at Chatham Village, at the office of McClellan & Browne, in the State court, which has been by his order set down for Monday next, at 9 a. m., with the distinct understanding that no adjournment would be granted to either party on that day, which order was made a long time before the notice for these proceedings here was served.

Defendant's counsel opposes the application.

On the overt stipulation in open court of the complainant's solicitor, that the time for taking of testimony herein shall be extended till the first Monday of August next, the examiner decides to grant the application.)

216½. Q. Have you the patent of Aug. 9, 1859, in your pocket-book?

A. My pocket-book wouldn't hold it.

217. Q. Is your pocket-book large enough to hold the money that you expect to get out of the patent of August 9th, 1859?

A. I haven't figured it up.

2070 218. Q. Figured up what—yourself or your pocket-book?

A. It depends altogether on what company I am in.

219. Q. Being now under the care and keeping of the assistant district attorney, who is known to be a first rate fellow, for a moment consider yourself in his company and then answer the last question.

A. I don't think I have sold myself out to anybody.

220. Q. Should you sell yourself out to anybody, what price do you think you ought to bring, having in view, always, your last answer?

A. That's a question aint in my mind; I never was guilty of selling myself out.

221. Q. Do you know a person of the name of Thomas J. W. Robertson, formerly residing in New York City, but now of the city of Washington?

A. I never have met the gentleman, to my recollection.

222. Q. Did you have any interest in a patent assigned to you by him or by any other person upon revolving dates, and dated Sept. 22d, 1857?

A. I did; I don't know whether it was assigned by him or not.

223. Q. How much interest did you have in that patent, and when did you obtain it?

A. To the best of my knowledge, I owned one quarter by assignment.

224. Q. Who owned the other three-quarters of that patent?

A. Charles Eddy & Co., I think, William B. Hatch, and Peter Low.

225. Q. One quarter each did they own?

A. Charles Eddy & Co. owned one-quarter, William B Hatch owned one-quarter, Peter Low owned one quarter, F. G. Ransford owned the other quarter.

226. Q. Was that patent ever extended by the Commissioner of Patents for the term of seven years?

2071 A. I think it was.

227. Q. Did you take any part in the proceedings to extend it before the Commissioner of Patents?

A. Not before the Commissioner individually.

228. Q. Did you anywhere?

A. I was subpœnaed by a man by the name of Betts, in the city of Troy.

229. Q. For what purpose were you subpœnaed by Mr. Betts?

A. One thing was as to the reputation of Marcus P. Norton.

230. Q. How did Mr. Betts know you knew anything about that reputation?

A. Mr. Betts was in Troy making inquiries as to Marcus P. Norton; I gave him what information I knew about it.

231. Q. After Mr. Betts had diligently searched the city of Troy after the reputation of Norton, for the purpose of obtaining testimony as to that reputation, how many men like yourself did he discover, who were willing to go on the witness stand and swear under oath as to that matter?

A. I could not tell.

232. Q. Was Jeremiah D. Green examined as a witness on that occasion?

A. I couldn't say whether he was or was not.

233. Q. Was Jacob Shavor examined as a witness on that occasion?

A. I think he was, to the best of my knowledge.

234. Q. When Mr. Betts came to you to make the inquiries you have stated, what reply did you make to him?

A. I can't tell.

235. Q. Why can't you tell?

A. I have no means of telling.

236. Q. Were you examined as a witness in that case by Mr. Betts?

A. I was examined by somebody—I couldn't tell who.

237. Q. What did you testify on that occasion about Norton and as to his truth?

2072 A. Bad.

238. Q. Do you mean that the question was bad, or that you yourself were bad in your last answer?

A. Marcus P. Norton bad.

239. Q. How much money was paid to you on that occasion for testifying to that, by Mr. Betts, or anybody else?

A. Not a dollar; never sell out.

240. Q. On that occasion you went like a lamb to the slaughter, did you, not willing to testify?

A. I always made up my mind when the wolf was around the lambs and sheep had to be taken care of.

241. Q. Mr. Betts being around the city then, hunting evidence, did you consider him a wolf?

A. Mr. Norton.

242. Q. Was Norton in the city at that time?

A. He is in and out so often I don't know whether he was or not.

243. Q. How came you to be so alarmed on that occasion as to flee from the presence of a wolf you did not know was or was not in the city?

A. I took Mr. Betts to be an honorable sort of a man, and he must look out for the wolf.

244. Q. Did you tell him that on that occasion?

A. I couldn't tell you.

245. Q. What's your habit when you see wolves in the city of Troy;

do you undertake to kill them, or do you flee from them, or do you cage them?

A. Not what we call a two legged wolf; I generally get out of the way.

246. Q. Did you get out of the way of a two-legged wolf when you swore on that occasion you would not believe Norton under oath?

A. I had no object in getting out of the way then.

247. Q. When on that occasion you swore to that infamous mess of stuff, was there a two-legged wolf there to bite you on your cross-examination?

A. I don't have any recollection of any cross-examination.

2073 248. Q. In whose office were you examined on that occasion?

A. I couldn't tell.

249. Q. Were you examined at No. 37 Congress street, Troy, N. Y., on that occasion?

A. I have no recollection; I think it was on First street, and I wouldn't be positive; but I think so.

250. Q. Were you examined at No. 47 First street on that occasion?

A. I couldn't tell what the number was, if it was there.

251. Q. I now show you a certified copy from the United States Patent Office of a deposition said to have been made by you on the occasion to which I refer. Take it, examine it, and then state whether you testified. or not, to that, on that occasion?

A. (Witness takes paper, examines it, and testifies as follows): I don't know whether I testified to all or part of what is in there; it is so long ago I can't recollect. There is a part there in which my name is not spelled right.

(Complainant's counsel here offers in evidence the certified copy examined by the witness, and referred to in the last question and answer, and signed F. G. Ransford.

He also offers in evidence two other papers certified to in the same package, one being signed Jacob Shavor, and the other signed J. D. Green, together with the certificate of one Levi Philips, a commissioner of deeds.

All these papers being under one certificate and seal of the United States Patent Office, dated the 15th day of November, 1872, and signed James N. Thatcher, Acting Commissioner of Patents.

The said package of papers is here marked Complainant's Exhibit (Ransford), No. 5, I. B., ex'r, July 6th, 1878.)

(Objected to by defendant's counsel as not evidence.)

2074 Adjourned till Thursday, July 11th, at 10 a. m., pursuant to foregoing order.

THURSDAY, *July* 11, 1878.

Present, pursuant to adjournment, same counsel as before.

Cross-examination of witness F. G. RANSFORD by Mr. NORTON:

252. Q. Who came to see you to be a witness in that case? I mean the case referred to in the exhibit last above mentioned.

A. think it was Mr. Betts, to the best of my knowledge.

253. Q. What did you tell Mr. Betts in this interview about Norton? (Objected as immaterial.)

A. I do not recollect.

254. Q. Did you say anything to him about Norton?

A. I think not at that time; he inquired about the Robertson patent.

255. Q. When did you have a conversation with Mr. Betts about Norton?

(Objected as immaterial.)

A. I couldn't tell how long it was that Mr. Betts called on me after I first saw him.

256. Q. At that interview with Betts did you speak to him of Norton in a favorable or unfavorable manner?

(Objected as immaterial.)

A. I told Mr. Betts that Mr. Norton hadn't done square for me.

257. Is that all you told him?

A. At that time; yes; to the best of my knowledge.

2075 258. Q. When, after that, did you next see Betts?

A. I cannot tell exactly.

259. Q. Did he ask you if you would testify you wouldn't believe Norton under oath?

A. I couldn't tell.

260. Q. Why can't you tell?

A. I saw him a number of times.

261. Q. I ask you why cannot you tell?

A. I saw Mr. Betts; I couldn't tell when, whether in New York or Troy; I couldn't take Mr. Norton's word.

262. Q. Did you and Jeremiah D. Greene and Jacob Shavor go to that examination together, and were you there together during that examination?

A. I couldn't tell.

263. Q. Why can't you tell?

A. It was some time ago, and I had no interest in it; I could not tell.

264. Q. Were you subpœnaed there as a witness?

A. I think I was; I don't think I would have been there unless I was. That is the best knowledge I have of it at this present time.

265. Q. Who subpœnaed you?

A. I don't know.

266. Q. Did anybody?

A. I think there must, or I should not have gone.

267. Q. Do you know whether you were subpœnaed, or not?

A. I think I was, to the best of my knowledge.

268. Q. (Question repeated and witness asked if he understood the last question when he answered.)

(Objected to as immaterial, and as having no answer.)

A. I think I did understand it.

269. Q. Have you any doubt about it?

A. No, sir.

270. Q. Was that examination held at the place to which you were subpœnaed by Mr. Betts?

(Objected to as immaterial.)

2076 A. I could not tell; it was some time ago.

271. Q. Was that examination held at the place named in the notice for the taking of that testimony?

A. I suppose it must have been, but I could not tell.

272. Q. On your direct examination this question was put to you; it is number eleven, and reads as follows: "Do you know it from the speech of men in this community concerning it?" You answered, "Yes, sir." With whom did you have conversation at any time concerning Norton's character for truth or anything else?

A. I could not tell.

273. Q. Name one person with whom you had such conversation, and when it was?

A. I could not tell when it was—Wm. B. Hatch, Jacob Shavor, and others.

274. Q. Name the others you refer to in your last answer.

A. Captain L. H. Tupper.

275. Q. Go on, give us all the names?

A. Mr. Wm. W. Secombe, of New York, Mr. Peter Low.

276. Q. You have now given the names of all the persons with whom you had any conversation concerning Norton's character for truth, have you?

A. No, sir.

277. Q. Then, when you are several times asked to give those names, why do you not give them?

A. I didn't think of them at the time the question was asked.

278. Q. Go on and give them now, and all of them?

A. James Morrison, Ackley, Robert Green; that is all I can think of at present.

279. Q. With whom do you associate in this community? Name all the persons with whom you have social relations in this community.

A. Very limited since the death of my daughter.

2077 280. Q. Jeremiah D. Green and also Jacob Shavor, in his lifetime, were associates of yours, were they not, in social society?

A. They were.

281. Q. Do you know Mr. Wm. Eddy, of this city?

A. I do.

282. Q. Did you ever have any conversation with him about Norton's character for truth?

A. I think I have.

283. Q. What did you tell him about it?

(Objected to as immaterial.)

A. Well, I think I told him that Mr. Norton's word was not to be depended upon.

284. Q. Since January, 1870, to the present time, did you tell Mr. Wm. Eddy, of this city, that you intended to have Norton put into state's prison, or words substantially the same?

A. I told Mr. Eddy that Norton had forged my name and swore to it, and if that was the case he ought to be in prison for it.

285. Q. You told him that, did you?

A. I did, I think, to the best of my knowledge.

286. Q. Have you any doubt about it?

A. I could not say.

287. Q. What is it that you cannot say?

A. As to the conversation.

288. Q. Have you not just sworn that you told Mr. Eddy that Norton had forged your name, and is not that a part of your answer to question 284?

A. I swore I think I did.

289. Q. Do you desire to change your answer to question 284 in any respect?

(Answer to Q. 284 read to witness.)

290. Q. Why do you so long hesitate in making your answer to this question?

(Objected to as assuming the fact.)

A. The reason why, I am trying to inform myself as to the answer, and I don't think I can alter it.

291. Q. (Question 289 repeated, read to witness by the examiner, and witness requested to answer it.)

2078 A. "Same as I answered."

292. Q. Is that the only answer you give to this last question?

A. That is all.

293. Q. Do you know Lemuel H. Tupper, of this city?

A. I do.

294. Q. Have you had any conversation with him about Norton's character for truth within the last ten years?

A. I couldn't tell at present.

295. Q. Is that the best and only answer you will give to that question?

A. Till I have time to think it over.

296. Q. How much time do you want for that purpose?

A. I could not tell.

297. Q. Did you ever tell him that Norton ought to be in state's prison and you intended to have him there, or words substantially the same?

A. I have no knowledge of it.

298. Q. Do you know whether you did or not?

A. I have no knowledge of it.

299. Q. Do you know whether you did or not?

(Objected to as having been twice answered categorically.)

A. I have no knowledge.

300. Q. You have no knowledge about what?

A. About the question put to me last before that.

301. Q. For about how many years have you, Peter Low, Jeremiah D. Green, and Wm. B. Hatch, labored to prevent Norton or his assignees from receiving compensation from the Government of the United States, under his patent of April 14, 1863, and its several reissues?

(Objected to as assuming that the witness has so labored.)

A. Marcus P. Norton has been trying to keep the parties that
2079 was interested in the patent, and the patent that the government is using in the post-office—that patent is dated 9th August, 1859—from getting their pay.

302. Q. Will you now please answer my question, which is 301, and which the examiner will read to you?

(Q. 301 read to witness.)

A. Same answer.

303. Q. Do you refuse to answer my question in a proper manner?

A. I think my answer is proper.

304. Q. Do you refuse to make any other answer?

A. That is all I can make.

305. Q. You speak about a patent dated August 9, 1859; did you or anybody else ever have a suit on that patent against anybody?

A. I think Marcus P. Norton, and Wheeler, of Cleveland, had some trouble or something concerning the patent of 1863; Mr. Wheeler claimed to have a patent; don't know whether it was ever applied for; I understand Mr. Wheeler on priority was in 1860, and Mr. Norton took the August 9th, 1859, and beat him on time.

306. Q. Did you, Peter Low, Wm. B. Hatch, Jeremiah D. Green, Charles Eddy & Co., or anybody else, ever bring suit in the United States court anywhere or against anybody on the patent dated August 9, 1859, No. 25036?

A. I could not tell what has been done since Jeremiah D. Green has had my interest to look after.

307. Q. Do you own any interest in that patent at this time?

A. I suppose I do.

308. Q. How much, and when did you get that interest?
(Objected to as immaterial.)
A. I think I own an eighth; I think it came from Mr. Marcus P. Norton.
309. Q. How much did you own in it August 9th, 1859?
(Same objection.)
2080 A. Peter Low and myself owned the patent with the understanding that we were to assign one-third of the patent to Marcus P. Norton's wife.
310. Q. You say the government is using that patent; is that true?
A. I think they are; the same patent or for the same purpose that I put in there in 1860 or 1861.
311. Q. Is that the best answer you can give to the last question?
A. I think it is.
312. Q. Did you or any of your co-assignees ever apply to the government for pay for the use of the patent of August 9th, 1859?
A. I think they have, to the best of my knowledge.
313. Q. When and by whom was that application made?
A. I could not tell at present.
314. Q. Has the government ever paid you or your co-assignees anything for the use of the patent of August 9th, 1859?
A. Not to my knowledge.
315. Q. You don't know, do you, whether the government has ever paid you anything or not for the use of that patent?
A. I have no recollection of ever receiving a dollar.
316. Q. Is that patent in use in the New York post-office?
A. I think it is.
317. Q. Do you know whether it is or not?
A. I think it is.
318. Q. Do you know whether it is or not?
A. I think it is.
319. Q. You think it is; what reason have you to think that?
A. By the envelopes that come from New York City.
320. Q. That came from New York City when?
A. I couldn't give the date.
2081 321. Q. If you think so why don't you have a suit brought against Postmaster James on that patent?
A. There is a suit against him now on that patent.
322. Q. Where, in the city of Troy, does Wm. B. Hatch reside?
A. I never knew him to live in Troy.
323. Q. Now if it be true that the government are using the patent of August 9th, 1859, why don't you, Peter Low, Jeremiah D. Green, Wm. B. Hatch, and the entire family of "Tichborne claimants" to that patent call upon the Government of the United States for compensation for that use?
A. For my part, I haven't got money to do it.
324. Q. Have not you within the last three years furnished money to Jeremiah D. Green to use in Washington, D. C., to prevent the government from paying for the use—the very extensive use—of Norton's patent of April 14, 1863, and of its several reissues?
A. I made a contract with Jeremiah D. Green that he was to furnish the means to see to my interest in the post-office stamp of August 9th, 1859.
325. Q. Did you not, in the year 1876, send money or cheque or draft to Jeremiah D. Green, then in Washington?

A. I lent Mr. Green, through the hands of Shavor, forty odd; I could not tell.

326. Q. How much money did Mr. Shavor furnish Green on the same occasion?

A. I couldn't tell exact.

327. Q. Give your present best recollection about it.

A. I recollect once seeing a draft of $100 that Mr. Shavor told me that he loaned to Green.

328. Q. Was that draft sent to Washington?

A. No, sir; I believe not.

329. Q. Where was it sent?

A. I don't know; from Washington to Troy to the best of my knowledge.

2082 330. Q. Has Jeremiah D. Green had anything to do with conducting the defense to this suit for you or anybody else?

A. I couldn't tell you.

331. Q. Have you heard Jeremiah D. Green say anything about the defense in this suit?

A. I have no recollection but I have had; not for some time; merely spoke of it.

332. Q. Do you know whether Jeremiah D. Green has been to Washington and also to the district attorney's office in New York with reference to the defense in this suit?

A. I couldn't tell.

333. Q. Why not?

A. The reason why I have taken no interest in it?

334. Q. You have no interest in the defense of this suit, have you, of any kind, name, nature or description?

A. I'll be able to tell by and by—some time hereafter.

335. Q. How will you be able to tell "by and by—some time hereafter?"

A. I can't tell.

336. Q. You do not know whether you have any interest in the defense to this suit, do you?

A. I don't know anything about it at present.

337. Q. Do you know that the fate of the patent of August 9th, 1859, is involved in the answer and also in the proofs in this cause?

(Objected as assuming that it is so involved.)

A. I don't so understand it.

338. Q. Have you ever heard from any source whatever that the patent of August 9th, 1859, is involved in the pleadings and proofs in this cause and as a part of the defendant's defense in this cause?

A. Have no recollection.

339. Q. No recollection of what?

A. Of the question as it was put to me.

340. Q. Have you ever seen the answer in this cause, or a copy of it?

2083 A. No, sir; not to my knowledge.

341. Q. At whose request did you become a witness in this cause?

A. First I knew about it I got a subpœna.

342. Q. When was that?

A. I can't tell the day.

343. Q. State month and year.

A. July, 1878.

344. Q. You had never said a word to anybody before that time con-

cerning Norton's character for truth, and since the beginning of this suit, had you?

A. I could not tell.

345. Q. You were subpœnaed in the cause without knowing what you were to testify to, were you?

A. I was.

346. Q. How many times during the last winter and spring did you and Jeremiah D. Green, in this city, meet the assistant district attorney, Mr. Clarke, at the house of Mr. Albert C. Corse?

A. I couldn't say for anybody but myself; to the best of my knowledge, twice.

347. Q. Was anything said then about the suit?

A. I think there was.

348. Q. Was anything said there about Norton's character for truth?

A. I have no knowledge about it at present.

349. Q. Did you ever have any?

A. I couldn't say.

350. Q. Jeremiah D. Green, your agent and attorney, being then and there present, made no observations in your hearing with reference to this suit, did he?

A. Something was spoken about some letters same as Charles Eddy handed in—if I had any; I told him I had some letters from Marcus P. Norton, and I did not know what they amounted to; that's all that I know of.

351. Q. What letters did Charles Eddy "hand in"?

2084 A. Letters sent to Mr. Shavor, he, Eddy, got from his, Shavor's, wife—from Marcus P. Norton to Jacob Shavor.

352. Q. Mr. Eddy furnished those, did he?

A. He came and got them from Mrs. Shavor.

353. Q. Did he produce them on that night and hand them to Mr. Clarke in your presence?

A. I don't think he did.

354. Q. Did you see any letters lying around there that night said to have been written by Norton?

A. I think I did.

355. Q. Who brought them there?

A. I could not tell.

356. Q. Who produced those letters there for Mr. Clarke's inspection?

A. I couldn't tell who the person was.

357. Q. Did you and Jeremiah D. Green call at the Troy House in company, on the 4th day of July (present month), and inquire of Mr. Lansing, a clerk in that hotel, whether Mr. Clarke, the asst. district attorney, who conducted your direct examination, had arrived from New York?

A. I could not tell whether I did or did not.

358. Q. Why can't you tell?

A. I don't know whether I saw Jeremiah D. Green.

359. Q. Were you and Green together at that hotel on that day?

A. I could not tell whether I was or was not.

Recess until 2 o'clock p. m.

360. Q. Were you ever together there at that hotel since the commencement of this suit?

A. I could not tell whether I was or not.

361. Q. About how good is your memory at the present time?

A. I don't think it is as good now as it was before my trouble in my family by death of my daughter.

362. Q. When did that take place?

A. Last September.

2085 363. Q. You have had no trouble in your family of any kind since your direct examination in this case, have you?

A. No.

364. Q. On your direct examination in this matter you had a very fine, clear and comprehensive memory as to things you were inquired about then, didn't you?

A. I answered to the best of my knowledge.

365. Q. You did not swear on your direct examination to anything as being positive about it, did you?

A. I don't know but I did.

366. Q. Did your memory trouble you on your direct examination as it seems to have troubled you on your cross-examination?

A. I was more familiar with the subject.

367. Q. Why have you not been as familiar with *with* the subject on your cross-examination?

(Objected to as assuming that the witness has shown unfamiliarity, on the cross examination, with the things which he testified about on the direct.)

A. One part of my direct examination as to the reputation of Mr. Norton and the matter of an instrument drawn up by the Patent Office, which is here in evidence.

368. Q. You testified on your direct examintion about the paper drawn up by the Patent Office aud referred to in your last answer, did you not?

A. It was said to be a copy of a trial or part of a trial of Marcus P. Norton.

369. Q. Did you testify about that paper on your direct examination?

A. I cannot tell.

370. Q. If you cannot tell, why have you just sworn that you have testified to it on your direct examination?

A. Answer the same as the last.

371. Q. What answer is that?

A. Cannot tell.

2086 372. Q. You testified to things under oath, and you can give no reason why you testified to them; is that it?

A. To the best of my knowledge.

373. Q. How extensive is your knowledge about anything or anybody?

A. It depends on circumstances.

374. Q. Where were you educated?

A. I have had but very little of it, and what I have came from New York and the city of Troy.

375. Q. About how many days during the term of your natural life, so far as completed, have you tended school of any kind?

A. Cannot tell.

376. Q. Have you ever been five days to a school of any kind?

A. Yes.

377. Q. Where and when and what school?

A. New York.

378. Q. When?

A. It must have been somewhere in the neighborhood of 1818—from that time to 1828.

379. Q. What school did you attend then?

A. Public school.

380. Q. How long did you attend that public school?

A. I could not answer that question; it was some part of the years I spoke of on my last answer.

381. Q. How old were you at that time?

A. In the year 1818 I was four years old.

382. Q. Is it your habit, in writing letters, when speaking of yourself, using the pronoun "I" to make a small letter "i" having a dot over it?

A. I do.

383. Q. Do you own a store on the corner of River and Federal street?

A. I do—part of it; it is not paid for.

384. Q. For what purpose do you rent that store?

(Objected to as immaterial.)

2087 A. I rent it to Mr. McLaughlin for a cigar and liquor store and lager beer and ale.

385. Q. Liquors of various kinds are sold over his counter, are they not, daily and nightly?

A. I suppose they be; that is what he hires it for, I suppose.

386. Q. Did you ever use any profane language in your life?

(Same objection as above.)

A. I don't know what you call profane language.

387. Q. You don't know what profane language is?

A. The reason why—some people call one thing profane, and others call other things profane.

388. Q. When Moses was on Mt. Sinai, among other laws he brought out one something like this: "Thou shalt not take the name of the Lord thy God in vain." Have you ever violated that commandment?

(Same objection.)

A. I don't know.

389. Q. You don't know whether you have or not?

A. No.

390. Q. In that same code of laws there was another law something like this: "Remember the Sabbath day and keep it holy." Have you ever done any labor on Sunday?

A. Yes, sir; a number of years ago.

391. Q. How many times in the last fifty years have you been in a church or place of public worship on Sunday?

(Objected to as above.)

A. I can't tell; I pay my pew rent, and pay for it, too.

392. Q. Give your best recollections,

A. I couldn't tell; fifty years is a good while.

393. Q. About how many times within the last fifty years?

2088 A. I could not tell.

394. Q. Once within that time?

A. Was there the other day.

395. Q. What day was that?

(Same objection.)

A. I think it was on last Monday.

396. Q. You have now given your best recollections on the subject under inquiry, in the last previous questions, have you not?

A. I have.

397. Q. At the time Jacob Shavor died how much house rent was due to you or your wife from him?

(Same objection.)

A. Could not exactly tell.

398. Q. Was there as much as six or eight hundred dollars?

A. I can't tell, because I can see no way of getting my pay and I don't bother myself figuring it up.

399. Q. If a man comes upon a witness stand for the purpose of striking a blow at his fellow-man by undertaking to destroy his reputation, do you not think that that man should himself be above suspicion as well as an honest, moral, unrevengeful, and with a heart void of maliciousness?

A. I think that the man who tried to wrong his fellow-man, he has a right to show it before the public, I mean the man that is the witness.

400. Q. And it is under your opinion stated in your last answer that you have appeared here as a witness on this examination, is it not?

A. I should not have appeared without a subpœna.

401. Q. I now ask you to answer my question.

A. The same as before.

402. Q. Do you understand the question enquired about?

A. I answer to the best of my knowledge.

2089 403. Q. Did you at the time of your answer understand the question referred to in your last question?

A. To the best of my knowledge.

404. Q. What is the best of your knowledge?

A. What is the question?

405. Q. Have you in the last 15 years had any trouble or difficulty with Norton at any time?

A. Not farther than I have stated.

406. Q. Did you ever apply to any court for the adjustment of those difficulties, such as they were or whatever they might be?

A. I don't know but Mr. Green, my agent, did.

407. Q. What was the result of his application to the courts for the adjustment of your troubles with Norton?

A. Couldn't tell at present.

408. Q. Have you any case pending in any court against Norton for the adjustment of any grievances against him?

A. I was so informed by Jeremiah D. Green, that he had been indicted before the grand jury for forgery or perjury, or both.

409. Q. Mr. Green acted as your agent in those proceedings, did he?

A. I don't know as he did.

410. Q. Who did he act for if not for you?

A. I don't know.

411. Q. J. D. Green was a witness in that matter, wasn't he?

A. I don't know.

412. Q. You never heard Green say anything about it, did you?

A. I heard him say that Mr. Norton was indicted.

413. Q. When was that?

A. Can't tell.

414. Q. About how many years ago was it?

A. Could not tell.

415. Q. Was it as long as six or seven years ago?

A. It might be longer and it might be shorter; couldn't tell.

2090 416. Q. Did you make an affidavit that was used on that occasion?

(Objected to because the witness's answers show that he has no personal knowledge of what was used or what was done on that occasion.)

A. I don't know.

417. Q. Is your memory again failing you?

Witness here states that he had not finished his answer to question 416.

The examiner permits witness to finish his answer to question 416, which he does as follows:

I don't know; I made an affidavit to the Patent Office, the only one I know of; that is all I know.

418. Q. In 1864, did you know anything about a suit of Shavor & Corse against Mr. Hoole in the U. S. circuit court, northern district of N. Y.?

A. I heard Mr. Shavor speak of it.

419. Q. Is that all you ever knew of it?

A. I don't know but I have heard others, but I can't tell who they are.

420. Q. Did you attend the trial of that case?

(Objected to as not within the scope of the direct examination.)

A. I could not tell.

421. Q. That suit was brought on a reissue of Norton's patent of April 14, 1863, was it not?

A. I have no recollection about it at present.

422. Q. Your recollections and your memory shown by you during your cross-examination will fairly compare with your memory and recollections during your examination-in-chief, will they not?

(Objected to as being for the court.)

A. Don't know.

2091 Redirect by Mr. CLARKE:

423. Q. Why haven't any suits been brought against Mr. Norton for the forgeries and robberies to which you have frequently referred on your cross-examination?

A. I could not tell.

424. Q. Was it because you had not sufficient money to prosecute them?

A. Couldn't tell.

Recross by Mr. NORTON:

425. Q. Will you please state wherein Norton has ever robbed you of a single thing or a single dollar since you have known him?

A. Money I have loaned Mr. Norton at different times to pay, and my name endorsements, and he has never paid them; that I consider wrongful.

F. G. RANSFORD.

Subscribed and sworn to before me this 11th day of July, 1878.

IRVING BROWN,
Special Examiner.

FRIDAY, *July* 12.

Present, pursuant to adjournment, same counsel as before.

NELSON PRAMER, a witness called on the part of the defendant, being duly sworn, says:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, occupation?

A. Nelson Pramer; age, 44; residence, Troy, N. Y.; occupation, foundryman.

2. Q. What is the occupation of a foundryman in your case?

2092 A. I do general jobbing of all casting of heavy and light machine work.

3. Q. Are you in business for yourself?

A. I am.

4. Q. Where is your family?

A. In Green Island, Albany County.

5. Q. How long have you resided in Troy?

A. In the city of Troy four years; in West Troy, opposite, about eleven years.

6. Q. Do you know Marcus P. Norton?

A. I do.

7. Q. How long have you known him?

A. I have known Mr. Norton—I have known who he was fifteen years.

8. Q. What has been Mr. Norton's business, and where carried on, since you knew him?

A. Attorney at law and solicitor of patents in the city of Troy.

9. Q. Do you know Mr. Norton's general reputation as regards truth and veracity in this community; if you do, state whether it is good or bad?

A. His general reputation is bad.

10. Q. State how you have learned that his general reputation is bad?

A. From the general expression of the business community.

11. Q. From the speech of men in this community in regard to Mr. Norton's reputation for truth and veracity, state whether you would believe him on oath.

A. Would that require a direct answer, or would it admit of an explanation?

12. Q. Make such answer as you think the question calls for.

A. Well, from the personal experience and from opinions expressed by parties in the same business of myself, I could not.

Cross-examination by MARCUS P. NORTON, solicitor for complainant:

13. Q. Have you ever discussed Norton's character 'or truth with anybody in this city?

2093 A. I might have spoken of it in general conversation with Hicks & Wolfe; I don't remember any other parties.

14. Q. You have never had any conversation with anybody concerning Norton's character for truth, have you?

A. Not until recently.

15. Q. How recently?

A. Well, within thirty days.

16. Q. With whom did you have that conversation?

A. Mr. Ransford; I don't know his given name.

17. Q. Where does Mr. Ransford reside?

A. I don't know whether he resides in Troy, positively.

18. Q. Who is he, and what is he, and where is his business, and what does he do for a living?

A. I am unable to answer.

19. Q. What did he say to you about Norton's character for truth?

A. It was bad.

20. Q. What did you say to him about Norton's character for truth?

A. The same answer that I have given before.

21. Q. Did Mr. Ransford ask you to become a witness in the case?

A. No, sir.

22. Q. Did he say anything to you about this suit?

A. He did.

23. Q. What did he say to you about this suit?

A. He asked me if I had done any business with Mr. Norton, and I said yes.

24. Q. Did you understand the last question at the time you made answer to it?

A. I think I did.

25. Q. If you did, will you be kind enough to make the proper answer to it, which the examiner will please read for your information?

A. Do you want a general explanation of what was said?

2094 26. Q. Did Mr. Ransford on that occasion say anything to you about an effort to impeach Norton in this case?

A. No, sir.

27. Q. What did he say to you about this case?

A. He did not recite the particulars of the case.

28. Q. Did I ask you that?

A. That is my conception of the question.

29. Q. Your conception of this question is of the same kind or character as your conception of all other questions that have been put to you on this examination, is it not?

(Objected to as being for the court.)

A. I think so.

30. Q. Have you any doubt about it?

A. No doubt.

31. Q. Where was it you and Mr. Ransford had this conversation?

A. In my office, Green Island.

32. Q. Who was present?

A. No persons present except ourselves.

33. Q. What other business had Ransford then with you at that time?

A. I hardly know how to answer that question.

34. Q. Do you decline to answer it in a proper manner?

A. No.

35. Q. Then why did you not answer it when it was first submitted to you for that purpose?

A. I can answer it by a general explanation.

36. Q. How long have you been in business in Green Island for yourself?

A. Since May the 1st, 1878.

37. Q. Have you any business partner?

A. Yes.

38. Q. Who?

A. John Miller.

39. Q. How much capital is required to carry on your business in Green Island?

A. That depends on circumstances.

2095 40. Q. How much money have you in that capital of your own?

A. ($1,000) One thousand dollars.

41. Q. How much money has your partner in that capital of his own?

A. Not any.

42. Q. What do you manufacture in that concern?

A. We do general jobbing.

43. Q. With what families in the city of Troy do you associate socially? I mean yourself and your family.

A. Do you wish names?

44. Q. That is my question.

A. George H. Perry, cashier of the United National Bank; R. D. Starkweather, Henry Thomas, Rev. James P. Caird, George Chamberlin, R. D. McClelian, a lawyer here; George Sliter, John P. Albertson, and numerous others.

45. Q. How long have you been on terms of social intercourse with those families?

A. From four to ten years.

46. Q. That is as near as you can answer the question, is it?

A. I cannot give definite dates.

47. Q. In what part of the city of Troy do you now reside?

A. Maple avenue.

48. Q. Where is that avenue situated?

A. Fifth ward.

49. Q. Well, where is the fifth ward?

A. It is the extreme east ward of the city.

50. Q. Is that a thickly settled part of the city?

A. No.

51. Q. At whose request did you become a witness in this case and on this occasion?

A. I can't give the person's name that subpœnaed me; the gentleman was here.

52. Q. When were you subpœnaed?

A. Last evening.

53. Q. In what manner were you subpœnaed, and by what process?

2096 A. In legal form.

54. Q. Explain that legal form.

A. I was served with a copy of a subpœna to appear here at nine o'clock at this date, accompanied with a fee of one dollar and a half.

55. Q. Will you produce a copy of that subpœna?

A. I left it at my house.

56. Was the person who subpœnaed you a stranger to you?

A. Yes.

57. Q. Had you ever seen him before that time?

A. But once.

58. Q. When and where was that?

A. In the afternoon of July the 11th, at my office.

59. Q. What business had he there at that time; I mean the first time you saw him before being subpœnaed?

A. He presented himself and asked if my name was Nelson Pramer, and if I had had any business transactions with Marcus P. Norton.

60. Q. Was that all he said to you?

A. No.

61. Q. Go on and state what he said to you and all he said after he had made that inquiry of you.

A. He asked the nature of the business and what the result was; I stated that I had made, through Mr. Norton, an application for a patent on an improvement in water-heating attachment to a parlor stove; I stated that the patent had never been obtained; that I had paid Mr. Norton fifty dollars fees, and government charges, I supposed they would be termed, from which I had no returns; that I had written to the Patent-Office Commissioner to have the fees refunded, and received notice that no application had been made; he, the man who subpœnaed me, presented a letter to the Commissioner of Patents purporting to come from me, and asked if I had written that letter; I replied that I had; I stated that the answer to a previous letter and from a
2097 personal call on the Commissioner of Patents I ascertained that no model or fees was on file or had been recorded in the department; that I showed the Commissioner's letter to Mr. Norton, and wrote the Commissioner Mr. Norton's reply, but never received the Patent-

Office fee in return; I didn't expect to get the whole of the fifty dollars, the Patent-Office fee; I stated that the Commissioner refused to refund, stating that the records did not show that any fee had been received; this embodies the general subject of our remarks.

62. Q. In what year was it you paid the fifty dollars?

A. Can't state positively without reference.

63. Q. Well, without reference to what?

A. Without reference to the receipt for this fifty dollars.

64. Q. Well, what receipt was that?

A. Receipt from Mr. Norton.

65. Q. You can't tell the date without that?

A. Not positive.

66. Q. Give your best recollections of it?

A. I should think 1868 or 1869.

67. Q. That is the only business he ever undertook for you?

A. Yes.

68. Q. You speak about calling Norton's attention to a letter from the Commissioner of Patents about your matter; when and where was that?

A. It was subsequent to the application in the office of Hicks & Wolfe, or subsequent to the payment of the fifty dollars.

69. Q. What did Norton say to you on that occasion about that matter?

A. He said that if he could not show that the fee and model had not been receipted for at the Patent Office he would refund the fifty dollars, and if I did not wish to continue the application the Patent Office would refund the fee.

70. Q. Did not Norton afterward exhibit to you in the counting room of Hicks & Wolfe a receipt for fifteen dollars from the Patent Office?

2098 A. I can't say that I ever saw the receipt.

71. Q. Will you swear that you did not see it?

A. I cannot swear positive.

72. Did you not state to Norton, on the occasion referred to, that you were satisfied that the Patent Office had made the mistake, and that you did not blame Norton about it, or words substantially the same?

A. Can't swear positively without an explanation.

73. Q. Do you swear that you did not so state or in substance state that to Norton?

A. No.

74. Q. Did you ever call Norton's attention to that matter after the time when you say you showed him the letter of the Commissioner of Patents?

A. We had conversation about it; I don't know whether I called attention to it or Mr. Norton did.

75. Q. About how long was it after you had this last conversation with Norton about it?

A. Well, I am unable to give definite date.

76. Q. About how many years ago was it?

A. I don't think anything has been said within four or five years; can't say.

77. Q. Did you ever ask Norton to refund the fifty dollars?

A. Yes.

78. Q. When was that?

A. About the time I received the letter from the Commissioner of Patents.

79. Q. Ever after that?

A. I don't think I made a formal demand after that.

80. Q. Now, Mr. Pramer, didn't Norton take his letter-press book to you and show you a copy of the letter enclosing a fee to the Commissioner of Patents for the application you speak of?

(Objected to as immaterial.)

A. I think he did.

81. Q. And about how long was that after your correspondence with the Commissioner of Patents?

2099 A. I can't state how long.

82. Q. About how long was it after you showed Norton the letter you received from the Commissioner of Patents?

A. Can't state.

83. Q. Now, did you not, on having shown to you copy of the letter above referred to and a Patent Office receipt for fifteen dollars, undertake to recover the fifteen-dollar fee from the Commissioner of Patents?

A. Nothing more than my letter to the Commissioner.

84. Q. Did you not apply to him in person for that fee?

A. No, sir.

85. Q. You never did?

A. I never made application but once, and that was previous to the time at which Mr. Norton showed a copy of the letter to the department.

86. Q. Is that all the business transaction you ever had with Norton?

A. Yes, personally or individual business.

87. Q. What other business have you had with him beside this?

A. No business except as messenger for Hicks & Wolfe.

88. Q. Was Norton doing much business in Troy in his profession at that time?

A. I am unable to say.

89. Q. You don't know anything about it?

A. No.

90. Q. Were you so situated that you had the opportunity to know the extent of the business carried on by Norton in his profession at that time?

A. No.

91. Q. You wan't so situated as to have the opportunity to know much if anything about Norton at that time, were you?

A. Nothing only what I heard in the office of Hicks & Wolfe.

2100 92. Q. And that was in the year 1869, was it not?

A. It was about that time, I presume.

93. Q. Have you ever been on unfriendly terms with Norton?

A. No.

94. Q. Do you see the person now present who subpœnaed you, and with whom you had a conversation about being a witness in this case?

A. The person is now present who subpœnaed me, but no conversation was had about my being a witness; that is, definite conversation.

95. Q. Will you be so kind as to inquire of this person his name and residence in answer to this question, he being now present?

A. I will.

96. Q. You may do so in compliance with your last answer.

A. The person reports his name as being James L. Robinson; residence, Flatbush, Kings County, Long Island, New York.

97. Q. You say that person has seen you twice with reference to this case?

A. Yes.

98. Q. On the first occasion he learned from you that you would make a first-class or A 1 witness in this case, did he not?

A. Can't say what his opinion was.

99. Q. How long after the first interview was it he subpœnaed you?

A. About twenty-eight hours.

100. Q. You say that at the first interview he showed you a letter written by you to the Commissioner of Patents. That he asked you if you wrote it and you told him you did. Do you know where or of whom he obtained that letter?

A. I do not.

101. Q. Was that letter in your own handwriting?

A. It was.

102. Q. What was the date of it?

A. Can't say.

103. Q. When did you last see it?

2101 A. When shown to me on that occasion.

104. Q. About forty-eight hours ago?

A. About twenty-eight hours ago. It would be more than twenty-eight hours up to the present time.

105. Q. Did you ask him how he obtained that letter or how it came into his possession?

A. I did not.

106. Q. Was it the very letter that you sent by mail to the Commissioner of Patents at the time you have spoken about?

A. I think it was.

107. Q. Have you any doubt about it?

A. No doubt.

108. Q. In your opinion could he have obtained if anywhere except from the files in the Patent Office, personally, or by or through some accomplices of his?

(Objected to as immaterial.)

A. I have no idea how he obtained it.

109. Q. You never wrote but that one on that subject, did you?

A. Yes.

110. Q. How many?

A. Can't say; two or three.

111. Q. Those letters were precisely alike, were they?

A. No.

112. Q. Did you ever write any other letter like the one shown to you by the person which you have above stated, than that letter?

A. I don't think I ever did.

113. Q. Have you any doubt about it?

A. No doubt.

114. Q. Did you ever in your life make any mistake or commit any error of any kind?

A. I have

115. Q. About how many?

A. I am unable to say.

2102 116. Q. Well, don't you think that when a person attempts to sit in judgment on the character of his fellow man that he ought at least to have clean hands, clean linen upon his back, and a cleanly shaven face?

(Objected to as scandel and impertinence on the record, and also as immaterial.)

A. I don't consider the requirements of the question necessary.

117. Q. What do you consider as being necessary to render a person competent as a witness to sit, or attempt to sit, in judgment on the character of his fellow man?

A. Intelligence and good standing in society.

Redirect by Mr. CLARKE:

118. Q. About how many men are employed in your foundry?

A. Sixteen at present. We have just organized.

119. Q. Have you any feeling, whatever, of personal hostility to Mr. Norton?

A. No.

120. Q. In answer to question 10, you state substantially that you have learned that Mr. Norton's general reputation is bad from the general expression of the business community. That was on your direct examination. On your cross-examination, in answer to questions fourteen, fifteen, and sixteen, you state substantially that you have never had any conversation with anybody concerning Norton's character for truth, until within thirty days, when you had such conversation with Mr. Ransford. I read those questions and answers to you. Explain what you wish the court to understand by those answers of yours, taken in connection with each other.

(Complainant's counsel, without objecting to the question, calls the especial attention of the court to the nature and kind of the inquiry, and that defendant's counsel has no right to impute misstatement or
2103 falsehood to his own witness. It is for the court to construe the language used by the witness, both on the cross and direct examination.)

A. I wish to be understood that my first answer, or answer to number ten, was based on the general expression of business men, and from myself participating. That I never expressed any opinion beyond my own business transactions.

121. Q. I understand you to mean that you yourself never expressed any opinion on the point except in that conversation with Mr. Ransford, and except in regard to your personal dealings with Mr. Norton, but that you have heard other men in the community, business men, express opinions on the point. Is that correct?

(Complainant's counsel, without taking especial objection, calls the attention of the court to the kind and character of the inquiry, as being improper at this stage of the proceedings and also requests the especial attention of the court to the efforts and labors of counsel to "bring forth a mouse.")

A. Yes.

Recross:

122. Q. Do you desire to change, to modify, or to alter the testimony given by you on your cross-examination?

A. I think not.

123. Q. Have you any doubt about that?

A. No doubt.

124. Q. You regard, do you not, the evidence delivered by you on your cross-examination as being sufficiently clear and certain as to enable the court to understand your answers and their meaning, do you not?

(Objected to as immaterial.)

A. I am unable to give any directions as to how my evidence shall be construed.

2104 125. Q. By the Court?

A. Yes.

126. Q. Of your own personal knowledge and without reference to anybody else, do you know of an untruth told by Norton?

(Objected to as immaterial, this inquiry relating to reputation and not to particular facts.)

A. No.

127. Q. Whatever you may have heard said by anybody concerning Norton, do you know personally or of your own knowledge that there was any truth in what you may have heard?

(Same objection.)

A. No.

128. Q. Is the city of Troy considered a city entirely free from gossip?

A. Never have heard any definite remarks on the subject.

129. Q. Did you ever hear any remarks against Hayes, the President of the United States, by anybody?

(Same objection.)

A. I have heard personal opinions expressed against him.

130. Q. Did you ever hear anybody make any remarks against General Butler, member of Congress from Massachusetts?

(Same objection.)

A. Yes.

131. Q. Did you ever hear anybody make any remarks against General Grant, late President of the United States?

(Same objection.)

A. Yes.

2105 132. Q. Did you ever hear anybody make any remarks against John Sherman, Secretary of the Treasury of the United States?

A. I have heard his policy discussed in the affirmative and negative.

133. Q. You speak about "business community;" what do you mean by that?

A. I mean business men with whom I come in contact.

134. Q. What kind of business have you reference to when you speak of "business community"?

A. I might say manufacturing business.

135. Q. What kind of manufacturing business do you refer to?

A. I might say the iron interest.

136. Q. What part of the iron business do you refer to; digging it from the mountains?

A. No.

137. Q. And what then?

A. That branch with which I am acquainted.

138. Q. What branch of the iron business is that?

A. General foundry and stove business.

139. Q. What do you mean by "general foundry?"

A. I mean a foundry where castings of great variety are made.

140. Q. How many such foundries are there in Troy?

A. I am unable to say; eight or ten I should judge.

141. Q. Give the names of persons who own and operate those general foundries?

A. Link & Mahoney; Sevett, Quimby & Perry; Nemis & Co.; Hislop & Co.; Harrison & Kellogg; Skinner, Gould & Co.; Ludlow Valve Co.; and I think there are stove foundries who also do general casting; that is my impression.

142. Q. You have given in the last answer the names of several persons; have you had conversations with those persons concerning the character of Norton for truth?

2106 (Objected to on the ground that it is immaterial whether the

witness has had conversations on the point with those persons or not.)

A. No particular conversation on that question.

143. Q. Did you ever hear those persons speak of Norton in a derogatory manner, in the city of Troy?

A. Only in general conversation with other parties in my presence.

144. Q. When was there a conversation of those persons in your presence when you heard them speaking to other persons about Norton?

A. I am unable to answer that question.

145. Q. Name a person whom you ever heard speak of Norton in terms derogatory to his character.

A. G. G. Wolfe.

146. Q. Name other persons, if you know of others.

A. Samuel Perry, James Morrison, E. J. Hicks, A. C. Corse, William E. Hagen, William Lough, and several others.

147. Q. Now, where was this?

A. At different times and different places.

148. Q. How long since?

A. Within the last ten years.

149. Q. Can you be any more definite than you have been in your last answer?

A. Yes.

150. Q. Go on.

A. Within thirty days.

151. Q. Now, where was it?

A. In my office.

152. Q. On Green Island?

A. On Green Island.

153. Q. Were they then in a body or separate?

A. Who?

154. Q. The persons you have named.

A. No.

155. Q. You heard them make those remarks, and you took no part in the conversation, did you?

2107 A. Well, I am unable to answer that question.

NELSON PRAMER.

Subscribed and sworn to before me this 12th day of July, 1878.

IRVING BROWNE,
Special Examiner.

JULY 12, 1878—2½ p. m.

Present, pursuant to adjournment, same counsel as before.

HENRY A. MERRITT, a witness called on behalf of defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence and occupation?

A. My name is Henry A. Merritt; I reside in Troy; my age is forty-one, and my occupation an attorney.

2. Q. How long have you lived in Troy?

A. From thirty-nine to forty years.

3. Q. How long have you been an attorney here?

A. About twenty years.

4. Q. Do you know Marcus P. Norton?

A. I cannot state; I think, though, ten years and upwards.

6. Q. Do you know Mr. Norton's reputation in this community as regards truth and veracity? And if you do, state whether it is good or bad.

A. I do not know that I know anything respecting Mr. Norton's character in this community for the past four or five years, and do not think that he has lived in this vicinity within that period, and cannot
2108 state anything about his character since he has left Troy, except what I have heard from other sources and from the newspapers.

7. Q. Does what you have heard from other sources and from the newspapers give you any knowledge of what Mr. Norton's character or reputation is?

A. I have an opinion of his character, formed from what I knew of and concerning him in Troy and what I have learned of him since he left the city.

8. Q. State what Mr. Norton's reputation is, as you know it, in respect to truth and veracity in this community.

A. It is so long ago and my recollection is so indistinct that I cannot now say that I recollect of any person discussing or commenting upon his character for truth and veracity; I have, however, a general recollection that when he was residing in Troy it was not good, and, from what I learned, that it was not improved after his departure. Most all of the matters in which I heard his character impugned for truth and veracity grew out of financial embarrassments with which Mr. Norton was connected, and patent matters.

9. Q. Are you a willing witness in this matter?

A. I was subpœnaed upon the part of the defendant; I have been spoken to by no one except by the party who subpœnaed me, and to say to him that I would not testify that I would not believe Mr. Norton under oath; I am not an unwilling witness nor a willing one.

10. Q. State whether, from your knowledge of Mr. Norton's reputation and from the speech of men concerning him in this community, you would at the time you had knowledge of that reputation believe him on oath.

A. I cannot of my present recollection of what I knew concerning him state whether I would or would not; but think the facts, if any, which could impugn his credit have arisen since he left Troy, and in respect to which I know nothing except the reports from the newspapers and statements of parties since his departure, and I do not
2109 feel myself competent to give any opinion upon the speech of people respecting his character for truth and veracity.

11. Q. Did you know what his reputation for truth and veracity was before the time you say he left Troy?

A. I undoubtedly did at the time, but have no present recollection of it as to particulars.

12. Q. State what your present best recollection as to it generally is.

A. It was not good—bad.

13. Q. On the basis of the speech of people concerning him, state whether you would then believe him on oath according to your present recollection.

A. I cannot say that I would not. The speech of people concerning Mr. Norton arose out of financial and patent matters, and I cannot say that in my opinion that his character for truth and veracity under oath would necessarily be impugned thereby, and I cannot say that I would not believe him under oath.

A. Can say no more than I have said, that if I know no reason to impeach a man's character I have no reason to discredit him.

15. Q. Knowing what was said about Mr. Norton in regard to financial and patent matters, can you state that you would then believe him on oath, or that you would not believe him on oath either?

A. If everything that I heard was true and I was fully satisfied in respect to the same, I think I would not believe him under oath; but I know nothing as to whether the stories are true or false, and I do not desire to express an opinion as to his veracity upon statements most of which emanated from parties hostile to Mr. Norton.

16. Q. Have you any conscientious or other objection to stating whether you would or would not believe a man on oath from the speech
2110 of men concerning him, when you have no personal knowledge that such speech is true?

A. No, except that a person may be badly talked of by interested parties, and that I consider that I have got to regard a man as a most finished and consummate scoundrel before the speech of people will so far influence me to testify that on their statements I would not believe him under oath.

17. Q. You have stated that you do not think Mr. Norton resides in Troy; where does he reside?

A. I do not know, but I have heard him state on this examination that he resides here.

In view of the direct examination of the witness by defendant's counsel, complainant's counsel waives the cross-examination of the witness.

HENRY A. MERRITT.

Subscribed and sworn to before me this 12th day of July, 1878.

IRVING BROWNE,
Special Examiner.

FRANKLIN J. PARMENTER, a witness called on the part of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Franklin J. Parmenter; my age is 45 and upwards; I reside in Troy; my occupation is attorney and counsellor.

2. Q. How long have you been an attorney and counsellor?

A. About twenty-five years.

3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. How long have you known him?

A. About fifteen years, I should judge.

2111 5. Q. Do you know what Mr. Norton's reputation as regards truth and veracity in this community is? And if you do, state whether it is good or bad.

A. I don't know that I know what it is; I don't know that I ever heard it called in question.

6. Q. Do you state that you do not know?

A. I cannot now recall an instance where I heard his character for truth and veracity called in question.

7. Q. Do you know Mr. Norton's general reputation and his estimation socially in this community?

A. I don't think I do know of his general reputation.

In view of the direct examination by defendant's counsel, complainant's counsel waives any cross-examination of the witness.

F. J. PARMENTER.

Subscribed and sworn to before me this 12th day of July, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned by consent of counsel until July 13th at 9 o'oclock.

SATURDAY, *July* 13, 1878.

Present, pursuant to adjournment, same counsel as before.

PHILETUS W. BISHOP, a witness called on the part of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Philetus W. Bishop; my age, 62; my residence is Troy; my occupation, a lawer.

2112 2. Q. How long have you been a lawyer in Troy?

A. Most of the time since 1856.

3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. State, if you know, what Mr. Norton's reputation is in this community in regard to truth and veracity—whether it is good or bad.

A. Well, from what I have heard of him in the community, I should say it was bad.

5. Q. State whether on reputation, and from the speech of men concerning him, you would believe him on oath.

A. Well, I have never yet sworn I would not believe a man under oath. It is a pretty hard thing to say of a man, but, from what I know of his general reputation, I must say that I would not believe him under oath.

6. Q. How long have you known Mr. Norton?

A. I have known him over twenty years.

Cross-examination by Mr. NORTON:

7. Q. How came you to become a witness in this matter?

A. I was subpœnaed last evening.

8. Q. Who subpœnaed you last evening?

A. This gentleman present subpœnaed me. I don't know his name.

9. Q. Will you inquire of that gentleman his name and residence, and what his business is in this city?

A. His name is James L. Robinson, so he reports. His residence is Flatbush, Long Island, and he is here on government business.

10. Q. Previous to your subpœna last evening, had the person named in your last answer been to see you about this matter?

A. He had.

11. Q. How many times?

A. I had seen him but once. I understood that he had been to my house yesterday twice in my absence.

12. Q. What did he state to you that he desired to prove by you in this case?

2113 A. I cannot say that he stated that he desired to prove anything by me, but he desired to know what Mr. Norton's reputation was?

13. Q. What did you say to him?

A. I told him that I did not desire to be a witness in this case, and if possible to let the cup pass; that I had never been a witness against a man.

14. Q. You say you have heard something against Norton's character for truth. Did you ever hear anybody speak of him in terms derogatory to him?

A. I have.

15. Q. In terms defamatory to him and his character?

A. I have.

16. Q. Who did you hear make such declarations?

A. I can name probably but a very few men. I will name Frederick G. Ransford, Marcus Ball, Edward Chamberlin, Mr. Clark—I think his name is John Clark. I think Captain Tupper, although I cannot positively state all that Captain Tupper said, since it was rather by innuendo than by direct statement. From Columbia County I have heard Daniel D. Barnes and Hugh W. McClellan speak unfavorably of him. I presume I have heard a good many others, but I don't remember them now.

17. Q. Whatever you may have heard from any of the persons named by you in the last answer, had you any knowledge that the statements made by them to you were true?

(Objected to as immaterial.)

A. I think I had.

18. Q. You had personal knowledge of the truth of their statements, had you?

A. I think I had.

19. Q. Now give the names of those persons as to whom you had personal knowledge of the truthfulness of their statements made to you?

A. I would name Marcus Ball as the only one of whose statements I had personal knowledge.

2114 20. Q. Now what did Mr. Ball say to you, Mr. Bishop?

A. He said Norton had sworn false.

21. Q. What did he say to you that Norton had sworn false about?

A. In a suit in which Ball was attorney. It was in swearing to an answer in that suit.

22. Q. What suit was that?

A. It was in a suit upon some notes and a check which Mr. Norton had given me.

23. Q. Now, when was that?

(Objected to as immaterial.)

A. I think it was in 1857.

24. Q. Who was the plaintiff in this suit?

A. I do not remember, but I think it was a man by the name of Sims; George F. Sims, I think.

(Same objections.)

25. Q. What became of the suit?

A. Judgment was obtained against you.

(Same objections.)

26. Q. What became of that judgment?

A. It was compromised afterward.

27. Q. It was settled and paid to the satisfaction of the plaintiff, wasn't it?

A. It was compromised, and judgment was satisfied.

28. Q. Have you yourself ever spoken of Norton to anybody in a manner unfriendly to him?

A. I have.

29. *A.* To whom, and when?

A. Well, I have spoken to Frederick G. Ransford, Marcus Ball, to Mr. Norton himself, and to others whom I don't now recollect.

30. Q. When did you last have conversation with Frederick G. Ransford, and he with you, where each of you spoke in terms derogatory to Norton's character, and in language unfriendly to him?

2115 A. Well, I don't understand that speaking in terms derogatory of a man is speaking unfriendly of him. Within the last two weeks I have spoken with Mr. Ransford in terms which might be considered derogatory to Mr. Norton.

31. Q. Where was that?

A. At my office in this city.

32. Q. Who were present?

A. No one; we were alone.

33. Q. Who first brought up the subject of Norton's character at that time?

A. Mr. Ransford.

34. Q. What did Mr. Ransford say to you about it?

A. He told that there was some impeaching testimony to be taken before Irving Browne against you, and that he would like to have me a witness to tell what I knew about you.

35. Q. When did you last have any conversation with Marcus Ball, wherein you spoke of Norton in terms derogatory to his character?

A. I cannot state the last time.

36. Q. State your present best recollection.

A. I should say within the last year.

37. Q. Have you and Mr. Ball frequently discussed Norton's character for truth?

A. We have frequently spoken of him.

38. Q. Who else besides Mr. Ball and Mr. Ransford have you discussed Mr. Norton's character for truth with?

A. Edwin Chamberlain and John Clark, and a good many others whose names I can't now remember.

39. Q. How frequently have you had those discussions referred to in your last answer?

A. I cannot state, but very frequently.

49. Q. You say you are a practicing lawyer in the city of Troy?

A. I am.

41. Q. And that you have been such for about 20 years?

2116 A. Yes, sir.

42. Q. During that time have you carried on any other business in Troy?

A. I have.

43. Q. What business was that?

A. Hotel business.

44. Q. During what years?

A. Well, during 1856 and 1857, 11 months of the two years; I was in the Union House, running that; I have kept the International Hotel about 6 months, in 1873 or 1874.

45. Q. What other business beside from the hotel and law business have you carried on in the city of Troy within the last twenty years?

A. I carried on a restaurant and billiard room.

46. Q. Where was that located in this city?

A. On Third street, in the Theatre Bulding.

47. Q. What was sold at that restaurant other than the food?

A. Liquors were sold, cigars, meals furnished, and there were nine billiard tables running; I did not keep this restaurant and saloon from

choice; my son was running it, and was making bad use of it, and I went there to protect myself, I being responsible for the property.

48. Q. How long did you run that establishment?

A. I think I run it first six months alone; then I sold a half interest to James B. Thomas; I, at the end of, I should think, three or four months, sold him out my interest, when he run it alone for a time; he then sold out to Walter Best, and took a mortgage back for five thousand dollars, which Thomas subsequently assigned to me in part payment of what he owed me; subsequently I had to foreclose the mortgage, and became possessed of the restaurant and billiard room again; I think then I run it for ten months, when it burned up; that wound up the billiard room on Third street.

49. Q. What other business have you carried on in that time, except what you have stated?

2117 A. No other kind of business except what I have stated.

50. Q. How many billiard rooms have you run and occupied in this city within that time?

A. Two others; I had a mortgage upon a billiard room, which I foreclosed, and run it as a billiard room for a short time; my son had a billiard room on Fourth street running, which I subsequently run for a few months, being responsible for the rent; I had to do it to protect myself; at that time I run the billiard room on Third street I had a boarding house, which I run in connection with the billiard room and restaurant, situated on Fourth street, nearly in the rear of the billiard room; I also bought out a small hotel near the depot, some three or four years ago; I run that some three or four months, and when I found I was losing money I sold out, having lost about five or six hundred dollars.

51. Q. Were you ever engaged in the car-wheel business in Troy?

A. I was engaged in the car-wheel business, but I think our office all the time was in New York; I don't think we had any here.

52. Q. Who were your associates in that enterprise?

A. Edward Chamberlin, this John Clark I have spoken of, Daniel W. Ford, and some others I don't recollect; we gave some of the stock away.

53. Q. What became of that corporation?

A. It is in existence yet, as far as I know; it has never been dissolved that I know of,

54. Q. In full operation, is it?

A. There has been nothing done, that I am aware of, for the past three or four years; we received once a royalty of forty dollars, but since that time we have never heard from the parties.

55. Q. Why havn't you enforced the payment of these royalties against this person?

(Objected to as immaterial.)

A. Well, I didn't feel disposed to have a lawsuit over the royalties.

2118 56. Q. Did they refuse to pay the royalties, Bishop?

A. Never to my knowledge.

57. Q. Do you consider the patent a good and valid patent in that case?

(Same objection.)

A. I do not know enough about it to form an opinion; there never has been any suit in regard to it, to my knowledge.

58. Q. Of whom did you obtain your interest in that patent?

A. From Marcus P. Norton, I believe; I bought it at the earnest solicitation of Edward Chamberlin and Mr. Clark.

59. Q. Have you now stated all the various kinds of business in which you have been engaged in the city of Troy within the last twenty years?

A. All that I now recollect.

60. Q. Have you been engaged in any business elsewhere within that time?

A. I have; in the city of New York; I have been interested in business at the State line in Massachusetts.

61. Q. State what that business was or is.

A. Was the manufacture and sale of a preparation for removing scales from steam.boilers.

62. Q. How did that enterprise turn out?

A. I sold out my interest in it, and then there was a new company formed; F. F. Bomel, and Jacob Johnson, owned nearly all the stock in the company; I understood they were doing very well until Bomel was obliged to leave the country for committing a forgery.

63. Q. At what time was it that you sold out, as stated in the last answer?

A. I think it was in 1869.

64. Q. What other business, out of Troy, have you been engaged in for the last twenty years?

A. I have been engaged in farming.

65. Q. How long have you carried it on?

2119 A. About seventeen years.

66. Q. Have you ever had, in the course of your life, any difficulty with any man?

A. I have.

67. Q. Have you, in the course of your life, ever made any mistakes, errors, or committed any sin?

A. I have made mistakes, committed errors, and committed sins, and also joined the Sons of Malta.

68. Q. What business dealings have you had with Norton within the last fifteen years, say since the year 1860?

A. I cannot very well say; except my dealings with him in regard to car-wheels. I remember nothing else.

69. Q. Has Norton's dealings with you since 1860 been fair and honorable?

(Objected to as immaterial.)

A. It has, so far as I know.

70. Q. You knew Norton had some business trouble in 1857 or 1858 in reference to some notes or checks?

A. Yes; there were business troubles with two notes and one check.

71. Q. Did you have anything to do, previous to 1860, about some notes held by Marcus Ball, which were given to a person by the name of Clark, by Norton, in a patent-medicine case, known by the name of "Ischuretic," and which Ball was trying to enforce collection from Norton, and amounting to fifteen hundred or two thousand dollars?

A. I cannot answer; I don't remember, and I don't think I did; and still I may have brought a suit or suits.

72. Q. You knew about those notes and suits at the time, did you not?

A. Only by hearsay.

73. Q. What did you hear about them, and who was it from?

A. The most I heard about those matters was from Mr. Norton.

2120 74. Q. Now, what did Norton say to you about those notes, as near as you remember?

A. As near as I can remember, Norton said he had bought an interest or the patent in the "Ischuretic," and had given his notes for it, and they were trying to collect the notes, and he claimed that he had been deceived and defrauded in the transaction.

75. Q. State what Mr. Ransford said to you at the time he applied to you to become a witness in this case, that was defamatory to the character of Norton?

A. I think he said, amongst other things, that you were indicted in Washington, and that you had papers which you were endeavoring to make out as originals which were not so, and which were nothing but copies; I think he said also that some of the parties you said had signed the papers were dead now; he said, you know what you and I have said about Norton, and I want you to go and testify to what you have said about him; and he said they were impeaching of him here before Irving Browne.

76. Q. What else have you heard Ransford say derogatory to Norton's character?

A. I have heard him say that he would not believe him under oath; that he was a cheat and a fraud, and give him a pretty good rating; I have heard him say pretty hard things about you in regard to some business transactions, in different places and at different times.

77. Q. Of the truth of those things stated to you by Ransford, had you any personal knowledge?

A. No.

78. Q. Have you a partner in the last business?

A. No.

79. Q. How extensive are your social relations in the city of Troy, I mean as relates to your knowledge of society, and into what society do you go aside from your business as a lawyer?

2121 A. There are very few families I have intercourse with in the city of Troy; I scarcely ever go visiting or calling; so far as the lawyers or business men of the city are concerned, I am always treated respectfully; so far as I know I am treated with consideration by Judge Ingalls, Judge Strait, Mayor Murphy, Postmaster Robertson, Honorable Martin I. Townsend, and all men with whom I am intimately acquainted.

80. Q. You are intimately acquainted with the persons named in the last answer?

A. Yes; I have known them for years.

Redirect by Mr. CLARKE:

81. Q. Have you any feeling of personal hostility to Mr. Norton?

A. I have not.

Recross by Mr. NORTON:

82. Q. Do you wish to change, modify, or alter or in any manner disturb the testimony given by you on your cross-examination?

A. I am not aware that I do.

83. Q. Have you any doubt about it?

A. I have not.

P. W. BISHOP.

Subscribed and sworn to before me this 13th day of July, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned by consent until July 15, 10 a. m.

Met pursuant to adjournment at 2.30 p. m.
Same counsel as before.

EDWIN CHAMBERLIN, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

2122 Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. Edwin Chamberlin; age, sixty; residence, Troy; occupation, maker of carriages.

2. Q. How long have you been in business in Troy?

A. About twenty five years.

3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. How long have you known him?

A. About twelve years.

5. Q. State, if you know, what his reputation is in this community in respect to truth and veracity—whether it is good or bad.

A. It isn't very good, I must say; rather bad, if anything, for truth and veracity.

6. Q. On the basis of that reputation, and from the speech of men concerning him, state whether you would believe him on oath.

A. I can't swear that I would not believe Mr. Norton under oath.

7. Q. Explain why you can't.

(Objected to on the ground that the question smells strongly of "bulldozing," as the witness has already given a full and fair answer on the subject, and one which the court cannot fail to understand. It therefore needs no explanation from anybody.)

A. Well, I can't give any particular reason as I know of; my dealing with him so far would not warrant me to swear positively to that fact.

8. Q. Without reference to your personal dealing with him. have you give' any conscientious or other objection to swearing that you would not believe him on oath, on the basis of his general reputation, and what people currently say of him?

(Same objection as last above, and as improper to examine a
2123 witness in this manner on a question of this character, the witness already having answered fully on the subject.)

A. I could not swear that I would not believe him under oath, not conscientiously, although his reputation may be bad for truth and veracity.

9. Q. Suppose that Mr. Norton's testimony were in conflict with that of another man who stands fair in the community, would you believe him in preference to the other man?

(Same objection, and also that the supposition contained in the question does not exist in this case; and further, that it is improper to endeavor to make an expert out of this witness, he having twice fully answered as touching the only question involved in the attempt by defendant to impeach Norton.)

A. No, I would not. I would believe the other man first.

10 Q. What is the name of your firm?

A. E. Chamberlin & Sons.

11. Q. Have you any objection to swearing that you would not believe a man on oath unless from dealings with him you personally know that he is untruthful?

A. I should want to know personally before I should want to swear that I would not believe him under oath.

Cross-examination by Mr. NORTON in person:

12. Q. Previous to 1870 you were familiar with Norton's law offices, and knew something of his business, did you not?

A. I was familiar with his office, and with his business somewhat.

13. Q. What was his reputation as a lawyer in his profession, and as to the amount of business done by him, so far as you had any opportunity to know?

(Objected to as immaterial.)

2124 A. At that time (1870) his business reputation stood, as near as I can recollect, fair as a lawyer—a patent lawyer; so far as I can recollect at that time, he had the reputation of doing a large amount of patent business.

14. Q. You were frequently in his office prior to April, 1870; can you state of a single instance in the city of Troy where a lawyer, or a firm of lawyers, had larger, better furnished offices, or a larger or better law library, than had Norton; and also the firm of Norton & Cowen?

A. Well, they had a large office and a large library; I don't think that there was any other in the city that compared with it in size or furniture, as far as I was acquainted.

15. Q. Suppose that two large and wealthy manufacturing firms in the city of Troy, and I will name them for your information—H. Burden & Sons, and Corning, Winslow & Company—were engaged in expensive litigation on some patent, and suppose that Marcus P. Norton was counsel for Corning, Winslow & Company, and while acting as their counsel in defending their interests in such a suit the following letter should be sent to him, to wit:

WOODSIDE, *June 24th*, 1861.

DEAR SIR: Since you were last here, I have accidentally been made acquainted with your friend's views in relation to your obligations professionally to the writer and his family, and am therefore now prepared for a friendly interview, and, if agreeable, propose the place my house. I perceive there is a 4 p. m. train, can you come by it?

Yours, truly,

H. BURDEN.

M. P. NORTON, Esq.

P. S.—Come straight to my house—say nothing to any one.

H. B.

2125 What would be your opinion of a letter of that kind, should you receive it, while you were acting as attorney on the other side?

(Objected to as immaterial.)

A. I should think that he wanted to see me on business.

16. Q. What sort of business should you judge that a letter of that kind called for, you not owing that man a dollar, and never having had any previous business transaction with him?

A. I should think it was a professional call.

17. Q. Suppose you should go, in answer to that letter at the time and the place named in it, and you were offered a large sum of money to desert your client, do you think that you ought after that to be called a liar and a scoundrel?

(Same objection.)

A. Not unless you deserted your former employer and accepted the bribe.

18. Q. Suppose that two days after that you should receive a letter like this:

JUNE 26, 1861.

DEAR SIR: Presuming I misunderstood your views and wishes of the subject matter of which I wrote you on Monday last, will thank you to enclose that letter together with this note in a sealed envelope addressed to me, and leave it with Mr. Levi Smith to be called for, and oblige,

Yours truly,

H. BURDEN.

M. P. NORTON, Esq., present.

Would it be your opinion that the person thus addressed was in the professional employment of the person writing such a letter?

(Same objection.)

A. I don't know that I can answer that, or give you any opinion.

2126 19. Q. Did you ever hear or do you know of a single instance where Norton was ever charged with deserting a client of his in court, or otherwise, in his profession?

(Same objection.)

A. I never heard of his deserting his clients. Not to my knowledge.

E. CHAMBERLIN.

Subscribed and sworn to before me, this 15th day of July, 1878.

IRVING BROWNE,
Special Examiner.

MONDAY, *July 15th*, 1878.

Present, pursuant to adjournment, same counsel as before.

LEVI SMITH, a witness called on the part of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence and occupation?

A. My name is Levi Smith; my residence the city of Troy; I am 56 years of age, and law is my occupation.

2. Q. How long have you been a lawyer in Troy?

A. 31 years last October.

3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. How long have you known him, and what has been his occupation?

A. I have known him since March or April, 1860; his occupation during that time has been that of a lawyer.

2127 5. Q. State, if you know, what his reputation is in this community, in respect to truth or veracity; whether it is good or bad.

A. I think I do know, and it is bad.

6. Q. State how you know.

A. I know it from the speech of people.

7. Q. From the speech of people in this community, in respect to Mr. Norton's reputation for truth and veracity, state whether you would believe him on oath.

A. I would not; I will qualify that by saying that I would not believe him on oath when he was interested in feelings or otherwise.

Cross-examination by Mr. NORTON:

8. Q. You have, on a previous occasion, been engaged in the same business as a witness that you are now in, namely testifying against Norton and his character for truth, have you not?

A. Not to my present recollection.

9. Q. Were you ever a partner in the law firm of Beach & Smith, in this city?

A. Yes. I was.

10. Q. When did that firm commence its business, and when did it end as a firm?

A. It commenced in April, 1851, and ended in December, 1870; the firm originally was composed of William A. Beach and Job Pierson and myself, and the firm name was originally Pierson, Beach & Smith; that firm was dissolved in 1853, and the firm of Beach & Smith continued from that time until December, 1870.

11. Q. Did you know Henry Burden in his lifetime?

A. I did.

12. Q. Was the firm of Beach & Smith ever counsel for Mr. Burden in any business?

A. It was.

13. Q. During what term of time?

A. Well, for a good many years; I think we did business for Henry Burden from the time the firm was formed until it dissolved.

2128 14. Q. What was the business of Mr. Burden, and how extensive was that business?

A. Well, the Burdens were a firm—H. Burden & Sons; they were in the iron business, and it was very extensive.

15. Q. Did that firm, during the time you were counsel for it, or for Mr. Henry Burden, manufacture a railway and other spike, horse and mule shoes, nails and such like?

A. I don't know as they manufactured nails; the other articles they did manufacture.

16. Q. Did they manufacture by machinery and under certain letters-patent claimed by Henry Burden?

A. Yes; or claimed by the firm. I believe their patents were common to the firm, and were taken out in Henry Burden's name.

17. Q. Did Mr. Henry Burden, or that firm, ever have any suits with anybody upon any of those patents?

A. Not to my knowledge; they had an interference in reference to a patent, with the manufacturer of horse shoes—some party in New England, I do not now remember his name; that is the only litigation which I now remember with reference to any of their patents.

18. Q. Was not the name of the person referred to in your last answer M. C. Lewis, of Boston, Massachusetts?

A. It may have been; I do not now remember.

19. Q. Who were counsel for Mr. Burden in that case?

A. It started off with William A. Beach, Marcus P. Norton, and myself; when we came to take testimony Marcus P. Norton appeared and acted on the other side.

20. Q. Now answer my question, if you please; who were of counsel in that case for Burden of record in the Patent Office?

A. I do not now remember. I presume it was Beach & Smith.

2129 21. Q. Did you know the firm of Corning, Winslow & Co. when they did business in this city, or any member of it?

A. I knew them all.

22. Q. What was their business, and was it extensive or otherwise?

A. They were in the iron business, and it was extensive.

23. Q. Did Marcus P. Norton ever act as attorney and counsellor for that firm?

A. I so understood, and I understood that he was acting for them in this interference question.

24. Q. Norton acted for that firm as attorney or counsel for a number of years, did he not?

A. I have no knowledge on that subject, except as to this interference question.

25. Q. Have you forgotten the hook-headed spike case between Corning, Winslow & Co. and the Troy Iron and Nail Factory, who manufactured under Mr. Burden's patent for making a hook-headed spike?

A. I have not.

26. Q. Was there any suit on that patent by anybody; and if so, by whom was it brought?

A. There was a suit brought by the Troy Iron and Nail Factory against Corning, Winslow & Horner for the violation of such a patent.

27. Q. Was the firm of Beach & Smith ever counsel in that case?

A. It was counsel on several motions in the case, but not in the case generally.

28. Q. Was Beach & Smith ever counsel in that case while it was pending before the master, under an interlocutory decree by the court?

A. We never appeared before a master, but while the case was pending before him we had several motions before the court.

29. Q. Who was the master in that case?

A. Chancellor Walworth.

30. Q. Who conducted the proceedings before him on the part of the complainant?

2130 A. Judge Foote and Mr. Sackett.

31. Q. Do you swear that Mr. Sackett took any part in those proceedings whatever on the part of the complainant?

A. It is possible that I am mistaken in regard to Sackett's appearance on the other side. I was never present. Judge Foote represented the complainant.

32. Q. Did Mr. Foote ever consult with the firm of Beach & Smith about that case?

A. Yes, frequently; but I don't remember of his consulting with us until after the report of the master.

33. Q. About how many years was that case pending before the master?

A. I don't know; it was pending when I first came to Troy, which was in 1845, and the report was made between the years 1865 and 1867, I should think.

34. Q. State in substance the result of the findings of the master in that case?

A. Well, he reported a small amount of damages in favor of the complainant. I won't be certain about that. I can't remember. I am inclined to think that the report was against the complainant, and that exceptions were filed to the report; upon the hearing of the exceptions by the court the court modified the report and allowed a small amount of damages to the complainant.

35. Q. As counsel in that case, were you satisfied with the result of it before the master, and the final result before the court?

A. We were not.

36. Q. Who was the Troy Iron and Nail Factory in that case?

A. A corporation under the law of this State.

37. Q. State the names of the persons forming that corporation?

A. I don't know as I know them. I understood that the Burdens were large stockholders in it, and there were some Albany stockholders—Townsends and others.

2131 38. Q. Did Henry Burden have anything to do with it?

A. While the corporation continued Henry Burden acted as the agent of the concern.

39. Q. About when did that corporation cease to exist?

A. I should think from fifteen to twenty years ago.

40. Q. Who were counsel for Corning, Winslow & Hornor in that suit?

A. David L. Seymour and, I think, Sackett.

41. Q. Was Samuel Blatchford of New York ever counsel in that case for defendants?

A. I don't know whether he was or not.

42. Q. Was William H. Seward ever counsel for defendants in that case?

A. That I don't know.

43. Q. Who else beside Seymour & Sackett, that you knew, were counsel for defendants in that suit?

A. I don't know of any one.

44. Q. Was Marcus P. Norton counsel in that case for the defendants at any time?

A. I don't know whether he was or not.

45. Q. Will you swear that he was not?

A. Of course I will not.

46. Q. You have spoken about an interference case between Henry Burden and some party in the Eastern States; what was that interference about?

A. Well, it was some feature connected with Burden's horse-shoes machine, but what particular feature I do not now remember.

47. Q. Did you at the time understand that Corning, Winslow & Co. furnished the means to defend that case, and were substantially the defendants?

A. I did.

48. Q. You also understood that Norton was acting for that firm as one of their counsel, did you not?

(Objected to as immaterial.)

A. I did, finally; in the first instance I understood that he was
3132 acting as counsel for Burden; the notice for the taking of testimony in Troy was served on Burder, and Mr. Beach, Mr. Norton, and myself, and Mr. Henry Burden, had a consultation together at our office in regard to the case; our circuit court was then in session, and it was doubtful whether Mr. Beach could get away from it so as to attend the examination, and it was then arranged that Beach, Norton and myself should go down to Burden's works, see the machine in operation, so as to understand the nature of the patented principle involved, and that if Mr. Beach could not get out of court so as to attend the examination, Norton and myself should conduct the examination on the part of the Burdens. We three did go over together to Burden's works, saw the machine operated, and prepared ourselves in that manner for the examination. When the examination came on Norton appeared on the other side.

49. Q. Whose testimony have you reference to in your last answer, that on the part of Burden or on the part of defendant?

A. Well, I don't now remember. I think on the part of the defendant, or the party opposing the Burdens.

50. Q. Mr. Burden being the moving party in that case, who appeared for him, and who conducted the examination for him?

A. I was not present at the examinations. I understood Mr. Beach did.

51. Q. Was Norton there?

A. I understood of Mr. Beach and from Mr. Norton himself that he was there. Norton at that time had a seat in our office. Mr. Beach was so disgusted at his conduct that he turned him out of the office.

52. Q. Did you take any part with Beach in turning Norton out of your office in the manner stated in the last answer?

(Same objection.)

A. I did.

2133 53. Q. Should it appear from the Patent Office records in that case that neither Norton nor any other living person appeared for Lewis or anybody else at the time the testimony was taken in your office for Burden, what answer would you make to that condition of things?

(Same objection.)

A. I should say I was mistaken about there being an actual appearance, but that Mr. Norton acted for Corning & Winslow in that matter I know from his own admissions, and from all the circumstances which then impressed themselves upon my mind.

54. Q. Now, at what stage in those proceedings did Norton act for the persons named by you in your last answer?

(Same objection.)

A. Right away after our going down to Burden's works to examine the machine I was called to Clinton County, and was gone three or four days, and was there at the time fixed by the notice for taking testimony here; when I returned I was informed by Mr. Beach that Norton had turned up on the other side. Then it was that Beach and I had the consultation which resulted in removing him from our office. He never acted for the Burdens after that, and from that time he acted for Corning & Company in the matter, as I understood.

55. Q. Now, will you please to detail all the business done by Norton for the Burdens; state what it consisted in.

A. I don't now recollect any of it.

56. Q. State how much money you know of your own knowledge or hearsay was ever paid to Norton by the Burdens for any kind of service, and who paid it?

A. I don't know as they ever paid him a penny.

57. Q. How large was the retaining fee paid by Burdens, or by you, as their agent, to secure his services in that or any other matter?

(Same objection.)

2134 A. I have no present memory on that subject; I don't know as he ever had a retainer.

58. Q. Did not Norton tell you and Beach, on the return from Burden's, that he could not act with you for the Burdens if it should appear that Corning, Winslow & Company were interested against the Burdens, or words in substance that, as he had been previous to that time duly and regularly retained by that firm?

A. He never told me so in words or substance. I never heard you say so. I was perfectly astonished when I heard he was on the other side.

59. Q. In what year was that interference suit?

A. I should think it was about the year 1867 or 1868; along there somewhere.

60. Q. You are positive that it was either in 1867 or 1868, are you not?

A. I am not positive.

61. Q. What are your present best recollections about it?

A. Well, I can't come any nearer to it than that it was in the neighborhood of 1867 or 1868. I may be considerably out of the way. I could tell, probably, if I was at my office and could consult my register.

62. Q. Will you be kind enough to go to your office and consult your register in regard to the date referred to in your last answer, so as to be positive about it?

(Objected to as immaterial.)

A. I regard the question as entirely frivolous, and I therefore decline to do it.

63. Q. How far is your office from the place of this examination?

A. The front door is about two hundred feet.

64. Q. Was there ever any other interference than the one you have referred to between those parties?

A. Not to my present recollection.

65. Q. What was the final result in that case?

A. I do not now remember.

2135 66. Q. Was not Mr. Burden defeated, and a patent refused to him by the United States circuit court for the District of Columbia, or by one of its judges?

A. I do not now remember.

67. Q. Do you know what judge decided that case?

A. No.

68. Q. Did you ever know or hear that Burden had received a patent in that case, as the result of the interference?

A. I don't remember.

69. Q. You have spoken without any inquiry on that subject about Norton's having a seat in your office, or in the office of Beach & Smith, from which, on consultation together, you and Beach ejected him. Whereabouts in your office was that seat located?

(Same objection.)

A. At that time what is now our north room was two rooms connecting by a door. Norton had the east room.

70. Q. Did Beach & Smith have a lease of that room?

A. We did.

71. Q. At the time Norton occupied it?

A. Yes, sir. I won't be certain whether we had a lease at that time for that room; I think we had. We leased it from John P. Albertson.

72. Q. In what year did you first take a lease from Albertson for that office?

A. We went into the main office somewhere about the year 1857. At that time Albertson used this east room as his own private office, and two or three years after this we leased this room from him. I think if we had not the lease at the time with Albertson we had the arrangement that Norton was to occupy that office and to use our library, and to use our rooms in passing through to the room.

73. Q. With whom did you have the arrangement spoken of in your last answer?

2136 A. We arranged for the room with Albertson, and with Norton that he was to have the privileges there then mentioned.

74. Q. Will you swear that in the year 1860 Beach & Smith, or anybody else beside Norton, had the lease of that room from Albertson?

(Same objection.)

A. I will not. I know that Norton was to pay the rent to Albertson.

75. Q. Apply the same question to the year 1861 and then make answer to it?

(Same objection.)

A. I say, no.

76. Q. Now, did Norton ever in the world have a key to the office of Beach & Smith?

A. I don't remember.

77. Q. Was not then the entrance to Norton's office separate and distinct from that to your office, and through a hall now occupied by you for the purposes of a water-closet?

A. I think so.

78. Q. Well, have you any doubt about it?

A. No.

79. Q. Was not the business carried on by Norton separate and distinct from that carried on by Beach & Smith?

A. It was, in the main; though it was expected by the arrangement that Mr. Beach was to be counsel for Mr. Norton in the trial of his patent cases.

80. Q. Do you know William E. Hagen, of this city?

A. I do.

81. Q. Did you know him in the years 1863 and '4?

A. I did.

82. Q. Were Beach & Smith counsel for him in those years in any matter?

A. They were.

2137 83. Q. Do you remember the interference case in the Patent Office of William E. Hagen against Jacob Shavor and Lewis Potter of this city?

A. I do.

84. Q. Do you remember what that was about?

A. I think it was converting water into superheated steam to aid in the combustion of fuel.

85. Q. Well, did Beach & Smith take any part in that suit for Hagen?

A. Yes.

86. Q. What part and in what capacity did they act for Hagen?

A. They acted in the capacity of counsel in the examination of witnesses tending to impeach the testimony of Marcus P. Norton, who had been a witness for Shavor and Potter.

87. Q. Your firm took an active part in that enterprise, did they not?

A. Yes.

88. Q. You used all the means at your command to make successful his impeachment, did you not?

A. We examined such witnesses as were furnished us, and did it to the best of our ability; and used all honorable means necessary to make the impeachment complete.

89. Q. Did you take any part in furnishing witnesses for that occasion?

A. I did not personally.

90. Q. Did anybody in your office?

A. Not to my knowledge.

91. Q. Were you examined as a witness in that case on the part and in behalf of Hagen?

A. I have no present recollection of being examined, and don't think I was.

92. Q, Do you swear that you were not?

A. I do not swear that I was not; it would be strangely against my custom in such cases if I was sworn.

93. Q. Should it appear from the records of the Patent Office that you did testify on that occasion, would you have any further answer to make than that made to the last question?

2138 A. I certainly should. I should desire to admit it if I was examined.

94. Q. Was Mr. Beach examined on that occasion on the part and on behalf of Mr. Hagen?

A. Not to my knowledge. He never was when I was present.

95. Q. You do not know that Beach was examined on that occasion?

A. I do not.

96. Q. What witnesses were examined by Mr. Beach on that occasion?

A. George Gould, then a justice of our supreme court, General George R. Davis, Henry Burden (who are all dead now), Marcus Ball, and some others perhaps.

97. Q. Did you give advice to Mr. Hagen as to the course he should pursue in obtaining witnesses for that occasion?

A. I did.

98. Q. Did you frequently advise him about it?

A. Yes.

99. Q. On the question of impeaching Norton for truth and veracity in that case, what was the result, and the final result, of that undertaking?

(Same objection.)

A. On the question of impeachment the witnesses Mr. Beach examined here swore that they would not believe Mr. Norton under oath in a case where he was interested in feelings or otherwise. We went to Rutland, Vermont, where Mr. Norton had previously resided, and examined a half a dozen or more witnesses there, lawyers and merchants, reputed to be men of the best standing in the village. They all testified that they knew Mr. Norton, and had known him for a considerable period, and as to his reputation for truth and veracity, they testified substantially the same as the Troy witnesses testified.

100. Q. Being yourself a lawyer, as you state on your direct
2139 examination you are, I ask you if you understood my last question at the time you made answer to it?

A. I think I did.

101. Q. Have you any doubt about it?

A. I have not.

102. Q. You have stated in your answer to question number 99 the "final result" on the question of the undertaking to impeach Norton for truth and veracity in that case, have you?

A. I have stated the results of our efforts—the testimony we obtained. Whether the whole testimony of both sides resulted in impeachment, I am unable to state.

103. Q. Being Hagen's counsel in that case, and had impeachment been successful, do you think that your office would have known nothing about it?

(Same objection.)

A. I presume we should. I presume we did; but I don't remember what the result was.

104. Q. Was not the impeachment in that case undertaken decidedly and emphatically an unsuccessful one, and did not Hagen and Shavor and Potter settle their matter of differences, consolidate their interests, and form a joint stock company in the city of New York upon Hagen and Groom patents?

A. As to the first branch of the question, if left to my judgment, I should say it was entirely successful. As to the last branch of the question, I know nothing upon that subject; as I recollect, we had nothing to do with the merits of that case, as I had before intended to state.

105. Q. I apply this question to the fore part of your last answer, and ask you if you ever have in any manner regretted that that impeachment testimony had not been submitted to you for your judgment, which, unasked for, you attempt to give in your last answer?

(Same objection.)

2140 A. I have never regretted in the slightest degree; I have never thought of the subject.

106. Q. Since the interference case of which you have spoken, have you ever felt yourself friendly toward Norton to the present time?

A. I have never been unfriendly toward Mr. Norton; I have never had any trouble with him to my recollection, though I have not the same feeling toward him that I have toward men whom I esteem to be good and worthy citizens.

107. Q. Have you ever spoken of Norton to any one in terms unfriendly to him?

A. I don't know as I have; his name has been a matter of frequent conversation between others and myself, and I have spoken of him in the same manner as in my testimony, and others have spoken to me of him in the same manner.

108. Q. With whom have you called in question the character of Norton as to truth and veracity, and discussed that question with?

A. I cannot undertake to give names to any great extent; these conversations have been going on for a good many years, and it seems that the opinion which I have expressed here has been almost the universal one among Mr. Norton's acquaintances.

109. Q. Give the names of such as you now remember?

A. Well, I can give you the names of all the members of my firm: Mr. Fursman, Mr. Cowen, and Mr. Kellum; I remember another, distinctly, David L. Seymour; I do not now remember any particular circumstance that leads my mind to any particular individual; these conversations have been going on so long that the whole thing is blended into one common whole.

110. Q. Who compose the present members of your firm?

A. Mr. Fursman, Mr. Cowen, Mr. Kellum, and myself.

111. Q. Did you know John L. Flagg in the year 1870?

2141 A. Yes.

112. Q. Did you do any business for him against Marcus P. Norton in that year?

A. I think I did, long about that time.

113. Q. What was it?

A. I think John L. Flagg sued Norton on some promissory notes which he had; Norton put in a defence; we were counsel in the case for Flagg; and there were some chattel mortgages which Flagg owned on Norton's library which we advised in regard to and assisted in foreclosing.

114. Q. Did you attend the sale of that property, or any part of it?

A. Yes; the principal part of it.

115. Q. About how large was the library that was sold on that occasion?

A. I cannot say; it was a large library—very large—both the private and law library.

116. Q. Do you know how much that library sold for?

A. I do not; none of the money came into my hands.

117. Q. Do you know what became of the proceeds of that property?

A. I do not, personally.

118. Q. Do you know in any way?

A. That is all I know about it.

119. Q. What kind of business did Norton carry on up to that time?

A. While he lived here in Troy he practised law.

120. Q. Were you ever in his office previous to that time?

A. Quite frequently.

121. Q. What kind of an office did you find then?

A. He had fine rooms and well furnished.

122. Q. Did not Norton carry on also patent business in the Patent Office and in the courts?

A. He did carry on the patent business, but what he did at or in the Patent Office I am unable to state.

2142 123. Q. Since 1869, has any of that patent business found its way into your office?

A. Mr. Conner does quite a large patent business, and he is assisted somewhat by Mr. Kellum.

124. Q. Since the organization of your present firm, have you had for a client any person or persons who, previous to 1870, were clients of Norton?

A. Yes; we have.

125. Q. You have found them good clients and good pay, haven't you?

A. I should think so.

126. Q. Have you any doubt about it?

A. I have no doubt about it.

LEVI SMITH.

Subscribed and sworn to before me this 15th day of July, 1878.

IRVING BROWNE,
Special Examiner.

(The complainant's counsel objects to each and every answer given by witness to questions put to him on cross-examination, and to all parts thereof not responsive to the question to which the answer is given; to all such answers not responsive to the question, and showing evasiveness and the voluntary evidence of the witness at the time of the answer; complainant's counsel under this objection will call the attention of the court at the hearing, and there move the court to suppress the same for the reasons stated in this objection.)

JOSEPH C. HENDERSON, a witness called on the part of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

2143 A. My name is Joseph C. Henderson; my age is 53; my residence Troy, and my occupation a manufacturer.

2. Q. How long have you been in business in Troy?

A. About nine years.

3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. How long have you known him?

A. Twenty years.

5. Q. Have you lived in Troy during that time?

A. No; when I first became acquainted with him I lived in Albany.

6. Q. State, if you know, what Mr. Norton's reputation is in this community in respect to truth and veracity—whether it is good or bad.

A. Well, I would say that there have been reports that he wasn't reliable; I should say bad.

7. Q. On the basis of that reputation, and from the speech of men concerning him, state whether you would believe him on oath?

A. Well, I should believe Mr. Norton under oath if he hadn't any interest at stake in it.

8. Q. Suppose that he was interested in the matter, how then?

A. I think that he would be governed in his oath by his own interest in the matter.

9. Q. Would you believe him in such a case?

A. Well, I think there are cases when I would not.

10. Q. In your answer to question 6 you say that there are reports that he is not reliable; how extensive are those reports?

A. So far as my knowledge is concerned they are not very extensive; well, what I mean to say is that the feeling is not universal; it is only with those that have had business with him.

11. Q. State in what business you have been engaged since you have been in Troy, and with whom.

A. I have been in the same business that I am now in—making stoves and furnaces; when I first came here I was with Charles Eddy & Company, and after that I was associated with Jacob Shavor, and after
2144 that with Sheldon, Greene & Company, and was with them for three years: after that time I again joined Mr. Shavor, and the firm then was Shavor & Henderson; I am now in business alone.

Cross-examination by Mr. NORTON:

12. Q. Did Norton ever do any business for you professionally?

A. Yes, sir.

13. Q. When was it and what was it?

A. Well, in 1866, I think, he done some patent business for me while I was with Charles Eddy & Company.

14. Q. Did he do that business for you to your satisfaction?

(Objected to as immaterial.)

A. Yes.

15. Q. Did Fuller, Warren & Company, of this city, sue you for an alleged infringement on a stove patent held by them, known as the curved oven plate patent, invented and patented by Samuel Pierce?

A. They did.

16. Q. Who was their solicitor and counsel in that case?

A. Marcus P. Norton, I think.

17. Q. Have you any doubt about it?

A. No, sir.

18. Q. What became of that suit?

A. Well, as I understood, you and John Rathbone and Sam. Pierce concocted some sort of an arrangement about it, whereby judgment was to be entered against me, and they were to have certain rights of manufacture; that is, they, Rathbone & Company, of Albany, were to have the rights.

19. Q. Was not a decree made in that case by the court against you

for a perpetual injunction for a statement of an account of profits, and were not you and your books examined on that subject before A.
2145 A. Boyce, one of the standing examiners of the court?
(Same objection.)
A. No, sir.
20. Q. You swear to that positively, do you?
A. I do; I do not swear that judgment was not entered up, but do swear that there was no examination.
21. Q. You swear positively that there was no examination of your books or of yourself under a decree of the court in that case, do you?
(Same objection.)
A. Not to my knowledge.
22. Q. What do you mean by your answer "not to my knowledge"?
A. That I had no remembrance of it.
23. Q. You know that a judgment was entered in the case against you?
A. Yes, sir.
24. Q. Has that judgment ever been paid?
(Same objection.)
A. No, sir.
25. Q. You knew Jacob Shavor very well, did you not, in his lifetime?
A. Yes, sir.
26. Q. At the time of his decease was he a partner of yours?
A. No, sir.
27. Q. And had not been for some time previous?
A. He had not.
28. Q. Do you know Frederick G. Ransford of this city?
A. I do.
29. Q. How long have you known him?
A. I have known him for the last twelve or fifteen years.
30. Q. Do you know Jeremiah D. Green of this city?
2146 A. I do.
31. Q. How long have you known him?
A. For ten years, I guess.
32. Q. While you were in business with Shavor did Ransford and Green ever call there to see Shavor to your knowledge?
A. They did.
33. Q. Quite frequently?
A. Not particularly so.
34. Q. While they were there at your place of business did you ever hear them discussing Norton's character for truth and veracity; I mean separately or collectively?
A. I have.
35. Q. Did you take any part in that discussion with them or either of them?
A. Not that I remember of.
36. Q. Name any person or persons whom you have heard speak of Norton or of his character for truth in a derogatory or defamatory manner.
A. Parties may not like to have their names used in that way.
37. Q. Do you decline to state the names of those parties?
A. No, sir.
38. Q. If you have no objection to doing so, please do so.
A. My objection is that without their consent it may not be agreeable to them.

39. Q. Do you know whether those persons or any of them were friends or enemies to Norton?

A. I don't know that any of them were enemies.

40. Q. Did you understand the last question when you made answer to it?

A. Yes, sir.

41. Q. Now, what did that question ask you to state?

A. Whether these men were friends or enemies to Mr. Norton.

42. Q. Did you give a full answer to it?

A. I did; yes.

2147 43. Q. And you understood and answered that question as fully and as fairly as any other question that has been put to you and answered by you on this examination?

A. Well, I will say no, for the reason that I don't know who Mr. Norton's friends and enemies are; I don't assume to know.

44. Q. Had Frederick G. Ransford any conversation with you about your being a witness in this case?

A. No, sir.

45. Q. Who has?

A. This gentleman present, Mr. Clarke, is the only one.

46. Q. Had you ever seen Mr. Clarke before that time?

A. No, sir.

47. Q. How did Mr. Clarke know that you knew anything about Norton?

A. I don't know.

48. Q. Who introduced Mr. Clarke to you?

A. Mr. Chauncey O. Green.

49. Q. Where was that?

A. In the office; we have an office together.

50. Q. When was that?

A. Saturday, I think.

51. Q. Who are your attorneys in your patent business in this city?

A. Esek Cowen is one of them.

52. Q. Who are the others?

A. The firm of Smith, Fursman & Cowen.

53. Q. Now, whatever you may have heard said by anybody against the character or integrity of Norton, had you any personal knowledge of the truth of any statement or statements so made?

(Objected to as immaterial.)

A. Well, on one occasion Mr. Jacob Shavor made statements to me in regard to Mr. Norton's character, stating that he had wronged him

2148 and had forged or changed papers in regard to business which he had done for him, and showed me letters of Mr. Norton's and exhibits which Mr. Norton had taken from the Patent Office at Washington to prevent other parties from getting copies of them, and Mr. Norton stated in his letter that he wanted him to destroy the letter so that it would not be found out, and the only personal knowledge which I have of the matter is from these exhibits and letters and from their statements.

54. Q. You call that personal knowledge, do you?

A. I call what I saw in your letters, I should think, personal.

55. Q. You saw me write these letters, did you?

A. No, sir; but there is no question but what you did.

56. Q. I state to you that I never wrote such a letter to Shavor, and never before heard of such a letter, and I want you to state how you know I ever wrote such a letter.

A. I know it by your handwriting.

57. Q. And that is all you know about it, is it?

A. I didn't see you write it, of course.

58. Q. Who, if anybody, told you I wrote such a letter?

A. Mr. Shavor informed me that he had received such a letter from you, and I examined it and found it to be in your handwriting.

59. Q. Now, when was that?

A. Eight or nine years ago; I should think at least eight years; I guess it was nine.

60. Q. Where were you at that time?

A. At his house—Shavor's house.

61. Q. In what business were you engaged, and with whom?

A. In the same business as I am now, and with Shavor.

62. Q. What was the date of that letter?

A. That I cannot remember.

63. Q. You cannot remember?

A. I say I cannot.

2149 64. Q. When did you last see that letter?

A. Well, I don't remember whether I have seen it since that time or not; I think not.

65. Q. And that was nine years ago?

A. Yes.

66. Q. You have a clear and distinct recollection of the contents of that letter at this time, have you?

A. I have, yes, of some parts of it.

67. Q. You can state the exact contents of that letter, can you? (Same objection.)

A. I cannot; I can't give a verbatim account of it; I can state the facts of it.

68. Q. Did you ever say anything to anybody about that letter?

A. Yes; I think I have.

69. Q. To whom and when?

A. I don't remember, it was so long ago; I was mostly interested with those exhibits.

70. Q. What exhibits?

A. They were exhibits filed in the Patent Office by Anson Atwood or Stewart and Peterson, of Philadelphia; I am not positive which filed them.

71. Q. In what case in the Patent Office were those exhibits filed?

A. I don't know.

72. Q. Were you a witness in that case in which you say those exhibits were filed in the Patent Office?

A. I was not; I don't know anything about it.

73. Q. I ask you to state in what case those exhibits were filed in the Patent Office.

A. They were filed by Anson Atwood or Stewart and Peterson in some case of which I have no knowledge.

74. Q. Have you not stated that you were most interested in those exhibits?

A. Yes.

75. Now, what were the exhibits about?

2150 A. They described the admission of air over the fire for the purpose of burning the gases.

76. Q. What file marks were on those exhibits?

A. Well, I don't remember; the names of Anson Atwood and Stew-

art and Peterson were on them; I remember nothing so far as the wording of the file-marks was concerned.

77. Q. Were then any other file marks on those exhibits beside those you have mentioned?

A. I don't remember.

78. Q. When did you last see those exhibits?

A. I can't remember.

79. Q. Where are those exhibits now?

A. Among Mr. Shavor's papers I should think; they were the last time I saw them.

80. Q. When was that?

A. I don't remember.

81. Q. Will you get them and produce them here?

(Same objection.)

A. They are not in my possession; I have no control over them.

82. Q. Will you make an effort to get them and bring them here tomorrow morning?

(Objected to as improper to ask the witness to do such a thing.)

A. Yes; I will.

83. Q. When did you ever see Norton write, and where was it?

A. I have seen you write several times in your own office.

84. Q. When?

A. In 1866 and 1867.

85. Q. You saw me write, and what was it about?

A. I had business with you and had drawn papers from you several times, and I was in your office waiting for you several times when you were writing.

2151 86. Q. Now, you state in your direct examination that you are in the manufacturing or foundry business. What do you manufacture?

A. I didn't say I was in the foundry business; my business is to manufacture stoves, furnaces and ranges.

87. Q. Have you a partner in that business?

A. No, sir.

88. Q. How much capital have you invested in that business?

A. Well, I don't know how much.

89. Q. How many men do you employ?

A. I have my manufacturing done, and don't do the work myself.

90. Q. You do not own a manufactory or a foundry, do you?

A. No, sir.

91. Q. How many clerks do you employ in your business?

A. Well, sometimes one to three; it varies.

92. Q. How much real estate do you own in this city or anywhere else?

(Objected to as immaterial.)

A. I own a house and lot, costing me $10,000, in this city.

93. Q. You own it in fee simple, do you?

A. Yes, sir.

94. Q. When did you buy that house and lot?

A. Seven years ago.

95. Q. Any mortgage on it?

A. Yes, sir.

96. Q. How many and for how much?

A. There is one mortgage on it for $4,180; there is another mortgage for $5,000, as collateral security against it.

97. Q. Has that property depreciated in value any since you purchased it?

A. I don't know.

98. Q. With what bank in this city do you transact business or have an account?

(Same objection.)

2152 A. Manufacturers' National, principally.

99. Q. Do you keep a regular account in that bank?

A. I do not now; no, sir.

100. Q. Did you and Shavor fail in business as partners?

A. Mr. Shavor and I made an assignment of our business for the purpose of settling it up.

101. Q. How much did that firm pay on the dollar in settlement?

A. It hasn't been settled; it will pay 100 cents; I hope to.

102. Q. What are the assigned assets of that firm?

A. I don't know the amount.

103. Q. What kind of property did that concern assign?

A. It assigned the manufactured goods on hand and the book accounts.

104. Q. How many manufactured goods did you have on hand, in value?

A. I don't know; there has been no inventory taken.

105. Q. Where are those goods at the present time?

A. Some of them are in my store.

106. Q. Where are the rest?

A. Some of them have been sold, and some are at the Co-Operative Foundry.

107. Q. When did you make that assignment?

A. November 30, 1876.

108. Q. Who was the assignee?

A. Charles Eddy.

109. Q. Any of your creditors ever found any fault with that assignment?

(Same objection.)

A. I never heard of any.

110. Q. How much personal property have you unencumbered?

A. I don't know.

111. Q. Any of your creditors ever sued you?

2153 A. Yes, sir.

112. Q. Any judgments obtained by them against you?

A. Yes.

113. Q. Your personal property, is it covered by a chattel mortgage?

A. No, sir.

114. Q. At the time you left the firm of Charles Eddy & Company was Jacob Shavor a member of that firm?

A. He was previous to my leaving. He left before I did.

115. Q. How much money did Charles Eddy or Charles Eddy & Company claim to have lost in their operations with you in the stove business? I now refer to the bituminous coal burning stoves that were made and sold in the west.

A. I don't know.

116. Q. Has not Mr. Eddy claimed to have lost $40,000 by you and your operations in the West and other things?

A. No, sir; not to my knowledge.

117. Q. What sum do you know him to have claimed to have lost in that direction?

A. I don't know of any.

118. Q. What is your financial standing and credit in this city at this time?

A. Well, I should judge not very strong at the present time.

119. Q. Is it not in bad repute?

A. I don't know that it is.

Adjourned until July 16, 9 a. m.

JULY 16TH.

Met pursuant to adjournment. Same counsel.

Cross-examination of witness HENDERSON resumed by complainant's counsel:

2154 120. Q. Have you since the adjournment yesterday obtained those exhibits mentioned by you on your cross-examination yesterday?

A. I applied to the administrator of Mr. Shavor last evening, and he said he had a large quantity of Mr. Shavor's papers in bundles; never examined them, but would look them over, and if they were in his papers let me have them, take them. It would require more time; we had not time to go over those papers in so short a time.

121. Q. Name the administrator.

A. Jonathan Richardson.

122. Q. You spoke yesterday about a letter in which you say those exhibits were contained; have you since the close of the examination yesterday obtained that letter?

A. I have not for the reasons I have just stated.

123. Q. During your cross-examination on yesterday you stated in substance that the letter and exhibits just referred to related to a case in which Atwood, Stewart & Peterson of Philadelphia had to do; are you positive in that statement?

A. No, I didn't state it. I stated that the exhibits I referred to was in regard to Atwood, Stewart and Peterson, one of them, and the other I don't remember about; there was two of them. They weren't on the same subject, I don't think.

124. Q. Who were or are Stewart & Peterson?

A. Stewart and Peterson is a foundry concern of Philadelphia.

125. Q. To what Atwood do you refer, and where was or is his residence?

A. I refer to Anson Atwood, who formerly lived in Troy. I don't know where he lives now.

126. Q. Who was Mr. Atwood's attorney in that case?

A. I don't know.

127. Q. Who was the attorney of Stewart & Peterson in that case?

A. That I don't know.

128. Q. Will you and do you swear that there ever was a case of
2155 the kind, or of any other kind, between those parties in regard to a gas-burning stove, or anything else, in the Patent Office, or at Philadelphia, or anywhere else?

A. The only evidence I have is Norton's letters and the exhibits.

129. Q. You swear positively that Norton in a letter of that kind mentioned the names of those persons, do you?

A. I don't swear to anything of that kind. What I want to say is that the filing on the exhibit is of those names, and Norton's reference to these exhibits was not to the names on the exhibits, but to the device itself.

130. Q. Now what was the device referred to?

A. One was in reference to taking air in over the fire for the purpose of burning the gasses as full; the other, I don't remember just what the description of it was. Neither do I remember that it was their exhibit, the exhibit of Atwood, or of Stewart & Peterson; I am inclined to think that it was not.

131. Q. Explain to the court how it is that you seem to have so clear and vivid recollections of the alleged letter and of one exhibit, and have no recollections at all about the other exhibit, as to what it contained.

A. First I will explain that Mr. Shavor submitted these letters to me with reference to Mr. Norton, threatening that he was going to prosecute him for fraud; in regard to the exhibits, the one in the case of Atwood, Mr. Shavor wanted to know whether it would not affect a patent I held; being more interested in that particular device, I took more pains to investigate it; the other, being one in which I did not take the pains to investigate it, and it did not impress itself so firmly upon my mind.

132. Q. Shavor submitted to you several letters and at the same time threatened to prosecute Norton for fraud; is that it?

A. He submitted the letters to me to read, and asked me what I thought of them.

2156 133. Q. You will please now answer my question, which the examiner will read for your information.

A. He did threaten to prosecute him for fraud.

134. Q. Now, when was that?

A. In 1869.

135. Q. Where was it?

A. At his house, in the city of Troy.

136. Q. He submitted those letters to you for your examination and opinion, did he?

A. Yes, sir.

137. Q. You examined them and gave your opinion, did you?

A. I did.

138. Q. Will you now be so condescending as to give that opinion?

A. As I remember it, in substance, I told him that if the authorities in Washington knew that he had taken papers from their files, that they no doubt would prosecute him, Norton.

139. Q. What did Shavor say to that?

A. That he would notify them of the facts, if he concluded to prosecute him.

140. Q. You have already stated that he concluded to prosecute him, for he threatened it?

A. Yes.

141. Q. Did Shavor ever prosecute that or any other matter against Norton?

A. I don't know.

142. Q. Did you ever hear anything about that matter after that time?

A. I have.

143. Q. From whom?

A. Shavor.

144. Q. When and where was it?

A. On several occasions, and as late as 1875 or '76.

145. Q. As late as 1875 or '6, Shavor was in full war paint and on the war path, still harping about this stupendous fraud, was he not?

A. He was.

146. Q. From his appearance at that time, did you apprehend
2157 any danger to Norton, or that there would be much of a shower in consequence of that gigantic fraud, of which you know nothing except what you heard from Shavor?

A. That is a very funny question, and I do not know that I comprehend it.

147. Q. What is there about this question that you do not comprehend?

A. I do not know what is meant to be conveyed by the question; a shower of what?

148. Q. We will leave out the shower, and then answer the question.

A. I would simply say that Mr. Shavor's appearance was very earnest, and I thought he meant just what he said.

149. Q. When did you last have any conversation with Shavor about Norton?

A. I don't remember when; I haven't seen Shavor much for the last two years.

150. Q. Anybody present when you had these conversations with Shavor?

A. I don't remember now.

151. Q. With who else have you ever had any conversation about Norton, or about his character for truth, other than Shavor?

A. I don't remember now all the parties with whom I had conversations.

152. Q. Name at least one person?

A. I should name Charles Eddy, A. C. Corse.

153. Q. Name others.

A. Fredrick G. Ransford.

154. Q. Who else?

A. Oh, I don't remember.

155. Q. Do you know Franklin J. Parmenter, of this city?

A. I know him by reputation; I am not acquainted with him; he is a lawyer.

156. Q. Do you know James A. Burden, of this city, of the firm of H. Burden & Sons, who are largely engaged in the iron business?

A. I know him.

2158 157. Q. Do you not think Mr. Parmenter and also Mr. Burden have as full and as fair an opportunity to know Norton's character for truth and veracity as you yourself, in this city?

(Objected to as immaterial.)

A. I have no knowledge on the subject.

158. Q. On your own knowledge, what do you know of Norton's character for truth and veracity, in this city or anywhere else?

A. Well, from my experience, I haven't formed a very elegant opinion of his character for truth and veracity.

159. Q. What experience have you had on that subject, and with whom have you had it?

A. I have had some experience with Mr. Norton himself; my first business experience with him was in 1860, when he undertook to prevent the extension of Samuel Pierson's patent for a curved plate; Mr. Norton came to Albany and took testimony for a combination of manufacturers in connection with Charles Eddy and others; he went to Washington for this interest, and stated that he defeated, before the commissioner, the extension of the patent; the next day, after the time when the limited time expired, he entered into an arrangement with Mr.

Pierce by Pierce's giving Charles Eddy & Company such papers as would exempt them from the force of the patent, and he then waived his objection to the patent, and allow' the patent to be extended; then when Marcus P. Norton returned back to Troy he wrote me a letter back to Albany stating that Pierce's patent had been extended, that it wasn't legal, and before we done anything about it to submit the matter to him; General Rathbone and myself came to Troy to see Mr. Norton in regard to it, and he pledged his reputation as a lawyer that the thing wasn't worth anything, and could be defeated; we did not retain Mr. Norton as a lawyer to defeat it; Mr. Rathbone expressed himself as very unfavorably impressed with Mr. Norton for having anything
2159 to do with it; I will say further that Mr. Norton stated to me personally that he had defeated this thing, and that it wasn't worth a rush; I asked Mr. Norton why he didn't protect the rest of his clients as well as Charles Eddy & Company; his answer was that he was doing their business, and in their interests, and didn't care for the others; and such transactions as that I think very dishonorable for any lawyer to do.

160. Q. You became considerably enraged and maddened over that matter, did you?

A. I did not, but I felt very much annoyed at being treated that way.

161. Q. You have been annoyed for eighteen or twenty years in that way, haven't you?

A. No, sir; I have not; for I have never met any other lawyer that would do that kind of business.

162. Q. Now, Mr. Henderson, how much money did you put in that enterprise of trying to defeat the extension of the Pierce patent on the curved oven plate?

A. I paid all the expenses of taking testimony in Albany.

163. Q. What testimony did you take in Albany, and what lawyer took it for you?

A. We took testimony in regard to the validity of the Pierce patent, and the testimony was taken by James B. Sanders, and at his office in Albany.

164. Q. Was Norton there?

A. If I remember right he was, on one occasion.

165. Q. What occasion was that?

A. When taking testimony.

166. Q. Did you pay Norton any money for any services he rendered

A. I did not on this occasion.

167. Q. Did Norton ever make you any bill for any expenses in that extension matter?

A. No, he did not.

168. Q. Did you ever ask him for any such bill?

A. I did not.

169. Q. Did you ever offer to pay me any money for any such matter?

2160 A. No; not after he explained to us how he deceived us.

170. Q. Did you before he explained to you how he deceived you?

A. No.

171. Q. Norton went down to you and told you how he had decived you, did he?

A. No; he told me so up in Troy.

172. Q. At what time did he tell you that up in Troy?

A. In 1866, when he thought he could do so with safety.

173. Q. That was the first you ever knew about it, was it?

A. No; Mr. Shavor told me all about it.

174. Q. When did Shavor tell you?

A. I don't remember; it was, however, previous to 1866.

175. Q. Who, if anybody, made any arrangement with you to join in the opposition to Mr. Pierce's patent?

A. Mr. Shavor, of the firm of Charles Eddy & Company, went to Albany and called on me first; explained the fact that Mr. Pierce's patent was about to expire; that all the stove manufacturers would be interested in it; requested me to go with him to all the stove manufacturers in Albany.

176. Q. Did Norton take any part in that arrangement?

A. No; he didn't.

177. Q. Did you ever communicate to Norton any arrangement that was made with Shavor?

A. No.

178. Q. For whom did Norton enter his appearance in that case, as of record?

A. I do not know.

179. Q. Did he do it for you?

A. He did not.

180. Q. Did he enter it for Rathbone & Company, of Albany?

A. Not to my knowledge.

2161 181. Q. Didn't he appear solely and entirely for Charles Eddy & Company?

A. I don't know; he ought not to have done so.

182. Q. How do you know that? You say that you never employed him, paid him a dollar, or communicated with him about that case while it was pending.

A. We made our arrangements with Charles Eddy & Co., and they employed Norton.

183. Q. The patent was extended; you were sued upon it, routed, defeated, captured bag and baggage, were you not?

A. I think this an impertinent question, and unworthy of the counsel who asked it.

184. Q. In what does the impertinence consist?

A. In the language.

185. Q. How much of that question is true in point of fact?

A. They got a judgment against me after suit.

186. Q. Did you ever have a license to manufacture under the extended term of that patent?

A. I never did, nor ever manufactured stoves under that patent before the suit or after.

187. Q. Would you have liked to have had a license under that extended term at that time?

A. No; for the reason that I did not manufacture stoves.

188. Q. Explain why you wanted the extension defeated, then, and why you blamed Norton because he did not work for you for nothing in a case in which he did not know you had anything to do?

A. Rathbone & Company were manufacturing stoves that had a patented device of mine in them; they requested me to take charge of this testimony and do what I could for them in connection with Charles Eddy & Co. and others.

189. Q. In the suit of Fuller, Warren & Co. w h you on the extended Pierce patent with curved oven plate, the court held that your stove,

made by Rathbone & Co., was a direct and positive infringement of the Pierce patent, did it not?

2162 A. I did not have anything to do with the defense; Mr. Rathbone defended it, and an arrangement was entered into between Mr. Rathbone and Mr. Pierce in which a judgment should be entered up against me in default, he arranging with Pierce as to the manufacture of the stoves.

190. Q. How many royalties on your stoves did you receive from Rathbone & Co. after the final decree in that suit?

A. They paid me a royalty of a dollar apiece on all the stoves they made after that.

191. Q. Was that the original agreed price?

A. Yes, sir.

192. Q. Did you sell any after that suit?

A. I did not.

193. Q. Did you lose any money in consequence of that suit?

A. I did

194. Q. How much money did you lose in consequence of that suit?

A. I couldn't say.

195. Q. Well, approximate it.

A. I cannot.

196. Q. Did you ever find any fault with Pierce and Rathbone for their conduct in that matter?

A. I did.

197. Q. Did you have a serious conflict with those gentlemen on that subject?

A. Well, I protested against their arrangement.

198. Q. Taking their conduct in that matter for a basis, would you believe those gentlemen under oath, or either of them?

(Objected to as immaterial.)

A. Mr. Pierce is dead; Mr. Rathbone I would.

199. Q. What is your religious belief, Mr. Henderson?

(Same objection.)

A. My denomination is the Baptist.

200. Q. Whose and what church do you belong to?

2163 A. I don't belong to any.

201. Q. You are a Baptist without faith and without any religion, are you?

A. I refuse to answer that, as it is entirely outside your province.

202. Q. When the question was put to you did you not make this reply: "What the devil is the use of asking such a question"?

A. That was not my answer.

203. Q. What did you say about the devil or in connection with him?

(Objected to.)

A. I object to making any such record.

204. Q. What did you just remark about compromising with the examining counsel?

A. I refuse to answer.

205. Q. The last question is repeated and you are respectfully invited to make a proper answer to it.

A. My answer to that is that the whole thing is a burlesque; we were talking in conversation ou side of the testimony.

206. Q. Will you now answer my question?

A. No, sir.

207. Q. I understand you to say that you are a conditional Baptist; was Mr. Shavor a Baptist also in his lifetime?

A. I believe that in the latter part of his lifetime he was a Presbyterian.

208. Q. Was he a Baptist before he was a Presbyterian?

A. I believe he was.

209. Q. Now, Mr. Henderson, won't you please state to the court your individual opinion of Norton?

A. First, my opinion is that he is a great bore, making great pretentions to piety and high living; had the reputation of never paying many bills; buying all that he could get trusted for; socially, a very clever fellow, an American version of that word.

210. Q. Now, on what occasion did you ever see Norton when he made pretentions to piety?

2164 A. When he wanted to get trusted.

211. Q. Where and when was that, and of whom?

A. I think it was kind of promiscuous.

212. Q. Did you understand the last question when you answered it?

A. Yes, I did.

213. Q. State a single occasion, when you have been present, when Norton applied for credit to any one?

(Objected to as immaterial.)

A. I have been present on several occasions when he applied for credit.

214. Q. Where and when?

A. Principally in 1866, at Charles Eddy & Co.'s?

215. Q. In 1866, at Charles Eddy & Co.'s, you were present and Norton applied for credit on a religious platform, were you?

A. I was.

216. Q. Was that credit ever refused?

A. Not to my knowledge.

217. Q. Do you know of any other time or place?

A. No; I do not.

218. Q. On what occasion have you ever been present when credit was refused to Norton by anybody?

A. Not any.

219. Q. Do you know of your own knowledge of any such occasion?

A. I do not.

220. Q. Have you any bills against Norton that are unpaid?

A. I have none.

221. Q. Did you ever have any that he didn't pay?

A. No.

222. Q. You are one of those kind of men who take to gossip as easily and as readily as a duck to water, are you not?

A. I say, no.

223. Q. What makes you think so?

A. Because I had such a good opinion of you for so long.

2165 224. Q. You are familiar with the subject of gossip, are you not?

A. I am.

Re-direct by Mr. CLARKE:

225. Q. Did you ever know of Ransford & Green's sitting together at the office of Shavor, in conspiracy against the reputation of Norton?

A. No.

Re-cross by Mr. NORTON:

226. Q. About how much time did you occupy in the office when Shavor was there, and you and Shavor was in partnership?

A. About half the time.

J. C. HENDERSON.

Subscribed and sworn to before me this 16th day of July, 1878.

IRVING BROWNE,
Special Examiner.

TUESDAY, *July* 16, 1878.

Met pursuant to adjournment at 9 o'clock a. m.

Same counsel as before.

Defendant's counsel offers in evidence a letter from Marcus P. Norton to Hon. Abram Wakeman, P. M., New York, dated Troy, N. Y., February 6, 1864, the same being under the seal of the Post-Office Department and the certificate of the Postmaster-General, and it is marked Defendant's Exhibit 180, Troy, July 16, 1878, I. B., Ex'r.

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JAMES A. BURDEN, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name, James A. Burden; residence, Troy; occupation, iron manufacturer; age, 45; firm name, H. Burden & Sons.

2. Q. How long have you been in the iron business in Troy?

A. About twenty-five years; as a partner, for about fourteen years.

3. Q. Do you know Marcus P. Norton?

A. I am not personally acquainted with him.

4. Q. Do you know him by reputation?

A. I don't know exactly what you mean by "reputation;" I don't understand the question; I ask for explanation.

5. Q. By "reputation," as used in my last question, I mean common report as to whether such a person as Marcus P. Norton exists.

A. Yes, I know of such a person by reputation.

6. Q. What have you understood his business to be?

A. I have been told that he was a lawyer.

7. Q. A lawyer of Troy?

A. So I have understood.

8. Q. For how many years have you heard of Mr. Norton as a lawyer of Troy—about?

A. About ten or fifteen years; I have no way of fixing the
2167 time; I can't recollect; if I had access to papers, I could tell pretty nearly how long I have known him to be in Troy, but I have not the papers with me.

9. Q. During the time that you have heard of him as a lawyer of Troy, state whether you have heard him spoken of frequently or otherwise.

A. I have heard him spoken of frequently.

10. Q. State, if you know, what his reputation is in this community as regards truth and veracity, whether it is good or bad.

A. I should say I believe it is not very good.

11. Q. State whether on the basis of that reputation, and from the speech of people concerning Mr. Norton, you would believe him on oath.

A. I don't think I should.

12. Q. How long has the firm of H. Burden & Sons been in existence —about?

A. It is very difficult to answer that question; the works were established about 1813; it was first a corporation, and then it became a firm.

13. Q. You do a large business in iron, do you?

A. Yes.

Cross-examination by Mr. NORTON:

14. Q. What was your father's name?

A. Henry Burden.

15. Q. Is he dead?

A. He is dead.

16. Q. Been dead how long?

A. Seven years.

17. Q. Did you ever have any conversation with him in reference to Norton?

A. Yes.

18. Q. Did you ever hear him speak of Norton in an unfriendly manner?

A. I have heard him speak with surprise of Mr. Norton's actions, from disappointment.

19. Of his disappointment?

A. His disappointment.

20. Q. In what did he appear to have been disappointed concerning Mr. Norton?

(Ojected to as immaterial.)

2168 A. In giving evidence to the other party after having employed him as counsel as he supposed, or something to that effect.

21. Q. Did your firm, or your father, ever employ Norton to transact any business for you of any kind whatever?

A. I was told that they employed a firm with which Norton was connected.

22. Q. Who told you that, and when was it?

A. My father told me that; I can't recollect the date.

23. Q. What firm did he state to you that he had employed, with which Norton was connected?

(Same objection.)

A. He stated to me that he had employed Beach & Smith, and that Norton was engaged with them and had access to his papers.

24. Q. Was Levi Smith a member of that firm?

A. I think he was.

25. Q. Have you any doubt of it?

A. No; I haven't any doubt about it.

26. Q. Levi Smith is a lawyer in this city, is he not?

A. Yes, I believe so.

27. Q. You know him personally and intimately well, do you not?

A. Yes.

A. About half the time.

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A. No; I haven't any doubt about it.

26. Q. Levi Smith is a lawyer in this city, is he not?

A. Yes, I believe so.

27. Q. You know him personally and intimately well, do you not?

A. Yes.

28. Q. Did you ever hear him speak of Norton, or of Norton's character for truth?

A. I don't remember whether I have or not.

29. Q. Is he at the present time one of your attorneys?

A. Yes.

30. Q. Is the firm to which he belongs your attorneys or counsellors?

A. Yes.

31. Q. State what business, if any, Norton ever transacted for you, your father, or your firm, and the price you paid for those services.

2169 A. I don't remember of Norton personally ever having done anything for us.

32. Q. Did you, your father, or your firm ever retain Norton in his profession to transact any business for you?

(Same objection.)

A. I have no knowledge that they did ever retain him individually.

33. Q. Was Norton ever a member of the firm of Beach & Smith, your attorneys and counsellors?

A. I don't know from my own knowledge.

34. Q. Was Norton ever in your office, or about your works for any purpose?

A. I don't remember to have ever seen him there.

35. Q. Was Norton ever employed as an attorney or of counsel against you, or your firm, or your father during his lifetime?

A. I don't remember that he was.

36. Q. Have you forgotten the suit known as the hook-head spike suit, in which your father and your firm took an active part?

A. I have not forgotten it.

37. Q. Do you think you will ever forget it?

A. No, sir.

38. Q. Have you forgotton the interference suit in the United States Patent Office of Henry Burden (your father) against N. C. Lewis, of Boston, upon improvements in machinery for the manufacture of horse and mule shoes?

A. I have not forgotten it.

39. Q. Do you think you will ever forget that suit?

A. No, sir.

40. Q. Have you forgotten the suit of Henry Burden against Corning, Winslow & Company for an alleged infringement of a patent granted to your father upon a machine for the manufacture of horse and mule shoes, argued at Winsor in 1864 by William M. Evarts, Samuel Blatchford and others, before Judge Nelson?

A. I have not forgotten that suit, but I don't remember those counsel or the date.

2170 41. Q. Was the firm of Beach & Smith engaged for your firm or for your father in the several litigations mentioned in the several last preceding questions?

A. Beach & Smith were not our patent attorneys in all cases; I can't remember now whether they were in any case but the spike suit.

42. Q. Did not Beach & Smith appear as solicitors in the suit referred to as having had its final hearing at Winsor, Vermont?

A. I can't remember; I don't recollect.

43. Q. Will you swear that they did not?

A. No, I can't.

44. Q. Did not Beach & Smith appear for your father in his interference suit with Lewis?

A. I am not quite sure; I think they did.

45. Q. They were in the hook-headed spike suit, among other counsel for your firm or your father, were they not?

A. Yes, they were.

46. Q. That firm continued to transact business for your firm until it was dissolved, did it not?

A. Yes.

47. Q. And it has been succeeded in your business by the firm of Smith, Fursman & Cowen, has it not?

A. Yes, it has.

48. Q. Did you know anything about the firm of Corning, Winslow & Company while it transacted business in this city?

A. I did.

49. Q. Was it a responsible firm, and did it do a large business in the manufacture of iron, and of iron for market purposes?

(Same objection.)

A. Yes, it did.

50. Q. When did that firm cease to transact business in Troy, and who succeeded it in that business?

A. I can't recall the date when they ceased to transact business.

Erastus Corning.

2171 51. Q. Of Albany?

A. Yes.

52. Q. Was Norton one of the attorneys or one of the counsellors of the firm of Corning, Winslow & Company?

A. I am not aware that he was, but I understood that he acted as expert for their counsel, or in some such capacity.

53. Q. From whom did you understand that?

A. I can't remember now.

54. Q. Do you know of Norton's ever conducting any suit, or taking part in any suit against you, your firm, or your father, as attorney or counsellor for the firm of Corning, Winslow & Company, with reference to any of the patents that have been mentioned during this cross-examination?

A. I don't remember that he conducted any suits; I think he was connected with the counsel for Corning, Winslow & Company, in some of these cases in some way.

55. Q. Did he not act as one of the counsel in every one of those cases?

A. I am not aware that he did.

56. Q. Do you know whether he did or not?

A. No; I have no means of knowing now, positively.

57. Q. Who defended Lewis in the interference case, and furnished the means for that defence?

A. I don't know of my own knowledge.

58. Q. Do you in any other way know?

(Objected to as immaterial, and as asking for hearsay.)

A. No; I have no means of knowing.

59. Q. Did you ever hear it from anybody?

(Same objection.)

A. I have never heard anybody state that they knew it positively.

60. Q. Did you ever hear anybody speak of Norton in terms derogatory to his character for truth?

2172 A. Yes, I have heard Norton's reputation called in question.

61. Q. By whom?

A. I can't specify persons; I can only speak in a general way of his reputation.

62. Q. You will please now answer my question, and give the name of at least one person.

A. I think I have heard members of the firm of Beach & Smith.

63. Q. Have you any doubt about that?

A. I have no doubt, to the best of my recollection.

64. Q. My question is, have you any doubt about it, not what your recollections are?

A. I think I have no doubt about it.

65. Q. Do you know whether you have any doubt about it? for when you use the words "I think," you imply a doubt, and I desire your testimony on this point to be plain and positive.

A. I feel as sure about it as I can about anything from memory.

66. Q. Is your memory good?

A. Fair—pretty good.

67. Q. Now, name some other person beside some person that was in the firm of Beach & Smith?

A. I think I have heard Elisha Foote, late United States Commissioner of Patents, speak about Mr. Norton in the same manner.

68. Q. When was that?

A. I can't recollect when.

69. Q. Give your present best recollections of it?

A. About the time he was United States Commissioner of Patents.

70. Q. Now, when was that?

A. I think that it was during President Grant's last term.

71. Q. You are just as sure about that as you are about anything that you have stated on this examination, are you not?

A. Yes.

2173 (The witness here wishes to make an explanation of his former answers as part of the last answers, to which the complainant's counsel objects, because the witness has already fully answered the last question.) The witness further says: All my answers since number 60 have been based on the answers to that question, "Yes, I have heard Norton's reputation called in question." I do not wish to confine my answers to Norton's reputation for truth alone; I supposed I was speaking of his general reputation.

72. Q. Without any reference to Norton's "general reputation," have you ever heard anybody speak in terms defamatory or derogatory to his character for truth and veracity?

A. No, not for truth and veracity alone.

73. Q. Now, without any reference to anything but truth and veracity, I put the last question, and wish you to confine your answer solely and entirely to "truth and veracity."

A. I don't remember that I have ever heard any one speak of his truth and veracity.

Redirect by Mr. CLARKE:

74. Q. Did you ever hear of Norton's credibility being questioned, at any of the times when you say you have heard his reputation in general questioned?

(Objected to, as the witness has already fully answered the subject in the last answer given by him.)

A. I never heard anybody question that at all. I confine myself to the statements he has made, and not as to what he has done. Not being personally acquainted with Mr. Norton, I am not able to speak of his truth and veracity.

75. Q. In question 10 you were asked substantially: "What is Mr.

Norton's reputation in this community for truth and veracity?" you answer: "I should say I believe it is not very good"; explain to the court just how you wish that understood?

2174 (Complainant's counsel objects to the question for the following reasons: First. The defendant's counsel has no right to cross-examine his own witness. Second. The witness has already be*ing* cross-examined on the matter inquired about. Third. The witness, by his cross-examination, has already fully explained to the court precisely how he desires the court to understand it.)

A. In answer to that, I desire to say that I was speaking of his general reputation, and was not confining myself to his reputation for truth and veracity alone.

76. Q. Do you mean to be understood that the unfavorable statements that you have heard concerning Mr. Norton include his character as regards truth and veracity?

A. I don't wish to divide my last answer; I wish to speak of his general reputation.

JAS. A. BURDEN.

Subscribed and sworn to before me, this 16th day of July, 1878.

IRVING BROWNE,
Special Examiner.

JOHN H. COLBY, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. John H. Colby; Troy, N. Y.; lawyer; 42.

2. Q. How long have you been a lawyer in Troy?

A. Since I was 21 years old.

3. Q. Do you know Marcus P. Norton?

A. I do.

4. Q. How long have you known him?

2175 A. From eighteen to twenty years.

5. Q. State, if you know, what his reputation is in this community in respect to truth and veracity, whether it is good or bad?

A. So far as my knowledge extends it is both good and bad.

6. Q. Please explain how you wish that understood?

A. My explanation is, that I have heard his reputation for truth and veracity canvassed; I have heard some persons assert it to be good, and others assert it to be bad.

7. Q. What, on the whole, is your judgment of what his reputation is in that respect?

A. Well, the question is so much in doubt that I can't say that I have any judgment on that subject; I should not like to discriminate; I have heard it asserted to be bad, and equally strongly asserted to be good, by persons entitled to equal credit.

8. Q. From the speech of people concerning Mr. Norton, state whether you would believe him on oath?

A. Using the speech of people, forming an opinion of what I have heard other people say on the subject, both for and against his veracity, I have no positive opinion on the subject.

9. Q. Suppose that Mr. Norton's testimony were in conflict with that of another man who stands perfectly fair in the community, and judging from the speech of people concerning Mr. Norton, state which of the two witnesses you would believe?

(Objected to as assuming a case that does not and cannot exist, considering the testimony already given by the witness. It is also assuming, in an unfair manner, that Norton is not to be believed on oath, while the witness states that he has no opinion on the subject.)

A. I do not see how I can answer that question but as I have already stated it; from the speech of people as being so conflicting I cannot form any definite opinion.

2176 10. Q. Have you an opinion as to whether you would believe a witness who stands perfectly fair in the community, or a witness in regard to whom the speech of people is conflicting in regard to truth and veracity?

A. That depends upon what they testified to.

11. Q. You have been prosecuting officer of this county, have you?

A. I have been district attorney.

Cross-examination by Mr. NORTON:

12. Q. Are you willing to give the names of one or more persons whom you have heard speak of Norton in terms derogatory to his character for truth?

A. The only person whose name I can now recall to mind is Judge Olin, of Washington, and the circumstance under which I heard him speak of Mr. Norton's reputation for truth and veracity was a conversation which I had with Judge Olin upon one occasion in regard to Mr. Olin's having been a witness on that subject at Washington City; and cannot now remember any other individuals, although I have heard it spoken of by others whose names I do not now remember; I think, but am not positive, that William E. Hagen was one of those parties; these things all happened some years ago.

13. Q. Norton was a witness in the trial of persons charged with complicity in the assassination of President Lincoln, was he not?

A. I do not know.

14. Q. Was it not during that trial that Judge Olin was examined on the matter referred to in your last answer but one?

A. I do not know; if I ever knew I have now forgotten.

15. Q. Do you remember that some time in 1863, in some case in which William E. Hagen was a party, he assailed and undertook to impeach the character of Norton for truth in this city?

A. I remember generally that an attempt was made to impeach
2177 Norton's veracity at the city of Troy, at or about that time, but have no knowledge as to who the parties were in the suit, or by whom it was undertaken, but remember that Hagen had some connection with it.

16. Q. Have you ever heard an opinion expressed in this community by any one as to the injustice or wrongfulness of that undertaking?

(Objected to as immaterial.)

A. No; I do not know that I have, especially as regards that particular undertaking.

17. Q. Have you with reference to any other?

(Same objection.)

A. No; not as to any particular attempt to impeach Norton; only generally.

18. Q. And what was that?

(Same objection.)

A. No; I don't remember the particulars of anything that I heard, only the general statement.

19. Q And what was that general statement, if you remember?

(Same objection.)

A. I have heard the question of his reputation for trust and veracity spoken of in a general manner without entering into details; I have heard it in a general manner most positively asserted to be good, and in the same general manner most positively asserted to be bad; these assertions on each side have been made by people of equal credit and standing, and from this speech of people used as a basis to form an opinion from, I have never formed an opinion on the subject.

20. Q. Had you reason to believe at the time that those who spoke against Norton were unfriendly toward him?

A. It was so long ago that I do not now distinctly remember who those persons were that spoke against him other than Olin and Hagen
2178 above referred to; Hagen was or had been, I understood, in litigation with him, and I never had any reason to believe that Olin was unfriendly toward him, from any*any*thing that I know.

21. Q. Have you ever heard it said in Troy that the impeachment of Norton, undertaken some years ago, was a persecution of him, or in substance that?

(Same objection.)

A. Yes; I have heard so; but I am unable to state definitely whether it was an impeachment in this Hagen suit, or in some other matter.

22. Q. Have you ever known of any other attempted impeachment of Norton other than that of Hagen?

A. The only attempts at impeachment that I have heard of was a Washington matter, in which Judge Olin was sworn as a witness, and an attempt in the city of Troy, but whether Hagen was a party to that suit or not I do not know.

JOHN H. COLBY.

Subscribed and sworn to before me, this 16th day of July, 1878.

IRVING BROWNE,
Special Examiner.

Adjourned to July 17th, at 9 o'clock a. m.

WEDNESDAY, *July 17th*, 1878.

Present, pursuant to adjournment, same counsel as before.

RICHARD M. HERMANCE, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?
2179 A. My name is Richard M. Hermance; my age is 61; residence is Half Moon, Saratoga County; my occupation is tending my garden in the summer, and selling my patents in the winter.

2. Q. How far from Troy is Half Moon?

A. Seven miles, so called.

3. Q. Have you been in business in Troy?

A. No; in no particular business; I lived here four years, being rather out of health; meanwhile getting up patents.

4. Q. What four years were those?

A. I have resided at Half Moon for eleven years past; lived here the four years previous to that.

5. Q. Are you pretty generally acquainted with the people of Troy?

A. I claim that I am pretty well acquainted.

6. Q. About how many patents have you taken out?

A. Well, what has been issued through the office, I think, is seven.

7. Q. Has your business been mainly the making of inventions?

A. No; I never made a particular study of inventions; I want to be understood as saying that in some of the patents that I have made it was merely applying some rolling thought or observation which I had to some invention; I have got up in the night and made memorandums to show my rolling thought, and then at some future time models and drawings.

8. Q. Do you know Marcus P. Norton?

A. I do know him.

9. Q. How long have you known him?

A. Over fifteen years.

10. Q. State, if you know, what his reputation is in this community as regards truth and veracity, whether it is good or bad?

A. I heard the man spoken of in almost the worst of terms; not here but elsewhere.

11. Q. Is his reputation here in Troy good or bad for truth and veracity?

2180 A. I should consider it bad, sir, from what I have heard.

12. Q. On the basis of that reputation, state whether you would believe him on oath.

A. On the basis of his reputation here, I would not believe him.

Cross examination by Mr. NORTON:

13. Q. When did you last come from Half Moon here?

A. This morning.

14. Q. Did you come on the railroad or by the canal?

A. I came on foot three miles and rode down from Waterford on the cars, not being in time for the stage, and your hour of meeting being so early.

15. Q. When were you first applied to to be a witness in this case?

A. Last evening, about eight o'clock.

16. Q. Who saw you about it, and what was said to you by him or her?

A. I was met by a gentleman and did not know his name; he saw I was hard of hearing, so we went into the store, as the wind was blowing under the poplar trees; he asked me if I knew Mr. Norton.

17. Q. Did he tell you who sent him there?

A. He told me that the party—I had no specs, so he read me the subpœna, and gave me a copy and said "This one is just like it"; he said it was an important patent case, and then we went inside—something about a stamp.

18. Q. Did you have any conversation with the person who served the subpœna previous to its service "outside"?

A. Well, he spoke and said that he had a subpœna to give me; well, we had a few words of conversation before we went in.

19. Q. Are you so deaf that on that occasion you put one or both hands up to your ear or ears to hear that individual?

2181 A. Well, I think I put up one hand; I generally do.

20. Q. Have you any doubt about that?

A. No; I don't think I have any.

21. Q. What did that stranger say to you before you "went in"?

A. He asked me if I was acquainted with Marcus P. Norton.

22. Q. What else was said besides that?

A. I told him that I was.

23. Q. Was that all that was said?

A. No, sir.

24. Q. State all that you said before you "went in."

A. He asked me what I knew of Marcus P. Norton and his reputation; well, I told him so far as myself, that he did some business for me, or attempted to do it, and didn't do it.

25. Q. Is that all that was said by you at that time?

A. I expressed myself when he asked me as to his reputation; I told him I considered it bad; and on that he said he had a subpœna for me; he had spoken, I think, of a subpœna.

26. Q. Did he write a subpœna in your presence, or a copy of one?

A. No, sir; he had it already.

27. Q. Will you let me see your copy of subpœna?

A. I will if the court orders me to.

28. Q. Won't you without an order from the court?

A. Well, by open word; by counsel or by somebody outside taking the evidence.

(Defendant's counsel consents.)

29. Q. After you "went in," what did you and this stranger do?

A. Well, he then took out his subpœna and gave it to me, and paid me my fee, and asked me what the distance was, and asked me
2182 about the conveyance; he asked me if I kept a horse; I told him no, that a stage came along about 9 o'clock.

30. Q. What remarks did you just make to the examining counsel while you were answering?

A. I say I made some rolling remark; I said you needn't put it down.

31. Q. What else did this stranger say to you beside asking you if you kept a horse, after you "went in"?

A. Well, I told him that I did not; that I could catch a chance, or walk down to Waterford and then take the cars there.

32. Q. Is that all he said to you?

A. That is about all he said to me—that he would like to have me get here at nine o'clock.

33. Q. Well, what did you promise him on that subject?

A. I promised to come if I wasn't sick; I had a colic turn two or three days ago.

34. Q. How long did that stranger remain with thee?

A. He disappeared very quickly after he paid me the money; probably it was fifteen minutes.

35. Q. You have stated everything that took place between you and this stranger, have you not?

A. Well, about in substance; there might have been a few more words expressed.

36. Q. Did he make any written memorandums while he was there?

A. I didn't see him write any.

37. Q. Did he tell you what was going on in Troy in reference to this impeachment business?

A. He told me when it was to be tried, here over Moore & Nim's store, and that it was an important patent case pertaining to a stamp.

38. Q. You concluded that you would answer his purposes for a witness, didn't you?

A. I concluded that when I was asked the questions about Mr. Marcus P. Norton's reputation I should answer it was bad.

39. Q. You are and have long been one of Norton's very particular friends, have you not?

2183 A. Well, until I became acquainted with his acts and a more general knowledge of his reputation.

40. Q. When did you find that out?

A. I found it out in transacting business, in part—transacting business for me.

41. Q. When, is the question.

A. Well, some nine or ten years ago—about the time of the reissue of the Spaulding patent, and about the time Norton made application for me for the patent for a reservoir which Joseph B. Wilkinson now owns; the exact time doesn't just occur to my mind.

42. Q. Now state about the reservoir application of which you speak, and all you know of your own knowledge about it.

A. I took a model of the reservoir patent to Mr. Norton, and he viewed it, and he said there were a number of patentable features about it; I made application to him to take out the patent for it, Alvah Travor, a counsellor here, furnishing the means for an interest in the patent; this application, when applied to Mr. Norton, he was to take it out at once; that he was going to Washington in a few days, and would take the case for me. He left my case here and he went to Washington, and when I came back he said Bussey & McLeod had a model there just like it. I paid him this twenty dollars before he went. He took my case to the Patent Office afterward, and then dropped the case, put the notice in the model, and then, I think, made an amendment in the case, and then cancelled the amendment, put a notice in the model—there was a notice found in the model; I don't know whether he put it in or not; then the Commissioner notified me that Norton had withdrawn from the case; he withdrew and left me without a counsel.

43. Q. Is that all?

A. There is a little more in regard to his and my business together which will bring in the issue of another patent, and also this one.

44. Q. Were Bussey, McLeod & Company clients of Norton at that time?

2184 A. They were very shortly after, about or within this time. I was informed that McLeod went to Washington the next night after I learned that my patent was rejected, for I showed them the notice of rejection. I showed McLeod. I don't know as I showed Bussey. I said, "I suppose this is betwixt you and me on this reservoir." Then I heard that Norton was their counsel.

45. Q. Who told you all that?

A. I think Mr. McLeod told me that Norton was doing business for them.

46. Q. Previous to the time of your application for the patent, had you not given a license to Bussey, McLeod & Company to use those improvements; and after the application was made for the patent, did you not endeavor to cancel that license in a most disreputable and dishonorable manner?

(Objected to as immaterial.)

A. No, sir.

47. Q. Do you say that you didn't give them a license?

A. I didn't say that I never gave them a paper under which they claimed a license; but they never paid me a cent for it. They agreed to pay me $300, but didn't pay it.

48. Q. Why didn't they pay it?

A. I could not tell you. They were very anxious to get it.

49. Q. You afterwards assigned that reservoir improvement to other parties, didn't you not?

A. I sold Mr. Wilkinson this patent, he agreeing to take the case as it stood in the office rejected, for one-half of the patent, Mr. Traver releasing his interest by refunding his money, which I paid out of the first money I received, which was $20 for fees, into the hands of Marcus P. Norton, he, Wilkinson, agreeing to take all the interest in the patent, assigning me back one half, and agreed to pay all expenses of issuing patent and reissues.

2185 50. Q. At the same time you had made the exclusive license to Bussey, McLeod & Company for $300, to be paid on the issuing of your patent, had you not also made and delivered substantially the same license to Potter, Paris & Company?

(Objected to as assuming facts.)

A. I did not make any exclusive license to either party—not of the whole.

51. Q. Did you make one to Potter, Paris & Company similar to the one made to Bussey, McLeod & Company?

A. They didn't read alike as they were written, and they haven't given me a dollar—either one of them. Mr. Norton reissued the Spaulding patent through that firm of Cowen & Norton; and what I saw written on one of the loose sheets of what had been put together of my patent before folding up and being coupled together, I saw what was set forth in my application when read, and I looked at it myself; and about this time this Spaulding patent was being reissued, and I saw reissued in the Spaulding patent the same words and language as those set forth in my patent, which I had seen in their office; and Marcus P. Norton was going to kick me out of his office for ever speaking of it.

52. Q. Did you ever know a firm in this city by the name of Cowen & Norton?

A. Norton & Cowen.

53. Q. Why didn't Norton kick you out of his office when he proposed to do so; he could have done so easily enough, could he not?

A. I told him I came there on business, and I wanted to know what had been done.

54. Q. You found out, didn't you?

A. No, sir; I didn't—nothing more than insults.

55. Q. You got very mad on that occasion, didn't you?

A. I told him I wasn't afraid of his putting me out; I could throw him out of that window in two minutes.

2186 56. Q. Did you throw Norton out of that window in two minutes at that or any other time?

A. I don't propose to ever clinch with a man unless a man clinches with me.

57. Q. How much was your avoirdupois weight at that time.

A. It is a scale and a half deep, and my weight is a hundred and seventy eight pounds, and it plays quick when I am interfered with.

58. Q. Norton ordered you out of his office on that occasion, didn't he?

A. He told me, in his polite way, that he "would kick my damned arse out of the office."

59. Q. How long after that did you leave that office?

A. Very shortly; I wasn't in any particular driving hurry.

60. Q. Were you ever in that office a ter that?

A. I don't particularly recollect that I was ever there while Mr. Norton was there. This was after Mr. Norton came back from Washington the first or second time.

61. Q. The last question is here repeated. You are requested to give

an answer either yes or no, or to give your present best recollections about it.

A. I think I was there and spoke with his draughtsman, and also with Mr. Cowen, but I don't recollect having seen Mr. Norton there.

62. Q. Since Norton threatened to kick you down stairs, you have never had anything but kind feelings toward him, and your conduct toward him and about him has been entirely peaceful and as gentle as that of a lamb, has it not?

A. Well, there are lambs that buck, but at the same time I thought I was imposed upon.

63. Q. Have you ever, since that time, changed your mind on that subject?

A. No, sir; I thought when I had counsel he should use me gentlemanly.

64. Q. How much money did you ever pay into Norton's office, or into the office of Norton & Cowen, for professional services performed for you?

2187 A. I paid Norton this $20. I asked him how much money he wanted. He said $20 was all he wanted then. I told him he could have his money any time. I took Travor's check on some bank here, and handed it to Mr. Norton personally. I think it was a check.

65. Q. What was that $20 for?

A. It was what he asked for his counsel or application. I don't know what he done with it. I don't know whether he applied it then or not. I never got any receipt to show where the $20 went. The supposition is that he took the fee of $15; it was $15 in those days.

66. Q. How much money was paid into the Patent Office as fees on your application, about which you speak?

A. Well, I say I do not know; the supposition is that the fee of $15 was paid.

67. Q. Do you owe Norton anything for professional services rendered by him, or Norton & Cowen?

A. I took this case to him, as Mr. Travor was to pay the expenses; he never called on me as claiming any, as I know of.

68. Q. Did he ever call on Travor for any pay for professional services?

A. Never that I heard of. I saw him into Travor's office once since that time.

69. Q. Since when?

A. Well, the time that he left me as counsel in Washington. I saw him about six or nine months after. I dropped in and saw you then.

70. Q. Did you say anything to Norton on that occasion?

A. I talked a few words with him.

71. Q. You received a written notice from the Commissioner of Patents that Norton, or Norton & Cowen, had abandoned your case, and declined further to act for you, did you not?

A. They had appended an amendment to the patent, and then
2188 cancelled the amendment, and then dropped the case, and had withdrawn from the case, leaving me without counsel.

72. Q. At the same time the Commissioner notified you to employ other counsel, didn't he?

A. No, sir; he did not.

73. Q. Did you employ any other counsel in that case?

A. I did not.

74. Q. Did anybody for you ever employ any other counsel in that case?

A. Not direct for me, without an interest for themselves.

75. Q. How large a farm do you own at Half Moon?

A. Well, sir; I am not the real owner of any; I am on a place owned by my son.

76. Q. Do you own any real estate of any kind?

A. No, sir; I have a life estate in that farm for myself, as a home.

77. Q. How large a farm is that and what is it worth?

A. It is merely a village lot, with a fair sized garden, and I hire some beside it which makes me a good sized garden.

78. Q. Is there half an acre in it?

A. Yes, sir; and more, too, with what I have, but not in what my son owns.

79. Q. Have you any government, railway, state, municipal, or other bonds of money value?

A. No, sir.

80. Q. To come to the exact point, how much money are you worth, or how much property have you of all descriptions in your own name or right?

A. I have none.

81. Q. In what society, socially or otherwise, have you ever had a part in the city of Troy?

A. There is one of my associates in the other room, Irving Browne; Martin I. Townsend, and I said the firm of Townsend & Browne, I respect them; Thomas Goldsmith seems to be a friend of mine; I
2189 call in there often; J. M. Warren & Co., I have dealt with them for thousands of dollars; Captain Virgil always appeared to be a great friend of mine; the Allendorphs.

82. Q. What have been your relations with those persons you have named in your last answer socially.

A. Well, I have had small dealings with them; they always seemed to take an interest in what I had; I have sold 2,000 stove-pipe dampers in this city.

83. Q. Has it not generally been understood among business men in this city, and especially among the stove men, that you are a lunatic and ought, years ago, to have been in the lunatic asylum?

(Objected to as improper.)

A. He speaks of the stove men—that I am a lunatic; they have asked me, "Hermance, how is it that you are so far-seeing in the invention of stoves, and you brought up a farmer?"

84. Q. What reply did you make?

A. I replied that they were short sighted, some of them, and didn't see the points.

85. Q. You consider yourself a great man, do you not, on the subject of inventions?

A. Not very great, and full grown.

86. Q. Full grown in what?

A. Well, I meant stature when I spoke, that I might converse with men.

87. Q. What do you mean by "stature" in your last answer?

A. My height, depth, and growth.

88. Q. What has become of your stove patent inventions?

A. Well, my first patent of 1858, called the Battle Ground stove and side diving flue, on the side which no other had—those patterns were brought here to Troy, and burned at O'Brien's shop; about $1,600 loss; I had no insurance upon it; the other inventions are owned by Mr. Wilkinson and Lawyer Travor; Mr. Wilkinson owns ¾, Mr. Lawyer Travor

$\frac{1}{8}$, and Mr. Marsh $\frac{1}{8}$, of the one original patent which Mr. Nor-
2190 ton had when he made application; three patents were afterwards made and obtained.

80. Q. Have your patents, any of them, been in the courts; and if so, have they ever been declared good and valid?

A. I have heard that they have; I haven't been present.

90. Q. In what suit was it?

A. In this Wilkinson suit.

91. Q. Who has Wilkinson ever had a suit against on your patent?

A. Well, it is hearsay—with Bussey & McLeod.

92. Q. How many times since Norton threatened to "kick your damned ass out of the office" have you spoken of him to anybody in Troy in terms defamatory, derogatory and injurious to his character for truth?

(Objected to as immaterial.)

A. Well, I have heard Mr. Norton's name brought in many times; I don't now remember; I think Travor has spoken of him, that he was not to be trusted.

93. Q. Now, please answer my last question, if you understand it; if you don't understand it, say so?

A. I cannot now say.

94. Q. Have you any photographs of yourself?

A. I have one.

95. Q. When was that taken?

A. When I was a farmer in the town of Malta; I had one on that first invention of mine; my stove was taken and I was taken with it.

96. Q. Is that the only one you ever had taken?

A. I think those are the only times I have had photographs taken; I had a family group once.

97. Q. Where are those photographs now?

A. One is in the possession of my sister—the one I had taken in front of the hotel.

98. Q. Where is the other one?

A. I think it is broken or smashed up.

2191 99. Q. Will you, to-day, go and be photographed, and furnish a copy of it for the edification, instruction and benefit of the court, at the time this deposition shall be considered by it?

(Objected to, unless complainant's counsel will guarantee the expense by offering a certified check.)

A. I do not consider my beauty as great enough that I would like to have it taken; I further consider it foolish to have money wasted by running to get my photograph taken; else I might have had it many times taken, as my children have wanted it.

100. Q. I am very desirous that the court should see you by a photograph just as you are and just as you appear on this occasion, excluding, of course, your restive manner, but including that part so elegantly designated by you in answer to a question; so that the court may be enabled to understand your business here, and your examination-in-chief; for that purpose, do you decline to furnish such photograph?

(Objected to for its unwarranted innuendoes, and as being scandalous and frivolous.)

A. If I am compelled to answer that, I will answer it; otherwise, I consider it out of place.

101. Q. Do you refuse to comply with the request of the last question?

A. Not if the court requests me to answer it.

102. Q. Do you decline to answer the question number 100?

A. I don't object to the photograph.

103. Q. When will you furnish the photograph?

A. They might be all employed, and it might be difficult for me to get one without an application in writing, and somebody to go and recommend me.

R. M. HERMANCE.

Subscribed and sworn to before me this 17th day of July, 1878.

IRVING BROWNE,
Special Examiner.

2191*a* Present, pursuant to adjournment, at 2.30 p. m.

HENRY G. GILES, a witness called on the part of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. CLARKE:

1. Q. What is your name, age, residence, and occupation?

A. My name is Henry G. Giles; residence, Troy; age, 63; occupation, stove manufacturer.

2. Q. How long have you been in business in Troy?

A. Since the spring of 1863 or '4, I think; it was in May, '63, I think.

3. Q. Do you know Marcus P. Norton?

A. Yes, sir.

4. Q. How long have you known him?

A. About eighteen years, I should think.

5. Q. State, if you know, what his reputation is in this community in respect to truth and veracity, whether it is good or bad.

A. Bad, sorry to say.

6. Q. On the basis of that reputation, state whether you would believe him on oath?

A. Well, I could not believe him in a case where he was interested.

Cross examination by Mr. NORTON:

7. Q. Do you know James Morrison, jr., of this city?

A. Yes, sir.

8. Q. Did you ever have any trouble with him in any way?

A. Oh, I had some difficulty with him.

9. Q. Did you sue him in the State courts?

A. Yes; I sued him.

10. Q. How many suits did you have against him at one time?

A. Two.

11. Q. What were those suits about?

2191*b* A. I think one was for damage on non-fulfilment of contract and one for royalties on a patent.

12. Q. Who was Mr. Morrison's attorney or attorneys in that case?

A. I don't remember; William A. Beach—I do remember.

13. Q. Who was William A. Beach?

A. A man that used to be a prominent lawyer here.

14. Q. What was the firm name?

A. I couldn't tell you.

15. Q. Did you ever hear of the firm of Beach & Smith?

A. I might have heard, but I don't remember.

16. Q. Who were your attorneys in those suits?

A. Millard & King were my principal attorneys.

17. Q. In what year did you commence those suits?

A I couldn't tell you.

18. Q. Give your best recollections about it.

A. 1863 or 1864, somewhere.

19. Q. When were those suits brought to trial?

A. That I don't remember.

20. Q. Give your best recollections as to time.

A. I couldn't give the years.

21. Q. Mr. Morrison, after having obtained a license from you to manufacture under your base-burner patent, became satisfed that your patent was invalid and void, refused to carry out the contract or further to pay you royalties under the license, made that defense, did he not?

A. I couldn't say exactly, for I have no recollection of ever having seen his defense.

22. Q. Who were examined in that case as witnesses by Mr. Beach?

A. Upon what is in my mind, I answer that Littlefield was one, as I remember.

23. Q. Was not Marcus P. Norton examined as a witness against you in that case?

A. Not to my recollection.

2192 24. Q. Will you swear that he was not?

A. I will not.

25. Q. Has Norton ever been engaged in any patent business against you?

A. No, sir; not that I recollect or know of now.

26. Q. Will you swear to that?

A. I do.

27. Q. And you do swear that Norton was never engaged in any patent business against you?

A. Not that I think of.

28. My question is not as to what you think, but do you now and here swear, on your oath, that Norton was never engaged in any patent business or any other business in his profession against you?

A. Not to my recollection.

30. Q. Did I ask you anything about your recollections about anything in my last question?

A. I don't think that you did; please read the last question.

31. Q. Why do you want the last question read?

A. Because I want to see if the word "recollect" was there.

32. Q. Your understanding of that question is as intelligent as any question put to you on the direct examination, is it?

A. In regard to recollection, do you mean?

33. Q. Did you understand the last question when you answered it?

A. I can't say; just begin back and I can tell.

34. Q. On your direct examination this question was put you: "Do you know Marcus P. Norton?" Was that question ever put to you before to-day?

A. Yes, sir.

35. Q. When, and by whom, and on what occasion?

A. I couldn't say when, but it was put by Mr. Smith; I think it was in the case of Hagan against Groom and others.

36. Q. Who is Smith that you mentioned in your last answer?

A. A lawyer in this city.

37. Q. Levi Smith, of the firm of Beach & Smith?

2193 A. He is of the firm of Smith, Fursman & Cowen.

38. Q. On your direct examination this question was put to you: "State, if you know, what his reputation is in this community in respect to truth and veracity, whether it is good or bad." Was that question ever put to you before to day, or one in substance the same?

A. Yes, sir; I think it was.

39. Q. When, by whom, and on what occason was it?

A. By the same party and on the same occasion as the former answer.

40. Q. What answer did you then make to it?

A. I don't remember, but I presume the same as my answer to that question now.

41. Q. How many years ago was that?

A. I couldn't tell.

42. Q. Where was the case pending?

A. Well, I think before the Commissioner of Patents, in Washington.

43. Q. You are one of the few standing witnesses always ready to testify against Norton for truth and veracity, are you not?

A. I think I am sitting; I don't stand for anybody.

44. Q. Did you refuse to testify against Norton when called upon for this business?

A. Yes, sir.

45. Q. When?

A. Well, it was yesterday or day before.

46. Q. Whom did you refuse?

A. Mr. Robinson.

47. Q. How many times had Mr. Robinson been to see you about this matter of impeachment?

A. But once, before he summoned me.

48. Q. And you refused him?

A. Well, yes; I told him I did not want to come; I would come by authority, but not by request.

49. Q. Having failed in the enterprise in which you were engaged some years ago, you hesitated some about undertaking it again, didn't you?

(Objected to as assuming a failure.)

2191 A. I want to know what enterprise.

50. Q. Your enterprise of lending yourself as an impeaching witness on that occasion.

A. I was not engaged in any such enterprise; never was.

51. Q. You swear to that, do you?

A. Yes, sir.

52. Q. Were you examined as a witness in that case?

A. I was, by authority; I was subpœnaed; I did it then, as I do now, by compulsion.

53. Q. Have you ever spoken to anybody about Norton, and in terms defamatory or derogatory to his character for truth?

A. I don't know that I have. I have heard persons speak of him and of his character for truth, and of some of his transactions, but I have no recollection of defaming him, as the question implies.

54. Q. Who have you ever heard speak of Norton in terms defamatory or derogatory to his character for truth?

A. I think of James E. Freiot as one, but the names of others I don't recollect, although I have heard from others; that was a good many years ago, and I don't recollect just what he (Freiot) said.

55. Q. Do you remember what the others said?

A. I don't recollect their exact language, sir.

56. Q. How long ago was that that you heard said, whatever it may have been?

A. I can't tell that.

57. Q. Was it about the time of the Hagan and Groom, Shavor and Potter case, the Patent Office case of which you speak?

A. It might be, and I think since.

58. Q. Now give the name or names of every person whom you ever heard say anything against Norton in terms derogatory to his character for truth.

A. My impressions are not all from what I have heard men say, but I have read reports from the Patent Office, and seen articles in print;
2195 and while I have heard many speak, I possibly cannot now name one; not expecting to be called on such an occasion as this kind, I never took the pains to charge my mind with their names.

59. Q. You cannot give the name of a single person?

A. None further than I have at this time.

60. Q. Where did you get the report you speak of as printed by the Patent Office?

A. Well, I forget whether it was by mail, or by the hand of some party.

61. Q. If by mail, who did it come from?

A. I don't remember.

62. Q. Was it anonymously communicated to you?

A. I don't remember.

63. Q. Your present best recollections about it?

A. I don't remember; it rather seems to me that some person handed it to me.

64. Q. What person?

A. Couldn't tell you.

65. Q. Somebody in Troy, was it?

A. I could not tell you.

66. Q. Let us have your present best recollections of it.

A. It seems as though somebody handed it to me, but I cannot tell any further.

67. Q. Where were you when it was handed to you?

A. I do not remember.

68. Q. Where you on earth or up in the moon?

A. I did not take any observations.

69. Q. You cannot tell where you were—whether on earth or elsewhere?

A. As I said before, I did not take any observations.

70. Q. Were you in the city of Troy?

A. I could not tell you.

71. Q. Give your best recollections of it.

A. I cannot tell; I positively cannot tell whether it was in Washington or Troy, or somewhere else.

72. Q. Or anywhere?

2196 A. Yes, I was somewhere.

73. Q. Where?

A. Somewhere.

74. Q. How do you know you were "somewhere"?

A. Because I received a Commissioner's report.

75. Q. Now, where was this, Mr. Giles?

A. Where, I couldn't tell.

76 Q. What did you do with that printed report?

A. I read it.

77. Q. After reading it, what did you next do with it?

A. I laid it away.

78. Q. Did you show it to anybody?

A. I don't remember.

79. Q. Will you swear that you did not show it to anybody?

A. No, sir.

80. Q. Where is that printed report?
A. I can't tell exactly.
81. Q. Why can't you tell?
A. Because I don't know.
82. Q. When did you last see it?
A. I don't remember.
83. Q. Did you ever speak to anybody about it?
A. I do not remember of any one.
84. Q. Had you any knowledge of your own that the statements contained in that defamatory printed report were true in point of fact?
A. No, sir.
85. Q. Did you believe anything contained in it?
A. Yes, sir.
86. Q. On what basis did you found that belief?
A. The statement of the case.
87. Q. You are quite apt to believe things of the truth of which you know nothing, are you?
A. When they come from good authority.
88. Q. From what good authority did that defamatory, derogatory, and lying printed statement come?
A. From the Patent Office.
89. Q. You received it from the Patent Office, did you?
2197 A. I am not clear as to that, but think that it was handed to me by some person somewhere.
90. Q. You are as clear on that subject as on any subject that you have testified about to-day, are you?
A. I am as clear that I didn't know who handed it to me.
91. Q. That is not my question; the examiner will read the question to you.
A. I am as clear on that as I am on any other question that I have answered to to-day; I mean to say that I am just as clear that I don't know who handed me that paper as to my answer to any other question put me this afternoon.
92. Q. You have spoken about some newspaper reports which you read about Norton; in what newspapers did you read such reports?
A. I couldn't tell you; I read a good many papers, and it would be pretty hard to tell you out of which.
93. Q. In how many newspapers did you read such report; more than one?
A. I should think I did.
94. Q. Well, how many?
A. I can't tell you.
95. Q. Name one or more of those papers.
A. I cannot now do so.
96. Q. How long ago was it?
A. I could not tell you; I can't tell.
97. Q. W'ere did you get those newspapers?
A. I can't tell that; I buy single papers sometimes; travelling I buy papers; I read papers in the reading rooms, so I can't tell; I take quite a number regularly.
98. Q. What did you read in the newspapers concerning Norton?
A. I can't state exactly what I have read.
99. Q. Did any of those newspapers state that Norton was a liar, and could not be believed under oath?
A. I don't know that they did in so many words.
2198 100. Q. Did the printed paper from the Patent Office, which

you say you read, state that Norton was a liar and could not and ought not to be believed under oath?

A. It did not state so in so many words, but I thought the inference was pretty fair.

101. Q. What do you mean by "inference"?

A. The conclusion to be drawn from a statement.

102. Q. Drawn by whom?

A. By the reader.

103. Q. You have stated that as to the truth of that paper, or of the contents contained in it, you had no knowledge of your own, have you not?

A. I think I stated so; but I relied upon the authority of the statement.

104. Q. Do you know whether that paper was sent out for the purposes of slander, and to injure Norton, and to prejudice such men as you against him?

A. I do not; but I don't think it was so.

105. Q. What reason have you for making your last remark in your last answer, "I don't think it was so?"

A. Simply that this paper was put into my hands for information as a patent right man—one engaged in that business more or less.

106. Q. Do you know whether that paper was sent out for that purpose or not?

A. I do not.

107. Q. Do you know of your own knowledge that that paper was sent to you to give you information as a "patent-right man more or less?"

A. I do not; but supposed so.

108. Q. What reason have you to suppose so?

A. I don't know that I have any; but I frequently receive papers from parties, and they are generally for information.

109. Q. Do you know from whom you receive such papers?

A. Not always.

2199 110. Q. Did you ever state to anybody that Norton was a liar, and that you would not and could not believe him on oath?

A. I have no recollection of stating anything further than I have stated this afternoon.

111. Q. The examiner will read to you my last question which I here repeat, and then you are requested to answer that question, either yes or no.

A. Well, I will say no, with the explanation that in conversation with parties I might have said that I would not believe him under oath, if he is interested in any way.

112. Q. With whom did you have any such conversation?

A. I couldn't tell you.

113. Q. You cannot name the first person, can you?

A. No, sir.

114. Q. Did you ever hear anybody say that Norton was a liar—a notorious public liar?

A. I never heard any one use those exact words.

115. Q. Did you ever hear any one say that Norton was a liar, and that nobody could believe him on oath?

A. I could not say that I ever heard any one use words exactly in that language, but words to that import.

116. Q. State the words that you say you heard.

A. It is a difficult matter. I don't know that I can.

117. Q. Did you ever hear any one say anything against Norton as a citizen or as a moral man in this community?

A. Well, that is a difficult question to answer. I have heard men say that he was a dead beat, in substance.

118. Q. Who did you hear say that Norton was a "dead beat?"

A. I don't know that I heard any one say "dead beat;" but that, in substance, he defrauded—that he took things without authority and without a right to take. From all that I heard I should say that he was a bad citizen.

2200 119. Q. Whoever told you that Norton defrauded anybody?

A. Well, I can't tell you that.

120. Q. Of your own knowledge, do you know that Norton ever defrauded anybody?

A. No; but I do know of debts that he never paid. Whether that would be called fraud is a question in my mind.

121. Q. What debts do you know of your own knowledge that Norton owes to anybody and never paid?

A. One to me.

122. Q. Any other?

A. Of my own knowledge, no, sir.

123. Q. How much does Norton owe you?

A. I haven't figured it up in ten years. It was about $74 originally.

124. Q. What was it for?

A. My recollection is that it was for stoves.

125. Q. For what kind of stoves?

A. Empire Gas Burner.

126. Q. Did you ever ask Norton for the pay of the stoves?

A. Yes, sir.

127. Q. When?

A. I could not tell you that.

128. Q. When you asked him, what did he reply?

A. Some kind of put-off; but I don't remember what.

129. Q. You put an Empire Gas Burner up in his office once which blew up, came near destroying his office, and you were required to remove that stove, were you not?

A. No, sir; not required to.

130. Q. You swear that that stove did not blow up, do you?

A. No, sir; I don't swear.

131. Q. You swear that that stove was not removed in consequence of its blowing up through the sudden ignition of gas in it, do you?

A. I swear that I don't know. But I swear if it did blow up, it was not the fault of the stove.

2201 132. Q. Now, how many stoves did you make after that?

A. Oh, I can't tell. We made them for a number of years after that.

133. Q. What town and county did you come from when you came to Troy?

A. The county of Monroe, the city of Rochester.

134. Q. Were you ever sued out there by anybody?

A. No, sir.

135. Q. Any judgments entered up out there against you?

A. No, sir; not to my knowledge.

136. Q. Were you ever sued by anybody or anywhere before you came to Troy?

A. Yes, sir.

137. Q. Where?

A. In Rome, Oneida County. I was the deputy sheriff's bail and got sued on it.

138. Q. Any judgments entered up against you there?

A. A. There was a judgment entered up on that.

139. Q. Did you ever pay it?

A. I paid it in part; I compromised it—settled it.

140. Q. How much of that judgment did you pay?

A. I don't remember.

141. Q. Before you came to Troy to reside, or after, were there any judgments entered against you anywhere in the State of New York?

A. There was one against Giles & Seymour in which I was involved.

142. Q. Any others?

A. Not to my recollection.

143. Q. Do you swear that there were no other judgment or judgments entered against you in the State of New York?

A. That is all I remember.

144. Q. Have you any judgments against you now unsatisfied?

A. No, sir.

2202 145. Q. How many debts of your contracting have you compromised in the last 25 years?

A. Well, I have no recollection of but two, and those afterwards I paid, with the interest; one was in Troy and one was in New York, and I never paid anything that did me so much good to my own satisfaction.

146. Q. If Norton should do as you swear you had done in your last answer you would think him an honest man, a good citizen, a good moral man, and who ought to be believed under oath under any and all circumstances, would you not?

(Objected to as immaterial.)

A. I think it would be a good step toward a good citizen and an honest man; further I shouldn't want to answer, for I can't.

147. Q. Do you think that you ought to be believed under oath at all times and under all circumstances?

A. That I don't want to answer; it is for other men to say.

148. Q. Why don't you want to answer?

A. I don't want to swear as to my own virtues; I don't think it is a proper question; I am not on the stand to prove my virtues.

149. Q. What are you on the stand for?

A. To testify as to the matter in difference between Campbell and James.

150. Q. That is all, is it?

A. That is all that I know of.

151. Q. Who ever told you that Norton took things that did not belong to him?

A. I don't know; I think I read it.

152. Q. Now, where did you read it?

A. I don't remember.

153. Q. Did you read it anywhere?

A. I can't say; it is my impression that I did.

154. Q. What do you mean by impressions?

A. Well that I read it rather than heard it.

2203 155. Q. And that is all that you know about it, is it?

A. Yes, sir.

Adjourned, by consent of counsel, until Thursday week, July 25th, at 10 o'clock, a. m.

TROY, *June 25th.*

Adjourned, by consent of counsel, until Monday, July 29th, 2 p. m.

MONDAY, *July 29th*—2 p. m.

Met pursuant to adjournment.

Same counsel as before.

Cross-examination of Mr. GILES resumed:

156. Q. Did you ever reside in Oneida County in this State?

A. Yes, sir.

157. Q. Did you know a person by the name of Timothy Seymour while residing there?

A. Yes, sir.

158. Q. Did you know a person by the name of Charles W. White, Woodman Kimball, Richard G. Savery, Henry T. Weller, Francis Warriner, and Jeremiah B. Angell, while residing there?

A. All but Weller; I don't remember him.

159. Q. Were you ever sued by Daniel Cady, president of the Oneida Central Bank?

(Objected to as immaterial.)

A. I don't remember.

160. Q. Give your present best recollections about it?

A. I don't recollect about it.

161. Q. Was there not, on the 31st day of October, 1856, a judg-
2204 ment entered up against you in the supreme court of this State in favor of the Oneida Central Bank for $349.39?

(Same objection.)

A. I can't say as to the amount, but there was such a judgment entered up against the firm of Seymour & Giles, which Mr. Seymour was to pay; the judgment was paid by me before entering up, in order to make Mr. Seymour pay his share.

162. Q. Who did you pay that judgment to before it was entered up?

A. I paid it to the bank; I don't know but what I had better qualify that answer by saying that I am not clear whether I paid it to the bank or to Mr. Ethridge, who, by an understanding with me, took an assignment of the judgment in order to collect from Mr. Seymour his proportion, he being my brother-in-law.

163. Q. Now, what did Mr. Ethridge pay you for an assignment of that judgment?

A. I don't remember.

164. Q. Give your best recollection as to the amount paid by your brother-in-law for an assignment of that judgment.

A. I have no recollection.

165. Q. Did he pay you or anybody else a single dollar for it?

(Same objection.)

A. I have no recollection.

166. Q. Now, who made an assignment of that judgment to your brother-in-law?

A. I don't remember.

167. Q. Do you know that there was an assignment made of that judgment to your brother-in-law?

A. I do.

168. Q. How do you know that, while you can't remember so as to answer a single question put to you in reference to that assignment, as the record last above shows?

2205 A. I know that what I stated was purposed, understood and

accomplished; exactly who made the papers and what was passed between us I have no recollection.

169. Q. Now, state what was understood, state what was purposed, state what was accomplished, as stated in your last answer, and by whom it was understood, and by whom accomplished, and then state further whether it is not true, in point of fact, that you and your brother-in law entered into a conspiracy to defraud Timothy Seymour out of the amount of that judgment?

(Same objection.)

A. To the latter part of it I say emphatically, no, sir; as I stated before, the purpose was for him to hold the judgment until Mr. Seymour could pay his proportion of it; he held it until there seemed to be no prospect of ever getting anything from it, and until I wished, on account of my credit, to have my record clear; he gave me a discharge.

170. Q. When did your brother-in-law discharge you from that judgment?

A. I don't remember; a good many years ago.

171. Q. How many years ago?

A. I can't tell.

172. Q. Was it since the 23d day of December, 1862?

A. I should think it was somewhere after that; I can't tell precisely.

173. Q. You and your brother-in-law didn't succeed in getting anything from Seymour on that judgment, did you?

A. I didn't know that he got anything; I know that I didn't.

174. Q. You say you paid the judgment to the bank before it was entered up, and then procured the bank to make an assignment of it to your brother-in-law, with the understanding that your brother-in-law was to make Timothy Seymour a defendant with you in that
2206 action; pay back to your brother-in-law the money you had paid the bank, in order to procure for your brother-in-law an assignment of that judgment by the bank to him; is that it?

A. I said I was not sure whether I paid it to Ethridge or the bank.

175. Q. Was Ethridge a plaintiff in that action?

A. No, sir.

176. Q. Now, won't you please explain to the court precisely how you could pay a judgment to a man who was not a plaintiff in an action against you, and take an assignment from him of that judgment?

(Same objection.)

A. I didn't take any assignment.

177. Q. Who did?

A. My brother-in-law.

178. Q. Who did he get it from?

A. I don't remember.

179. Q. You don't know?

A. I don't remember.

180. Q. Why don't you remember?

A. Because my memory does not serve me as to that.

181. Q. Does your memory ever fail to serve you, and if it does, state on what occasions?

A. My memory does fail me sometimes, but as to occasions I can't say.

182. Q. It never fails you amid scenes of scandal, slander, vituperation, or when you take the witness stand to attempt to swear away the reputation of a fellow being, does it?

A. It does fail me sometimes, I presume, in such cases, but in this

case I am not conscious of swearing away the reputation of Mr. Norton.

183. Q. Returning to the judgment of $349.39, I ask you who furnished your brother-in-law the money to purchase an assignment of that judgment to him?

A. I can't state.

184. Q. Did you furnish him that money?

2207 A. I can't state.

185. Q. Will you swear that you did not furnish it to him for that purpose?

A. I can't.

186. Q. Where is Timothy Seymour now, if you know?

A. I don't know.

187. Q. After your brother-in-law had for several years endeavored to compel Mr. Seymour to pay that judgment, and failing to get it from him, he discharged you from it, did he not?

A. He discharged me from it. I do not know that he ever endeavored to compel him. I don't think that he ever attempted collection of it.

188. Q. For what purpose did you procure an assignment of that judgment by the bank to your brother-in-law?

A. To keep it in life until Mr. Seymour was able to pay his proportion.

189. Q. Had the bank retained that judgment instead of selling it ts your brother-in law, would it have made any difference about Seymour'o paying it; could he not have paid it to the bank quite as well as to your brother-in-law, if it was fair that he should pay it to anybody?

A. I suppose he could.

190. Q. That judgment was entered upon a note made by you, endorsed by Seymour, and discounted by that bank, was it not?

A. No, sir; Mr. Seymour never endorsed for me.

191. Q. I did not ask you that, but I desire an answer to my last question, which the examiner will now read to you.

A. I answer; no such note was ever made.

192. Q. Now I ask you upon what did that bank sue you, out of which grew the judgment of $349.39?

(Same objection.)

A. A note made by the firm of Seymour & Giles.

193. Q. And endorsed by whom?

2208 A. That I can't tell you; I don't remember.

194. Q. Now did not your name stand first in the firm referred to by you?

(Same objection.)

A. It did not.

195. Q. Were not the defendants in that suit Henry G. Giles and Timothy Seymour?

A. Those are the names; whether they were used in that order I can't say.

196. Q. Were you ever afterwards sued by that bank?

(Same objection.)

A. Not to my knowledge; no recollection.

197. Q. Did not that bank on the 16th day of June, 1857, enter a judgment for $83.95, in a suit against you, David T. Turpenny, Francis W. Warriner, and Jeremiah B. Angell?

(Same objection.)

A. I don't recollect that they ever did.

198. Q. If it did, have you ever paid that judgment?

(Same objection.)

A. If it did, I don't think I ever did; I left Rome about that time, and have no recollection of any service being made upon me of that kind. It is rather an indefinite recollection that we had a note of Turpenny's, and I am not clear that we didn't get the bank to sue it for the purpose of getting a judgment against him, but the management of it in my absence was with Warriner and Angell.

199. Q. Who held the note against Turpenny?

A. Warriner, Giles & Angell; I don't remember how the arrangement of names was; the firm of Warriner, Giles & Angell was dissolved some time prior, and they settled the debts—that is Warriner & Angell.

2209 200. Q. You obtained the bank to sue your firm so as to get a judgment against Turpenny, did you not?

A. I can't say as to that; the matter was in the hands of these two men—Warriner & Angell; I don't know how they managed that.

201. Q. How many judgments have been entered up by John R. Jones, former sheriff of Oneida County, against you?

(Same objection.)

A. I guess only one; that is all I recollect of; I don't see how he could enter any more.

202. Q. Was there not one on May 15, 1857, for $768.16, and another on the 16th May, 1857, for $1,455.40 against you, and in favor of John R. Jones, a former sheriff of Oneida County?

(Same objection.)

A. Not to my knowledge; I don't believe there was.

203. Q. Should it appear that there were such judgments, what answer have you to make about it?

(Same objection.)

A. Simply that I don't know about that; I recollect that we were sued as bondsmen on our bond, and had a general hearing; I don't remember who before; John J. Crocker, I guess; in that matter there might have been charged up these several items mentioned, but have no recollection of any separate judgments, which the sheriff, Jones, alleged to have paid; I don't know anything about these separate items; there might have been separate items charged up, which his deputy, for whom I was bondsman, may have collected and not paid over to the sheriff.

204. Q. You state on your direct examination substantially that
2210 you are in the foundry business in this city; how much capital have you invested in that business?

(Same objection.)

A. I decline to answer.

205. Q. How much capital have you at this time invested in any kind of business in this city?

(Same objection.)

A. I decline to answer.

206. Q. Have you any?

A. I decline to answer.

207. Q. Are you the owner in part or in whole of any foundry or any other manufactory in the city?

A. I decline to answer.

208. Q. Have you at this time anybody in your employ in this city in any kind of business?

A. I decline to answer.

209. Q. Are you carrying on any kind of business in this city at the present time?

A. I decline to answer.

210. Q. Have you at the present time any property unencumbered by mortgages or judgments?

A. Well, I make the same answer.

211. Q. In what part of the city of Troy do you live?

A. I decline to answer.

212. Q. Do you know Philetus W. Bishop, of this city?

A. I don't think I do.

213. Q. You never heard of such a man, did you, as residing in Troy?

A. I don't know.

214. Q. Did you ever hear or know of a lawyer in the city of Troy by the name of Philetus W. Bishop?

A. I don't know of any such man; I don't know that I ever heard of him.

215. Q. Do you know of a person in the city of Troy by the name of Frederick G. Ransford?

2211 A. Really I can't say; the name seems a little familiar; I can't say.

216. Q. Do you know of a person residing in the city of Troy or elsewhere by the name of Hermance?

A. Yes, sir.

217. Q. Who is he, and where does he live?

(Same objection.)

A. I couldn't tell you any more than that he lives in the upper part of the city, as I have understood.

218. Q. What is his business?

A. Well, that I couldn't tell you.

219. Q. Did you ever know of a man in this city by that name who ever had anything to do with stoves or stove inventions, said at the time to reside at the town of Half Moon, in the county of Albany, or Saratoga, this State?

A. I know a man by that name who was said to have something to do with stoves, but where he resides, or is said to reside, I don't know.

220. Q. Did you ever have any conversation with him about stove inventions?

(Same objection.)

A. Yes.

221. Q. You are, then, on intimate terms with him, are you not?

A. I have been.

222. Q. Have you ever seen him out on the mission of peddling stove-dampers in the city of Troy?

A. I don't know that I can say; I don't think that I have.

223. Q. You never knew anything about his peddling stove dampers, then, in the city of Troy, did you?

A. I can't say that I do.

224. Q. Have you and Hermance ever had any conversation together about Marcus P. Norton, of Troy?

A. I should think we had.

2212 225. Q. Well, sir, have you any doubt about that?

A. I have no doubt we talked about some business that Norton did for him.

226. Q. Was that conversation in terms derogatory or defamatory to the character of Norton for truth?

A. I don't know that it was especially so; my impression is that he thought that he was dishonorable in his treatment of him or his business.

227. Q. What did you say to Hermance about Norton?

A. I don't know as I can tell you.

228. Q. Did you say anything to Hermance good concerning Norton?

A. Under the circumstances I didn't see anything good to say; it was a matter of business.

229. Q. Did you say anything good concerning Norton at the time of any interview with Mr. Hermance?

A. I can't say; I don't remember.

230. Q. Did you see Mr. Hermance here while he was being examined as a witness in this matter?

A. No, sir; I don't think I have seen him under a year.

231. Q. In your interviews with Hermance, did Hermance say anything good to you about Norton?

(Same objection.)

A. Well, I can't say.

232. Q. You don't know whether he did or not?

A. No, sir.

233. Q. Now, what did you hear Hermance say about Norton, and where was it, and who was present?

A. I can't tell, and I can't tell who was present; I don't know as anybody.

234. Q. Do you know a man in this city by the name of Joseph C. Henderson, formerly a partner of Jacob Shavor?

2213 A. I do know a man by that name; I know Joseph C. Henderson, of this city.

235. Q. Did you ever have any conversation with him about Marcus P. Norton?

A. I don't remember now.

236. Q. You knew Jacob Shavor when living, did you?

A. I knew him; yes, sir.

237. Q. Did you ever have any conversation with him about Marcus P. Norton, or he with you?

A. I don't remember.

238. Q. Well, did you ever have any conversation with anybody about Marcus P. Norton?

A. I think I have.

239. Q. With whom, and when was it?

A. I think quite a number, but the only one I can name is James Freiot; there was also Hermance.

240. Q. All the persons that you can now name with whom you have had any conversation concerning Marcus P. Norton you have named in your last answer, have you not?

A. I don't know but that I have had conversation with William E. Hagen; I think I have.

241. Q. My question is repeated, and I want a direct and positive answer to it.

A. I have in my last two answers; those three names comprise all I can give.

242. Q. Do you remember to have ever heard said in the city of Troy, concerning any man, that he was a liar?

A. Well, I decline to answer; I don't know.

243. Q. Did you ever hear said in the city of Troy, concerning anybody, that he was a scoundrel and could not tell the truth?

(Same objection.)
A. Oh, I decline to answer that.
244. Q. How old are you, Mr. Giles?
A. Sixty-three.
245. Q. Is your memory good at this time?
2214 A. About an average I should think.
246. Q. You are in good health, free from all diseases, are you not?
A. My general health is good.
247. Q. Do you belong to any church?
A. I do.
248. Q. What church is that?
A. Third Street Baptist.
249. Q. Are you regular in your attendance there?
(Same objection.)
A. Well, I decline to answer.
250. Q. Are you in good and regular standing there with that church, and with its pastor?
(Same objection.)
A. I decline to answer.
251. Q. Are you on terms of friendship and at peace with all the world?
(Same objection.)
A. Same answer.
252. Q. You solemnly decline to answer my questions, do you?
A. I decline to answer those questions.
253. Q. I now give you an opportunity to answer all questions which I have put to you, and which you have declined to answer on this cross-examination, and I now ask you if you will make answer to those questions?
(Same objection.)
A. Well, sir, I decline to answer them.
254. Q. Do you wish to change, to alter, or to modify any answer or any testimony that you have rendered in answer to questions put to you on your cross-examination in this case?
A. I think I do not; I think I have none.
255. Q. Do you know whether you do or not?
A. I know that I don't think of any.
2215 256. Q. If there be any, the opportunity is now given you in answer to this question.
A. I understand that.

Redirect examination by Mr. CLARKE:

257. Q. Explain to the court why you decline to answer the questions put to you about your church, capital, etc.
A. Because they in no way relate to the matter between the parties in this suit, and therefore improper questions.
258. Q. Do you know Nelson Pramer, who does a foundry business on Green Island?
A. I do.
259. Q. He is one of the aldermen of this city, is he not?
A. I believe he is.

Recross-examination by Mr. NORTON:

260. Q. Of your own knowledge do you know that he is an alderman in this city?
A. I have the same knowledge of him as I have of any other.

261. Q. My question is repeated.

A. I did not see the votes counted in his ward, but have seen reports of his election, and have heard his being acknowledged as alderman, and that is as much as I know of any of them; I have heard his character spoken of as that of an honorable, upright man; a man, Henry S. Church, used the word "honest."

262. Q. Who asked you to state anything about the character of Mr. Nelson Pramer, whether he is honest or dishonest, or anything else about him, concerning his character?

A. No one.

263. Q. Then, why did you go into a long lingo about Nelson Pramer's character, and what people said about him, or didn't say about him?

A. Because I was impressed with the report of it.

264. Q. Who impressed you with the report of it?

2216 A. Well, Henry Church, most of any one recently.

265. Q. Did Mr. Church use any particular means to impress you with that idea about Pramer?

A. He used the language "I believe him to be an honest man"; that is all the means.

266. Q. And at that utterance on the part of Mr. Church, and finding for the first time since you lived in the city of Troy that there was one honest man here, you "became impressed" and overwhelmed with joy, did you not, and will never forget the occasion when Mr. Pramer was called an honest man?

A. I decline to answer.

H. G. GILES.

Subscribed and sworn to before me this 29th day of July, 1878.

IRVING BROWNE,
Special Examiner.

TUESDAY, *July* 30.

Met pursuant to adjournment.

Same counsel as before.

Defendant's counsel offered in evidence a printed pamphlet, the title page of which reads as follows: "Marcus P. Norton, postmarking and postage-stamp cancelling device, patented April 14, 1863, reissued August 3, 1869; and another, letters patent dated July 13, 1869, antedated June 10, 1869. Application to the Hon. Postmaster-General for compensation for the use of said invention under the said patents by the Post Office Department. Points and arguments in support of that application. Washington. Cunningham & Mackintosh, printers, 1869." The same being certified under the seal of the Post Office Department and the signature of the Postmaster General as an original paper taken from the files of that department.

2217 (Complainant's solicitor, Marcus P. Norton, does not object to the introduction and reception in evidence on the part and behalf of the defendant, if defendant's counsel will concede that this pamphlet was on file in the Post Office Department in the month of September, 1869, and that the same has remained on file in that department until the date of the Postmaster General's certificate, dated May 24, 1878; and it also defendant's counsel will admit that the said printed pamphlet was written by and printed for Marcus P. Norton, of Troy, New York, in the fall of the year 1869, and if he will also admit that at that time there were no pencil marks upon the said printed pamphlet, excepting those that appear upon the first title page in blue and red

pencil marks; and also that said printed pamphlet was printed by Cunningham & Mackintosh in Washington, D. C., for the said Marcus P. Norton, and that the same was addressed by him to the Hon. J. A. J. Creswell, then Postmaster-General of the United States.)

The pamphlet is marked Defendant's Exhibit 183—(Norton's pamphlet)—Troy, July 30, 1878, I. B., ex'r.

I hereby authenticate the above offer with my signature.

IRVING BROWNE,
Special Examiner.

Complainant's solicitor requests defendant's counsel to recall the witness Philetus W. Bishop for the purpose of further cross-examining him, and especially on the subject of his having been a well-known gambler in the city of Troy and elsewhere for many years past; having been instructed by Judge Williams, complainant's counsel, since
2218 the cross-examination of that witness, to so cross-examine him further.

Defendant's counsel states that the record shows that the witness was examined, cross-examined, and re-examined several weeks ago, and the witness then signed his deposition and departed. Defendant's counsel, therefore, declines to take the trouble of bringing the witness again before the examiner.

Complainant's solicitor offers to pay the necessary and reasonable expense of producing the witness again for further cross-examination.

Defendant's counsel also offers in evidence a certified copy of an indictment in a case of the United States against Marcus P. Norton in the District of Columbia, and the same is marked Defendant's Exhibit 184, Indictment, I. B., exr., July 30, 1878.

I hereby authenticate the above offer with my signature.

IRVING BROWNE,
Special Examiner.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Irving Browne, a special examiner, appointed by the circuit court of the United States in and for the southern district of New York, do hereby certify that the foregoing depositions were taken before me at my office in the city of Troy, State aforesaid. I further certify that I was attended, on the taking of the said depositions, by Marcus P. Norton, esquire, as counsel for the complainant, and S. B. Clarke, esquire, assistant United States attorney, as counsel for the defendant, and that the several witnesses above-mentioned were, at the time of their examination, each of full and lawful age, and of sound mind, and that each of said witnesses were carefully examined and cautioned and sworn to testify the whole truth; their several depositions were by me caused to be reduced to writing in the presence of the witnesses, who sever-
2219 ally subscribed the same in my presence; and I further certify that I am not of counsel or attorney for either of the parties in said depositions and caption hereto named, nor in any way interested in the event of said cause.

In witness whereof I have hereunto subscribed my name and affixed my seal this 1st day of August, 1878.

[L. S.]

IRVING BROWNE,
Special Examiner.

Defendant's Ex. No. 6—J. A. S. ex'r.—Jan. 7, 1878.—John A. Dix.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust,
against
THOMAS L. JAMES, U. S. POSTMASTER, NEW York.
} In equity.

POST-OFFICE, NEW YORK, 8 *Aug.*, 1860.

HON. HORATIO KING,
First Asst. Post M. Gen.:

SIR: The order of the Post M. Gen'l of the 23d ult., prohibiting the cancelling of postage-stamps by the dating or postmarking stamps, and requiring the work to be done by a separate instrument, could not be executed in this office without an increase of our clerical force. We were compelled a few days ago to keep back a mail nearly half an
2221 hour in order that the postage-stamps on the letters to be transmitted by it might be properly cancelled. When the letters amount to tens of thousands, the duplication of the work of cancelling and postmarking is a very serious matter. On Monday our carriers and messengers brought to the office 11,985 letters for the mails.

In this extremity, and with an extreme reluctance to augment the clerical force of the office for the purpose of doing the work, I have hit upon an expedient which answers the purpose perfectly. It occurred to me that the "separate instrument" required by the dept. might be attached to the postmarking stamp, and I sent for the stampmaker and gave him my idea, which he has carried out very well. The cancelling stamp is soldered on to the other so that one handle answers for both, and the double operation is performed with one blow. There is, therefore, no increase of work.

I send you a specimen of the work on the enclosed envelope.

Respectfully, yours,

JOHN A. DIX, *P. M.*

(Here follow 4 diagrams, marked pages 2222, 2223, 2224, & 2225.)

2226 *Def'ts Ex. No. 15 H (Corse).—I. B., ex'r.—Feb. 4, 1878.*

(65.)

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of all assignments of record, under letters patent, granted Marcus P. Norton. Dated April 14th, 1863. No. 38,175. For "Imp't in post-office stamps."

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this first day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

Dtf't's Ex. No. 15 *A* (*Corse*).—*I. B., ex'r.—Feb.* 4, 1878.

C. 7, p. 458.

Whereas I, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, have invented "new and useful postmarking and canceling stamp," for and upon which I did, on the 14th day of April, 1863, obtain of and from the United States of America letters patent, to which reference is hereby had, for the invention this day sold and assigned;

2227 And whereas Jacob Shavor and Albert C. Corse, each of the city of Troy, county and State aforesaid, are desirous of purchasing, and have purchased of and from me all the right, title, and interest secured to me in said invention by said letters patent, or which may be secured to me by reissue of the same, or otherwise;

Now, therefore, this indenture of assignment witnesseth:

That for and in consideration of the sum of five hundred dollars to me in hand paid, the reciept whereof is hereby acknowledged, I have sold, assigned, and transferred, and do hereby sell, assign, and transfer, unto the said Jacob Shavor and Albert C. Corse, their heirs, assigns, executors, or administrators, all the right, title, and interest which I have in the said invention as secured to me by said letters patent, or as may be secured to me by reissue of the same, or otherwise; the same to be held and enjoyed by them, the said Jacob Shavor and Albert C. Corse, for their own use, benefit, and behoof, and for the use benefit, and behoof of their legal representatives, to the full end of the term for which the same were and are granted, as by reference to said patent will fully appear, as fully, freely, and entirely as the same would have been held and enjoyed by me had this sale, assignment, and transfer not been made.

In testimony whereof I have, on this 20th day of April, 1863, hereunto set my hand and seal.

MARCUS P. NORTON. [SEAL.]

Signed and sealed in presence of—
CHAS. D. KELLUM.
CHAS. E. PATTERSON.

Rec'd and recorded March 8th, 1864.
Ex'd. H. M. H., C. K.
[15-cent stamp, canceled.]

2228 *Defendant's Exhibit No.* 15 (*Corse*).—*I. B., examiner, January 28th,* 1878.

U[11], p. 319.

Affidavit and assignments.—Transfer of patents.

CITY OF TROY,
County of Rensselaer and State of New York, ss:

Jacob Shavor and Albert C. Corse, of the city of Troy, being duly and severally sworn, each for himself doth depose and say that they reside at the said city of Troy, in said county and State; that they have so resided there for about twenty years. We know Marcus P. Norton, who also resides at the same place. He is a practicing lawyer by profession in the several courts of the State of New York in the United States, as well as before the U. S. Patent Office. We have so known him for five or six years past. In the summer of the year 1860 he exhibited to

us at his office in said city of Troy a double or combined stamp or instrument for postmarking of letters, and for the cancellation of postage-stamps thereon in ink, at one blow or operation of the same. This device consisted of the device for giving the name of the post-office where used, together with the date of the same, and with a device of either cork, wood used endwise, rubber, or metal having any suitable configuration upon the lower surface of the same, for the cancellation of the postage-stamp, and used and arranged in combination with such postmarking device. At about that time the said Marcus P. Norton called upon us, we being then considered clients of his, and at that time he there made known unto us that he had a very valuable invention and improvements for use in the postal service of the kind, character, and for the purposes hereinbefore stated, and that because of having indorsed so large an amount of paper as to cause him very great embarrassment in
2229 the year 1856 and 1857, and from all of which he at that time was a great financial sufferer, and thus being much distressed, he desired each of us to aid him in money for the purpose of obtaining letters patent upon his said invention and improvements in this country and perhaps Europe.

Whereupon, and after due consideration, we agreed with him, the said Marcus P. Norton, to furnish him with such sums of money as he might require in order to get his said invention into general use by the Post-Office or other departments of the government requiring such inventions or instruments. The money so furnished by us, or either of us, as in the judgment of the said Marcus P. Norton he might need or require from time to time in order to obtain such patents as he might deem best in order to get his said improvements into general use by the government or Post-Office Department at as early a date or time as possible, or within his power to do, he having the entire management of the same. We agreed with and promised to the said Marcus P. Norton to receive one-half interest or moiety part of the said inventions, improvements, and letters patent when obtained for the uses and purposes aforesaid, while the other and remaining half interest or moiety part of such inventions, improvements, and letters patent were to be and the same were in any event or under any circumstances to remain the property and right of the said Marcus P. Norton and of his lawful representatives; we were to make no charges whatever against him for any money thus furnished by us to him. His one-half interest and moiety part of the said inventions and patents were to be wholly and entirely free from any and every claim or charge for money or other matter or thing on our part or by us. The said Norton was not to charge our said one-half part with any professional services rendered by him in the premises.

The said Norton was by the arrangement to assign all his said pat-
2230 ents to us soon after or before the same were issued to him, in order that all his patents, inventions and improvements and every of them might be in safe hands while said Norton was so embarrassed, because of his losses aforesaid, or for other causes, as well as to permit of his being a witness of and concerning his said inventions, improvements, and patents, in court or elsewhere, concerning such matters as were within his personal knowledge, and could not be proven by any other person, such, for example, as matters appertaining to his caveat filed in the U. S. Patent Office in the year 1853, and containing, among other things, the several inventions herein named. It was also agreed that whenever the said Norton should be able in his own judgment to manage the affairs concerning and connected with his said inventions, improvements, and letters patent and to us assigned and transferred in

the manner as aforesaid, and upon being requested so to do, we were to reassign, reconvey, and retransfer unto him, the said Norton, his heirs and legal representatives, the invention, improvements, and letters patent dated December 16, 1862, also dated April 14, 1863, including each and every reissue of either of said patents, if at the time of such request and demand of and by said Norton upon us, there were any reissue or reissues of the said letters patent or either of them; we were also to reassign, reconvey and retransfer unto him, the said Marcus P. Norton, his heirs and legal representatives, each and every other letters patent than those hereinbefore named, which at the time of his request and demand aforesaid, might be in our possession through and by means of any assignments and transfer thereof from the said Norton to us, including the "post-office way bill envelope," patented on or about the 10th day of June, 1862, including, also, all other patents upon postmarking of letters or packets, and for the cancellation of postage-stamps thereon, and including each and every reissue of any of
2231 the said patents. That whenever he, the said Norton, should for any cause desire, request, or demand of us the reassignment, retransfer, or reconveyance of any or of all of his said patents, by him assigned to us under our said agreement with him, and for the purposes aforesaid, then the same should be so done without any trouble to him or unnecessary delay; and in consideration of such reassignments, retransfer, and *and* reconveyances of the said inventions, improvements, and patents by us to the said Marcus P. Norton, he was only to pay to us all sums of money and lawful interest thereon paid out by us at the request of the said Norton, when we should present to him proper vouchers for the same, and that, if at the time when said Norton should desire or demand of us the reassignment, retransfer, or reconveyance of any, or of each and every of the said patents, by us as aforesaid, he might not be able to cash at once such money and the lawful interest upon the same, then he, the said Norton, his heirs or lawful representatives, may at his or their own election, pay such money out of the first money had or received by him or them, out of any sale or sales made with the Government of the United States, by him or them, and which should under such circumstances be so paid as soon as possible after any such sale and payment of money in accordance therewith, we producing vouchers for all moneys so expended by us as aforesaid stated. It was also agreed that the said Norton was to have full and uninterrupted charge and control of, as well as the management and direction of all matters appertaining to each and every of said patents, both in the obtaining of the same, all legal matters thereon, or in the sale or either of them, or in the introducing of any or all of them into public use by the "Post-Office Department," or other department of the government. The letters patent thus far obtained under our said understanding and agreement with him, the said
2232 Marcus P. Norton, are dated as follows, to wit, December 16, 1862, assigned to us December 20, 1862; also April 14, 1863, assigned to us April 20, 1863, and each for improvements in postmarking letters, packets, &c., and for the cancellation of postage-stamps, and each recorded in the U. S. Patent Office, also June 10th, 1862, assigned to us December 20th, 1862, and recorded in the U. S. Patent Office, December 31st, 1862, and for and upon an invention entitled post-office way bill envelopes, made by said Norton.

And deponents further say for answer to the position taken by the committee of the House of Representatives of the Congress of the United States of America, as well as in full statement and vindication

us at his office in said city of Troy a double or combined stamp or instrument for postmarking of letters, and for the cancellation of postage-stamps thereon in ink, at one blow or operation of the same. This device consisted of the device for giving the name of the post-office where used, together with the date of the same, and with a device of either cork, wood used endwise, rubber, or metal having any suitable configuration upon the lower surface of the same, for the cancellation of the postage-stamp, and used and arranged in combination with such postmarking device. At about that time the said Marcus P. Norton called upon us, we being then considered clients of his, and at that time he there made known unto us that he had a very valuable invention and improvements for use in the postal service of the kind, character, and for the purposes hereinbefore stated, and that because of having indorsed so large an amount of paper as to cause him very great embarrassment in
2229 the year 1856 and 1857, and from all of which he at that time was a great financial sufferer, and thus being much distressed, he desired each of us to aid him in money for the purpose of obtaining letters patent upon his said invention and improvements in this country and perhaps Europe.

Whereupon, and after due consideration, we agreed with him, the said Marcus P. Norton, to furnish him with such sums of money as he might require in order to get his said invention into general use by the Post-Office or other departments of the government requiring such inventions or instruments. The money so furnished by us, or either of us, as in the judgment of the said Marcus P. Norton he might need or require from time to time in order to obtain such patents as he might deem best in order to get his said improvements into general use by the government or Post-Office Department at as early a date or time as possible, or within his power to do, he having the entire management of the same. We agreed with and promised to the said Marcus P. Norton to receive one-half interest or moiety part of the said inventions, improvements, and letters patent when obtained for the uses and purposes aforesaid, while the other and remaining half interest or moiety part of such inventions, improvements, and letters patent were to be and the same were in any event or under any circumstances to remain the property and right of the said Marcus P. Norton and of his lawful representatives; we were to make no charges whatever against him for any money thus furnished by us to him. His one-half interest and moiety part of the said inventions and patents were to be wholly and entirely free from any and every claim or charge for money or other matter or thing on our part or by us. The said Norton was not to charge our said one-half part with any professional services rendered by him in the premises.

The said Norton was by the arrangement to assign all his said pat-
2230 ents to us soon after or before the same were issued to him, in order that all his patents, inventions and improvements and every of them might be in safe hands while said Norton was so embarrassed, because of his losses aforesaid, or for other causes, as well as to permit of his being a witness of and concerning his said inventions, improvements, and patents, in court or elsewhere, concerning such matters as were within his personal knowledge, and could not be proven by any other person, such, for example, as matters appertaining to his caveat filed in the U. S. Patent Office in the year 1853, and containing, among other things, the several inventions herein named. It was also agreed that whenever the said Norton should be able in his own judgment to manage the affairs concerning and connected with his said inventions, improvements, and letters patent and to us assigned and transferred in

the manner as aforesaid, and upon being requested so to do, we were to reassign, reconvey, and retransfer unto him, the said Norton, his heirs and legal representatives, the invention, improvements, and letters patent dated December 16, 1862, also dated April 14, 1863, including each and every reissue of either of said patents, if at the time of such request and demand of and by said Norton upon us, there were any reissue or reissues of the said letters patent or either of them; we were also to reassign, reconvey and retransfer unto him, the said Marcus P. Norton, his heirs and legal representatives, each and every other letters patent than those hereinbefore named, which at the time of his request and demand aforesaid, might be in our possession through and by means of any assignments and transfer thereof from the said Norton to us, including the "post-office way bill envelope," patented on or about the 10th day of June, 1862, including, also, all other patents upon postmarking of letters or packets, and for the cancellation of postage-stamps thereon, and including each and every reissue of any of
2231 the said patents. That whenever he, the said Norton, should for any cause desire, request, or demand of us the reassignment, retransfer, or reconveyance of any or of all of his said patents, by him assigned to us under our said agreement with him, and for the purposes aforesaid, then the same should be so done without any trouble to him or unnecessary delay; and in consideration of such reassignments, retransfer, and *and* reconveyances of the said inventions, improvements, and patents by us to the said Marcus P. Norton, he was only to pay to us all sums of money and lawful interest thereon paid out by us at the request of the said Norton, when we should present to him proper vouchers for the same, and that, if at the time when said Norton should desire or demand of us the reassignment, retransfer, or reconveyance of any, or of each and every of the said patents, by us as aforesaid, he might not be able to cash at once such money and the lawful interest upon the same, then he, the said Norton, his heirs or lawful representatives, may at his or their own election, pay such money out of the first money had or received by him or them, out of any sale or sales made with the Government of the United States, by him or them, and which should under such circumstances be so paid as soon as possible after any such sale and payment of money in accordance therewith, we producing vouchers for all moneys so expended by us as aforesaid stated. It was also agreed that the said Norton was to have full and uninterrupted charge and control of, as well as the management and direction of all matters appertaining to each and every of said patents, both in the obtaining of the same, all legal matters thereon, or in the sale or either of them, or in the introducing of any or all of them into public use by the "Post-Office Department," or other department of the government. The letters patent thus far obtained under our said understanding and agreement with him, the said
2232 Marcus P. Norton, are dated as follows, to wit, December 16, 1862, assigned to us December 20, 1862; also April 14, 1863, assigned to us April 20, 1863, and each for improvements in postmarking letters, packets, &c., and for the cancellation of postage-stamps, and each recorded in the U. S. Patent Office, also June 10th, 1862, assigned to us December 20th, 1862, and recorded in the U. S. Patent Office, December 31st, 1862, and for and upon an invention entitled post-office way bill envelopes, made by said Norton.

And deponents further say for answer to the position taken by the committee of the House of Representatives of the Congress of the United States of America, as well as in full statement and vindication

of the facts and that such committee may know the whole truth, to wit: The position aforesaid being, that deponents are mere speculators upon the invention and ingenuity of another, and that the purchase of said inventions and patents by Congress would not be a reward to or compensation to the said Norton or his family, nor would it be a reward by the government, through Congress, to the inventor for invention and valuable improvements made by him; that the real and true inventor should himself be the recipient of the attention of Congress, as well as of the compensation whereby to encourage, to reward, and to stimulate invention for the benefit of the government, and not persons who claim as mere assignees, for Congress cannot know how or in what manner they came by or into the possession of the same; that the payment of a very large sum of money by Congress to such assignees would not have the tendency to stimulate and encourage invention; that Congress should reward the inventor and patentee directly, and thereby encourage other inventors as well as to discourage speculation by assignees. The deponents say that they were only to be temporary assignees in order to aid said Norton in the manner hereinbefore 2233 stated, for deponents were by the arrangement to reassign, reconvey, and retransfer each and every of the said patents to them assigned by said inventor and patentee Norton previous to the time when he might or should request or require of and from us such assignments and transfers, no matter what may have been the name or nature or style of the same.

Deponents further say that it was their purpose and intention to render unto the said Norton all the aid in their power whereby to enable him to complete his models, drawings and specifications, in order to obtain the patents contemplated by him, and to enable him to get the Post-Office Department or government to consider, adopt and put into use the several inventions made by him for the purposes and uses aforesaid, for the said Norton was at that time engaged for deponents in and about business and certain matters appertaining to said Norton's profession, to wit, that of a practising lawyer.

And deponents further say that upon the said Norton's request so to do, deponents were to, and would duly and faithfully and freely reconvey, reassign, and retransfer each and every of the aforesaid inventions and patents unto the said Marcus P. Norton, in legal form and condition the same as we had and received such inventions and patents and each of them in trust as aforesaid from him, whereby the title thereto should be full, free, and perfect, and clear from any, all, and every encumbrance whatsoever.

And deponents in further answer to said position of the said committee of Congress, do hereby make, execute, and deliver the following absolute assignment and transfer of the aforesaid patents, inventions and improvements to the said Marcus P. Norton, his heirs, assigns, or legal representatives, to be by him or them used and put upon the 2234 record at the U. S. Patent Office whenever he or they may desire so to do; that is to say, whereas letters patent of the United States of America were duly granted, issued, and delivered unto the said Marcus P. Norton, under and bearing date as follows, to wit, December 16th, 1862, also April 14th, 1863, for and upon improvements in instruments for postmarking of letters and for the cancellation of the postage stamps thereon as, and in the manner, form, and for the purposes substantially as hereinbefore stated and set forth, also a certain letters patent dated June 10th, 1862, for and upon an invention known

and denominated a "post-office way bill envelope," as hereinbefore stated and set forth:

Now, therefore, and by virtue, force and power of our said agreement and contract with the said Marcus P. Norton in the manner aforesaid, and in consideration of the premises hereinbefore set forth, and in the further consideration of the sum of three hundred dollars, the receipt of which is hereby duly acknowledged, we have sold, assigned and transferred, and we do hereby sell, assign, and transfer unto the said Marcus P. Norton, his heirs, assigns and lawful representatives, the full, clear, entire, and the exclusive right and title to each, every, and all of the aforesaid named and described letters patent, inventions and improvements, also each and every reissue of any or either of the same, including together with those hereinbefore named and described, each and every invention and letters patent acquired by us, of and from him, the said Norton, under our aforesaid agreement and contract with him as aforesaid stated. To have and to hold the same, forever, for his own
2235 use, benefit, and behoof, and for the use, benefit and behoof of his heirs, assigns, and legal representatives for and during the full length of the term for which the same were and are granted, as fully, freely, and entirely as the same would have been held and enjoyed by us had this grant and sale not been made by us.

Defendant's Exhibit No. 15 (Corse).—I. B., examiner. January 28th, 1878.

In testimony whereof we do hereby set our hands and seals, and make our solemn oaths on this 23d day of February, A. D. 1864.

JACOB SHAVOR. [SEAL.]
ALBERT T. CORSE. [SEAL.]

Subscribed and sworn to before me this 23d day of February, 1864.

JOHN T. LAMPORT,
United States Commissioner for Northern Dist. of New York, Troy, N. Y.

Recorded July 24, 1869.
Ex. M. M., E. F. E.

[$1.05 int. rev. stamps, canceled.]

2236 *Def't's Ex. No.* 15.—*B* (*Corse*).—*I. B., ex'r.*—*Feb.* 4, 1878.

F[12], 279.

In consideration of the sum of twenty thousand dollars to me paid by Charles Eddy, Albert C. Corse and Jacob Shavor, of the county of Rensselaer and State of New York, I do hereby sell and assign to the said Charles Eddy in trust for himself and the said Albert C. Corse and Jacob Shavor, one undivided one-third part of all my right title and interest in and to certain letters patent of the United States, issued and granted to me as the original and first inventor for "improved postmarking and cancelling hand stamps," dated respectively as follows, to wit: January 14th, 1862, No. 34,184; December 16th, 1812, No. 37,175; April 14th, 1833, No. 38,175, reissued August 23d, 1864, reissued No. 1748 and August 3d, 1869, reissued No. 3586[1]. Also patent for revenue cancelling stamp, dated August 15th, 1865, No. 49,432; also patent for improvement on postmarking and cancelling hand stamps issued July 13th, 1869, and dated June 10th, 1869, No. 92,688; and also the undivided one-third of any patents which may be hereafter granted or issued upon my application for the purpose of improving or perfecting said inventions or either of them.

The said undivided one-third of each of said patents to be held and enjoyed by the said Charles Eddy as trustee, as aforesaid, to the full end of the term for which said letters patent or either of them are granted and for the term of any extension of either of said letters patent, as fully and entirely as the same would have been held and enjoyed by me if this assignment had not been made.

2237 In testimony whereof I have hereunto set my hand and seal this 23d day of October, A. D. 1869.

MARCUS P. NORTON. [SEAL.]

Signed, sealed, and delivered in the presence of—

JOHN I. WEED,
JAS. M. CHADSEY.

Recorded Oct. 25, 1869.
Ex. J. A. W., M. M.

[25-cent int. rev. stamp, canceled.]

Memorandum agreement.

Z[12], p. 43.

This article of a memorandum agreement made and entered into on this 22d day April, 1870, by and between William A. Wheeler, of the city, county and State of New York, party of the first part, and Frederick G. Ransford, of the city of Troy, county of Rensselaer, State aforesaid, and Peter Low, of the city of Cleveland, and State of Ohio, and Charles Eddy & Co., composed of the following named persons, to wit, Charles Eddy, Jacob Shavore, Albert C. Corse, of the said city of Troy, State of New York, and Wm. B. Hatch of the said city of New York, party of the second part, and who are assignees by original and mesne assignments of Marcus P. Norton of the said city of Troy, of an invention and of certain improvements made by him in postmarking stamps, upon which letters patent of the United States of America were granted and issued under and bearing date August 9, 1859, and numbered 25,036, witnesseth:

That the said party of the first part is to have and shall have an absolute assignment and transfer of said letters patent of August 9th, 1859, for the balance of the term now unexpired for which the same were granted and issued upon the making of an agreement in writing by and between the parties hereto and of even date with such assignment

2238 and transfer, wherein and whereby shall be provided the terms, conditions and royalties upon which said Wheeler receives such assignment. It is here understood and agreed upon that said Wheeler desires to have and obtain said patent in the manner aforesaid for the purpose of manufacturing and vending in an exclusive manner stamps for internal revenue use and purposes in such manner as to render permanent cancellation of internal revenue stamps complete and perfect by means of the improvements and invention contained in said patent, which among other things consists of cutting and inking the said stamps, and so cutting and inking the same as that the ink so applied shall impregnate the fibres of such internal revenue stamp and thereby prevent a second or re-use by means of any chemical or other cleansing, whereby to prevent frauds upon that revenue departments.

The object of obtaining such an assignment and transfer is for the purpose of permitting a reissue of said patent by said Wheeler in such manner and form as shall more fully protect the invention and improvements therein both as to the manufacture and as to each and every of the owners of said patent and invention. The said Wheeler shall sup-

ply the demand for the use of said invention, and is to do all in his power to create a demand for the use thereof.

The party of the second part shall also do all in their power to create and to increase a demand for the use of such device and invention, and shall do all they can to protect said Wheeler in manufacturing and vending of said invention, which shall be done at said Wheeler's own cost and charge, and whenever required by him, he employing such lawyers as he may need at his own expense, requiring no attorney from the party of second part. He (said Wheeler) shall pay fifty cents royalty upon each of said cancelling stamp made by him and pay the same every thirty days on settlement then to be made with all persons
2239 in interest. And said Wheeler shall resort to all the lawful means in his power to get up and continue a full demand for the use of said cancelling stamp by the business men of this country.

The permanent contract between the parties hereto shall be made and delivered within ten days from date hereof, at which time a good and sufficient title or deed of an assignment shall be made to said Wheeler of said patent of August 9, 1859, for the balance of unexpired term of said patent conditioned upon payment of royalties of fifty cents on each stamp made by said Wheeler or any other one or person under him or at his request.

Each party hereto shall make every effort in their power to make to cause the Government of the United States or the Commissioner of Internal Revenue, or Secretary of the Treasury, to fix and establish the price of said cancelling device so patented from $10 00 to $12.00 (twelve dollars) each one, in which event the said Wheeler is to pay the sum of one dollar and thirty cents royalty on each stamp made to said party, who shall then be entitled to receive the same under said contract, and settlement for said royalty shall be had once every thirty days, and if it shall hereafter become necessary for the said party of second part or their lawful representatives to have or own the said invention in order to make any settlement with the Post-Office Department for a claim now held against that department under another patent granted to said Norton, dated April 14, 1863, reissued August 23, 1864, and again August 3d, 1863, then said Wheeler shall reconvey and retransfer as much of said patent and invention therein as may be necessary for such purpose, and shall do it without cost or charge or payment therefor, but it must be done upon the written request of the Postmaster-General that he requires the same for the more full or better protection of the rights or interest of his said department under such settlement of the patent of April 14, 1863, and said reissues, and immediately after the re-
2240 issue of said patent said Wheeler shall reconvey to said party of second part, or the lawful representatives of the same, all that part or portion of the invention and improvements which in anywise relate or appertain to the use, purpose or requirements of the Post-Office Department, and in case the Commissioner of Internal Revenue or Secretary of the Treasury shall raise the price of said device from $10 to $11, then said Wheeler shall pay as royalties to said party of second part the sum of one dollar on each stamp made under said contract. Said Wheeler shall not permit or suffer or allow any infringements of any kind upon said patent or said reissue, or reissues of the same or of any part thereof, but shall prosecute the same at once after knowledge of the same, and said party of second part shall furnish all the evidence in their power or knowledge to furnish whereby to sustain said patent, and said Wheeler shall pay the same sum of royalty on each stamp in all cases of prosecuting and recovery for infringements to said party of

second part, and said party of second part shall be at no money expense in defense of or for maintaining said patent or said invention.

The details of our original agreement concerning the said Norton cancelling device for internal revenue, of which this is but a memorandum, we here refer to the original and permanent contract to be made and delivered in the time aforesaid, and containing the points or features herein mentioned.

In case said Wheeler shall for any cause discontinue to manufacture and sell said cancelling device, and to pay such royalties as before named, or in case he shall not make such settlements and payment of said royalties for any length of time, or shall fail to supply the demand and market, or shall fail, refuse or neglect to prosecute all case, for or of infringement of said invention patented as aforesaid for the space of ten days after information of the same from said party of the second part or either of them, or suffer any infringement suit to be con-
2241 tinued from time to time, upon the court calendar, or shall in any other manner fail to comply with the terms or conditions of said original agreement, then said title shall revert at once, and said party shall have possession of same at once. When the original permanent contract shall be executed and delivered then this shall cease and be of none effect.

The interlineation upon page 4 and 6 of this memorandum were made and inserted before the execution of this instrument, and at the request of the parties hereto.

In testimony whereof we have on this 22d day of April, 1870, hereto set our hands.

WM. A. WHEELER. [SEAL.]
F. G. RANSFORD. [SEAL.]
ALBERT C. CORSE. [SEAL.]
CHARLES EDDY. [SEAL.]
JACOB SHAVOR. [SEAL.]
PETER LOW.
By J. D. GREEN, *Attorney.*
WM. B. HATCH,
By J. D. GREEN, *Attorney.*

Signed and sealed in presence—
J. D. GREEN,
MARCUS P. NORTON.

Recorded May 11, 1870.
Ex'd C. C. W., C. L. E.

[20-cent. int. rev. stamp, canceled.]

2242 *Def't's Ex. No.* 15—*C* (*Corse*).—*I. B., ex'r.*—*Feb.* 4, 1878.

B[13], p. 151.

Whereas I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, did obtain letters patent of the United States of America, for and upon improvements in "post-office postmarking and cancelling hand-stamp," which letters patent were issued and delivered and bearing date the 14th day of April, 1863, which letters patent have been twice reissued under and bearing date as follows, to wit, August 23d, 1864, and August 3d, 1869, the last of which is numbered 3586; and whereas the invention and improvements contained in said letters patent have been in general and contin-

ned use in the postal service of said United States since the first day of March, 1863, by the order and direction of the Postmaster-General; and whereas Helen M. Ingalls of the said city of Troy, county and State, is desirous of having and acquiring all the right, title, and interest which I now have and ever had in, to, or for the said invention, improvements, and letters patent and the several reissues of the same, also any and every claim for past use of the same:

Now, therefore, this indenture and assignment witnesseth that, for and in consideration of the sum of one hundred dollars to me, the said Marcus P. Norton, in hand paid, the receipt of which is hereby acknowledged, and in the further and other valuable considerations the receipt of which is hereby duly acknowledged, I have sold, assigned, and transferred, and I do hereby sell, assign, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all the right, title, and interest which I now have or ever had in the said invention, improvements, and letters patent and the several reissues thereof; and I also sell, assign, convey, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all the right, interest, or claim I now have against the Post Office De-
2243 partment or Government of the United States aforesaid, for the past use of the said invention and improvements under the said letters patent, intending herein and hereby to sell, assign, and transfer unto the said Helen M. Ingalls and her lawful representatives all my right, title, interest or claim for the past and future use of the said invention, improvements, and letters patent, in the postal service of the United States by the Post-Office Department, and also the entire invention, improvements and letters patent, and all and every reissue of the same, each and every of which is to be held and enjoyed by the said Helen M. Ingalls, for her own use, benefit, and behoof, and for the use, benefit, and behoof of her legal representatives, to the full end of the term for which the said letters patent the said several reissues are or were granted, as fully and entirely as the same would have been held and enjoyed by me if this sale and assignment had not been made in the manner aforesaid. Hereby selling and conveying unto her, the said Helen M. Ingalls, and her assigns and lawful representatives, all and every right, interest, privilege, title, or claim which I now have or ever had in any way, manner, or form, under the said letters patent, and any and every reissue of the same, to the full end of the term of seventeen years for which said letters patent were granted, on and commencing the 14th day of April, 1863, with full right, power, and authority to enforce, settle, and adjust the same for the past use of the said invention, improvements, and letters patent.

In testimony whereof I have hereunto set my hand and seal on this 23d day of October, 1869.

MARCUS P. NORTON. [SEAL.]

Sealed, signed, and delivered in presence of—
JAMES O'CONOR.
EDW. W. DONN.

Recorded August 1st, 1870.

[50-cent int. rev. stamp, canceled.]

2244 *Def'ts Ex. No.* 15—*D (Corse).—I. B., ex'r.—Feb.* 4, 1878.

I[13], p. 260.

This article of an agreement made and entered into on this 15th day

second part, and said party of second part shall be at no money expense in defense of or for maintaining said patent or said invention.

The details of our original agreement concerning the said Norton cancelling device for internal revenue, of which this is but a memorandum, we here refer to the original and permanent contract to be made and delivered in the time aforesaid, and containing the points or features herein mentioned.

In case said Wheeler shall for any cause discontinue to manufacture and sell said cancelling device, and to pay such royalties as before named, or in case he shall not make such settlements and payment of said royalties for any length of time, or shall fail to supply the demand and market, or shall fail, refuse or neglect to prosecute all case, for or of infringement of said invention patented as aforesaid for the space of ten days after information of the same from said party of the second part or either of them, or suffer any infringement suit to be con-
2241 tinued from time to time, upon the court calendar, or shall in any other manner fail to comply with the terms or conditions of said original agreement, then said title shall revert at once, and said party shall have possession of same at once. When the original permanent contract shall be executed and delivered then this shall cease and be of none effect.

The interlineation upon page 4 and 6 of this memorandum were made and inserted before the execution of this instrument, and at the request of the parties hereto.

In testimony whereof we have on this 22d day of April, 1870, hereto set our hands.

WM. A. WHEELER. [SEAL.]
F. G. RANSFORD. [SEAL.]
ALBERT C. CORSE. [SEAL.]
CHARLES EDDY. [SEAL.]
JACOB SHAVOR. [SEAL.]
PETER LOW.
By J. D. GREEN, *Attorney.*
WM. B. HATCH,
By J. D. GREEN, *Attorney.*

Signed and sealed in presence—
J. D. GREEN,
MARCUS P. NORTON.

Recorded May 11, 1870.
Ex'd C. C. W., C. L. E.

[20-cent. int. rev. stamp, canceled.]

2242 *Def't's Ex. No.* 15—*C* (*Corse*).—*I. B., ex'r.*—*Feb.* 4, 1878.

B[13], p. 151.

Whereas I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, did obtain letters patent of the United States of America, for and upon improvements in "post-office postmarking and cancelling hand-stamp," which letters patent were issued and delivered and bearing date the 14th day of April, 1863, which letters patent have been twice reissued under and bearing date as follows, to wit, August 23d, 1864, and August 3d, 1869, the last of which is numbered 3586; and whereas the invention and improvements contained in said letters patent have been in general and contin-

ned use in the postal service of said United States since the first day of March, 1863, by the order and direction of the Postmaster-General; and whereas Helen M. Ingalls of the said city of Troy, county and State, is desirous of having and acquiring all the right, title, and interest which I now have and ever had in, to, or for the said invention, improvements, and letters patent and the several reissues of the same, also any and every claim for past use of the same:

Now, therefore, this indenture and assignment witnesseth that, for and in consideration of the sum of one hundred dollars to me, the said Marcus P. Norton, in hand paid, the receipt of which is hereby acknowledged, and in the further and other valuable considerations the receipt of which is hereby duly acknowledged, I have sold, assigned, and transferred, and I do hereby sell, assign, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all the right, title, and interest which I now have or ever had in the said invention, improvements, and letters patent and the several reissues thereof; and I also sell, assign, convey, and transfer unto the said Helen M. Ingalls, her heirs, assigns, and lawful representatives, all the right, interest, or claim I now have against the Post Office De-
2243 partment or Government of the United States aforesaid, for the past use of the said invention and improvements under the said letters patent, intending herein and hereby to sell, assign, and transfer unto the said Helen M. Ingalls and her lawful representatives all my right, title, interest or claim for the past and future use of the said invention, improvements, and letters patent, in the postal service of the United States by the Post-Office Department, and also the entire invention, improvements and letters patent, and all and every reissue of the same, each and every of which is to be held and enjoyed by the said Helen M. Ingalls, for her own use, benefit, and behoof, and for the use, benefit, and behoof of her legal representatives, to the full end of the term for which the said letters patent the said several reissues are or were granted, as fully and entirely as the same would have been held and enjoyed by me if this sale and assignment had not been made in the manner aforesaid. Hereby selling and conveying unto her, the said Helen M. Ingalls, and her assigns and lawful representatives, all and every right, interest, privilege, title, or claim which I now have or ever had in any way, manner, or form, under the said letters patent, and any and every reissue of the same, to the full end of the term of seventeen years for which said letters patent were granted, on and commencing the 14th day of April, 1863, with full right, power, and authority to enforce, settle, and adjust the same for the past use of the said invention, improvements, and letters patent.

In testimony whereof I have hereunto set my hand and seal on this 23d day of October, 1869.

MARCUS P. NORTON. [SEAL.]

Sealed, signed, and delivered in presence of—
JAMES O'CONOR.
EDW. W. DONN.

Recorded August 1st, 1870.

[50-cent int. rev. stamp, canceled.]

2244 *Def'ts Ex. No.* 15—*D (Corse).—I. B., ex'r.—Feb.* 4, 1878.

I[13], p. 260.

This article of an agreement made and entered into on this 15th day

of August, 1870, by and between Marcus P. Norton of the city of Troy, county of Rensselaer and State of New York, party of the first part and W. W. Secombe of the city, county, and State of New York, party of the second part, witnesseth:

That whereas letters patent of the United States were granted and issued to said Norton on or about the 14th day of April, 1863, upon "Post-Office, Postmarking and Postage-stamp Cancelling device," which was re-issued the 23d day of August, 1864, and again on the 3d day of August, 1869, which invention has been in general use by the Postmaster General's order in the Postal Service of said United States for many years past, and now in general and extensive use in said postal service, and the Congress of the United States of America did, on the 13th day of July, 1870, pass a joint resolution authorizing and directing the Postmaster General to continue to use the said invention and patent in said postal service, and to settle with the owners of said invention and patent for such past use, and also for the future use of the same while the said patent shall continue, and for him to make a fair, just, and equitable compensation for such past and future use of said invention and said letters patent, which said joint resolution was approved on the 14th day of July, 1870, by the President of the United States, and which is now a law; and whereas the said Secombe has heretofore advanced to said Norton for expenses in Washington, and the said Norton wanting hereafter and during the next sixty days the sum of twelve hundred and fifty dollars, in all the sum of ($2,500) two thousand and five hundred dollars: Now, in consideration of the sum of twelve hundred and fifty dollars already advanced to said Norton while he was in the
2245 city of Washington, D. C., as aforesaid, and in the further consideration of the said sum of twelve hundred and fifty dollars, to be advanced to said Norton during the sixty days by said Secombe, I, the said Norton, hereby agree, covenant, and bind myself as follows, to wit: The said Secombe, in view of the considerations, shall have, shall be entitled to and shall receive out of any sum of money which the Postmaster General shall agree to pay in settlement of said matter under the said joint resolution to said Norton, or to any one acting for him and in his name or behalf, the sum of ten per cent. on such sum so contracted for or agreed to be paid. It is also hereby agreed that if said Norton shall succeed in obtaining from Charles Eddy, trustee for himself, A. C. Corse, and Jacob Shavor, each and all of said city of Troy, the one-third interest in said invention and patent claimed by them under an agreement made by them with said Norton in the fall of the year 1869, and in case said Norton shall, in any manner recover the same from them, as said Norton claims he has legal right to recover and should recover the said one-third interest so held by the said Eddy, Corse, and Shavor then instead and in place of the said sum of ten per cent. the said Secombe shall be entitled to and shall have and receive one undivided fourth part of the said invention, letters patent, and claim to be settled for by the Postmaster-General, under and in conformity to and with said joint resolution.

In testimony whereof, I have on the 15th day of August, 1870, hereto set my hand and seal.

MARCUS P. NORTON. [SEAL.]

Signed and sealed in presence of—
I. A. CURTIS.
Recorded Nov. 1st, 1870.
[Two 5-cent int. rev. stamps, canceled.]

2246 *Def'ts Ex. No.* 15—*E* (*Corse*).—*I. B., ex'r. Feb.* 4, 1878.

I[13], p. 262.

This article of an agreement, made and entered into on this 4th day of October, 1870, by and between Helen M. Ingalls of the city of Troy, county of Rensselaer, and State of New York, party of the first part, and W. W. Secombe, of the city, county, and State of New York, party of the second part, witnesseth:

That whereas, on the 14th day of April, 1863, letters patent of the United States of America were duly issued unto said Marcus P. Norton, of said city of Troy, N. Y., for and upon improvements in "Post-Office, Postmarking, and Postage-Cancelling Hand-stamp," as by reference thereto will fully appear, which letters patent were, on the 23d day of August, 1864, duly issued and again reissued on the 3d day of August, 1869, and which letters patent, after having been duly assigned to me by the said Marcus P. Norton, and the assignment thereof duly recorded in the U. S. Patent Office, the same were by me surrendered to the Commissioner of Patents, and new letters patents were issued in two divisions, to wit, "Division A" and "Division B," and of even date herewith, "Division B" having been by me assigned to the "Secombe Manufacturing Company of the city of New York," according to the terms and provisions of a certain memorandum agreement in writing signed by the said W. W. Secombe, as president of said company, having authority so to do; and whereas the said W. W. Secombe has heretofore made a certain agreement in writing with the said Marcus P. Norton, concerning said reissued letters patent and certain moneys then advanced and to be advanced by him to said Marcus P. Norton, to which reference is now and hereby had as a part to this agreement, which said agreement so made by them before the said last reis-
2247 sue of said patent, but while I was the lawful owner of the same, with the assignment thereof not then recorded, but since recorded in order that the said letters patent might be reissued, as before stated, I, the said Helen B. Ingalls, assignee and lawful owner of the same, do hereby ratify, confirm, and consent that the same may be, and stand the same as though it were executed by me in case it shall appear necessary in order to carry out fairly and honorably the agreement so made by and between said Norton and said Secombe; and in the further consideration of money advanced, and which may hereafter be advanced to said Marcus P. Norton by said W. W. Secombe previous to any settlement by the Post Office Department for the past and future use of said invention contained in said "Division A," according to the requirements of a certain act of Congress approved on the 14th day of July, 1870, I hereby consent and agree that the same provisions and conditions named and set forth in the said agreement by and between the said Marcus P. Norton and said W. W. Secombe, may and shall apply and become a part of this agreement in consideration of any loan of money so made, or that may hereafter be made by said W. W. Secombe to the said Marcus P. Norton previous to such final settlement under said act of Congress as before stated, and I hereby ratify and confirm any and every loan of money made or to be made by said Secombe to said Norton under the aforesaid named agreement as well as under this agreement the same and in the same manner as though such loans had been made directly to me. In all such loans so made and to be made, the same have been done and are to be

done at my request by and through said Norton, and all agreements in writing between said parties of and concerning the said letters patent, are therefore binding upon me as the assignee and lawful owner
2248 and holder of said letters patent as well as of every and all claims for the past ten years' use of the said invention by the Government of the U. S. in the postal service of the United States of America.

In testimony whereof, I have, on this 4th day of October, 1870, hereto set my hand and seal.

HELEN M. INGALLS. [SEAL.]

Signed and sealed in the presence of
MARCUS P. NORTON.
A. P. NORTON.
Recorded Nov. 1st, 1870.
[Two 5-cent int. rev. stamps, cancelled.]

2248 *Def't's Ex. No.* 15.—*F* (*Corse*).—*I. B., ex'r. Feb.* 4, 1878.

X[13], p. 316.

Whereas, I, Helen M. Ingalls, formerly of Troy, New York, am the owner by mesne assignment of one undivided third part of the entire interest granted by the United States to Frederick G. Ransford, and Peter Low, as assignees of Marcus P. Norton by letters patent granted August 9th, A. D. 1859, for improvements in postmarking hand-stamps;

And whereas I am in like manner the owner of the entire interest in three other patents for improvements in postmarking and postage canceling stamps granted by the United States to said Marcus P. Norton, which said letters patent are respectively dated as follows, viz:

1st. Patent dated December 16th, A. D. 1862.
2249 2d. Patent dated April 14th, A. D. 1863, and subsequently reissued August 23d, A. D. 1864, and again reissued August 3d, A. D. 1869, and again reissued as Div. A, on the 4th of October, A. D. 1870.
3d. Patent dated July 13th, A. D. 1869.

And whereas, Wm. W. Secombe, of the city and State of New York, is willing to accept the ownership and charge thereof:

Now, therefore, in consideration of the sum of five dollars, to me in hand paid by said Wm. W. Secombe, I have assigned, transferred, and set over, and by these presents do assign, transfer, and set unto the said Wm. W. Secombe, and his assigns and personal representatives, all my right, title, and interest in and to each and all of the above recited letters patent, as fully as the same are vested in me, to have and to hold the same in trust for myself, my sister, Minnie D., wife of said Marcus P. Norton, and the children of said Marcus P. Norton, as follows:

The said Wm. W. Secombe may manufacture under said patents, or grant licenses to others to manufacture, or may sell and assign said letters patent, or any of them.

And I also assign to said Wm. W. Secombe all my right to compensation for the past use of said letters patent, or any of them, by the United States or others, as conveyed to me by said Marcus P. Norton, on the 20th day of October, A. D. 1869, and recorded in Liber B[13], p. 351, of transfers of patents in the Patent Office of the United States, authorizing him to collect and receipt for the same.

The proceeds of sales, licenses, or collections to be accounted for ac-

cording to the following rule: Said trustee is first to pay all the expenses of the trust, and reserving his compensation as trustee, to pay over the balance of money remaining in his hands according to the terms of a declaration of trust executed contemporaneously herewith to myself, and the said wife and children of said Marcus P. Norton.

2250 Executed at Washington, D. C., this fourth day of March, A. D. 1871.

HELEN M. INGALLS.

Witnesses:
MARCUS P. NORTON.
CHAS. P. BARNARD.

Recorded March 11, 1871.
Ex'd C. C. W., M. M.

[5-cent int. rev. stamp, canceled.]

B[17], p. 430.

Whereas, at various times and under several and different dates, the letters patent of the United States of America were issued upon the application and petition of Marcus P. Norton, of the city of Troy, county of Rensselaer and State of New York, for and upon improvements in hand printing and dating-stamps, post-office post-marking stamps, internal-revenue dating and canceling stamps, and for other improvements not necessary here to name, among which were letters patent of the following dates, to wit, January 14, 1862; December 16, 1862; August 4th, 1865; and also during the years 1870 and 1871;

And whereas the aforesaid inventions and letters patent were duly assigned, sold, and conveyed to the "Secombe Manufacturing Company," located at and doing business in the city, county, and State of New York, by the said Marcus P. Norton, inventor, and by Helen M. Ingalls, assignee of said Marcus P. Norton; which several deeds of assignment were duly recorded in, and are now of record in, the Patent Office of the United States, to which reference is now and hereby had for a more full and perfect description and understanding of the inventions and of the letters patent sold, assigned, and conveyed unto

2251 said Secombe Manufacturing Company by the said Marcus P. Norton and Helen M. Ingalls, assignee of said Marcus P. Norton, or by either of them, and reference is now and hereby had to the invention and to the several letters patent mentioned in the said deeds of assignment to the said Helen M. Ingalls by the said Marcus P. Norton, and by the said Helen M. Ingalls and said Marcus P. Norton, or either of them, to the said Secombe Manufacturing Company, or to William W. Secombe, as president of the said manufacturing company, for a more full and perfect description of the said several letters patent and inventions and improvements so sold and conveyed, and herein and hereby sold and conveyed, as hereinafter written;

S. A. Curtis, Marcus P. Norton, witnesses.

W. W. Secombe, president.

And whereas, the said Helen M. Ingalls is desirous of having and obtaining each and every of the aforesaid letters patent, inventions, and improvements now held and owned by the said Secombe Manufacturing Company, or by the said William W. Secombe as president;

And whereas the said Helen M. Ingalls has purchased of the said Secombe Manufacturing Company and of William W. Secombe, president, each and every of the aforesaid named and described inventions, improvements, and letters patent, now therefore, for and in consid-

eration of the sum of one thousand dollars, and in the other and further and valuable considerations, the receipt of which is hereby acknowledged, and in the additional consideration that the said Marcus P. Norton shall make no claim against the said Secombe Manufacturing Company for professional services rendered, we, the said Secombe Manufacturing Company, and William W. Secombe, president, have sold, assigned and conveyed, and we do hereby sell, assign, and convey unto the said Helen M. Ingalls, her heirs, assigns, and executors, each and every of the said inventions, improvements and letters pat-
2252 ent, and all of our right, title, and interest in the same, or in either thereof, now and forever; the same to be held and enjoyed by the said Helen M. Ingalls, for her own benefit and behoof, and for the benefit and behoof of her legal representatives to the full end of the term or terms for which the said letters patent are granted, or may be hereafter granted, issued, or extended, renewed or reissued, as fully and freely as the same would or could have been held and enjoyed by us had this sale and assignment not been made as and in the manner aforesaid.

W. W. Secombe, president.

S. A. Curtis, Marcus P. Norton, witnesses.

It is also the intention to sell, assign, and convey to said Helen M. Ingalls, each and every application for letters patent or for reissue of any letters patent, or for any extension of any letters patent now pending in the U. S. Patent Office in the name of said Marcus P. Norton, in which said Secombe Manufacturing Company, or by said William W. Secombe, president, have or claim to have any interest, right, or title whatever; and we do hereby sell, assign, and convey, now and forever, any and every right, title, claim or interest we have or either have in, to, or for any such pending case or application to the said Helen M. Ingalls, her heirs and assignees, now and forever.

Meaning to convey, and we do hereby convey unto her, the said Helen M. Ingalls, each and every claim, right, title, and interest we now have or can or would have in any of said inventions, improvements, and letters patent, by means or reason of any contract between us or either of us and said Marcus P. Norton and Helen M. Ingalls, or either of them, in, to, or for the said inventions and said letters patent, or either of them, so that they and each of them shall have and possess the same rights, titles, interests, and privileges they and each of them would have had and did have at the time of the making and executing of the said several deeds of assignments of said inventions, improve-
2253 ments and letters patent to said Secombe Manufacturing Company, or William W. Secombe, president.

In testimony whereof I have on this 10th day of July, A. D. 1873, hereunto set the hand and seal of the said Secombe Manufacturing Company, and of the said William W. Secombe, president.

SECOMBE MAN'F'G CO. [SEAL.]
W. W. SECOMBE, [SEAL.]
Pres'dent.

Signed, sealed, and delivered in presence of—
S. A. CURTIS.
MARCUS P. NORTON.

Recorded Sep. 20th, 1873.
Ex. M. M., E. F. E.

Def'ts Ex. No. 15—*G.* (*Corse*).—*I. B., ex'r. Feb.* 4, 1878.

N[21], p. 92.

Whereas letters patent of the United States of America were duly granted, issued, and delivered unto Marcus P. Norton, of the city of Troy, county of Rensselaer and State of New York, for and upon new and useful improvements in post-office, post-marking and canceling hand-stamp for postmarking letters and for the cancellation of the postage stamps, in the manner and for the purposes, and by the means therein described and set forth, which letters patent were issued and delivered, bearing date the 14th day of April, A. D. 1863, and numbered 38,175; which letters patent have been three times reissued, in the manner as by law provided, to wit, on the 23d day of August, A. D. 1864, number 1748; also on the 3d day of August, A. D. 1869,
2254 numbered 3586; and again, and for the third and last time reissued, on the 4th day of October, A. D. 1870, in two divisions of the same date, to wit, Division A and Division B, Division A being numbered 4143, and Division B being also numbered 4144 of reissues of patents, in the said Patent Office, to the specification and drawings of each reference is now and hereby had for a more full and perfect description of the said invention and improvements, as well as for full information of the same and of the invention, improvements, and letters patent herein and hereby assigned, in trust, in the manner and form following in this deed of trust, as herein stated and set forth;

And whereas the original letters patent, dated as aforesaid on the 14th day of April, A. D. 1863, and numbered 38175, were by the said Marcus P. Norton, on the 20th day of April, 1863, assigned and transferred in trust to Jacob Shavor and Albert C. Corse, of the said city of Troy, in the manner and for the purposes stated in their reassignment and retransfer to the said Marcus P. Norton, dated February 23d, 1864.

And whereas, on the 23d day of February, A. D. 1864, they, the said Jacob Shavor and Albert C. Corse, reassigned and reconveyed the aforesaid named letters patent and all reissues thereof to the said Marcus P. Norton, which assignment and deed of reconveyance being accompanied by the sworn affidavit and statement of the said Jacob Shavor, and of the said Albert C. Corse, was duly and lawfully entered of record, and was recorded in said United States Patent Office, on the 24th day of July, A. D. 1869, in liber U 11, page 319 of transfers of patents, as will fully and at large appear by the original deed of assignment and retransfer now in the possession of the undersigned; and whereas the said Marcus P. Norton did, on the 20th day of October, A. D.
2255 1869, by deed of assignment and transfer, and for a valuable consideration, sell, assign, and convey unto Helen M. Ingalls, of the said city of Troy, county of Rensselaer and State of New York, his entire right, title, and interest, in the invention, improvements, and letters patent, and of any and every reissue of the same, and also all and every right to compensation, and to recover by suit or otherwise for the use of the same, past or future, or for both, by the said United States, as by reference thereto will fully and at large appear.

The said Helen M. Ingalls, being the true and lawful owner and holder of the said invention and letters patent, duly surrendered the same to the Commissioner of Patents, for the purpose of reissuing the same in two divisions; and thereupon, upon the petition of the said Helen M. Ingalls, the said Commissioner of Patents, in conformity to law, granted a reissue of the said letters patent unto the said Helen M. Ingalls, according to said petition so made and filed by her in said Patent Office.

The said reissue was granted to her in two parts or divisions, under date of October 4th, 1870, as hereinbefore stated, of which "Division A" is the same or substantially the same as the said reissued letters patent granted to the said Marcus P. Norton, on the 3d day of August, A. D. 1869, and numbered 3586, as aforesaid stated.

The said deed of assignment to the said Helen M. Ingalls was duly entered of record, and recorded in said Patent Office on the first day of August, A. D. 1870, in liber B 13, page 351 of transfers of patents, as will appear by reference to the original deed of assignment and conveyance now in the possession of the undersigned, Helen M. Ingalls; and

Whereas, on or about the 4th day of March, A. D. 1871, the said Helen M. Ingalls, by a certain deed of assignment, and upon the terms and conditions stated therein as a part thereof, did in trust assign and convey to William W. Secombe, then of the city, county, and State of New York, her right and title to the said invention and letters
2256 patent, which was recorded in said Patent Office on the 11th day of March, A. D. 1871, in liber X 13, page 315 of Transfer of Patents, and which deed of assignment "in trust" has long since become void and of none effect, because and for the reason that the said William W. Secombe has not only wholly and entirely failed to keep and carry out the conditions therein named as the sole and only grounds for that "trust," but has repeatedly refused so to do. The considerations wherein said deed of trust was executed and delivered so as aforesaid and named therein, were not and have not been kept and faithfully observed by the said William W. Secombe in the manner as in said deed of trust was and is required of him in and thereby, but on the other hand, the same were and have been utterly neglected and refused on the part and behalf of him, the said William W. Secombe, whereupon the said invention and letters patent, and each and every right, title, and interest therein and thereto, became reinvested in and the sole and exclusive property of the said Helen M. Ingalls, the same as though no assignment "in trust" had been made to said William W. Secombe in the manner as aforesaid.

And whereas it has been deemed advisable that Christopher C. Campbell, of East Cheatham, county of Columbia and State of New York, should become fully vested with and should have vested in him in trust all the right, title, and interest which I now have or can have had in, to, or for the said invention and letters patent, and of each of the several reissues thereof, also of any and every claim or claims for past use of the said invention in the postal service of the said United States, from the date of the said letters patent, to wit, the 14th day of April, A. D. 1863. The right, title, and ownership of the said invention and letters patent is, in trust, vested in the said Christopher C. Campbell, upon the conditions that he shall have the sole management of said trust, and be at the expense of the same until a fair, just, and reasonable
2257 settlement shall be had with the United States aforesaid for such use of the said invention in the postal service of said United States by the Post Office Department, for which the said Christopher C. Campbell shall have and shall receive one-third of such sum as may hereafter be determined upon by the Court of Claims of the said United States, in payment for the past or for the future use of said invention in the said postal service; and the said Helen M. Ingalls shall have and shall receive two-thirds of such sum as may hereafter be determined upon by the said Court of Claims, in payment for the past or for the future use of the said invention in said postal service; and the said Court of Claims in the making and entering of any judgment against

said United States for the use of the said invention, improvements, and letters patent in such postal service, is now and hereby authorized and requested to make and enter such judgment as follows, to wit, one-third of the whole sum or amount to the said Christopher C. Campbell, and two-thirds of the whole sum or amount to the said Helen M. Ingalls, and thereby to require each of said named persons to sign and acknowledge satisfaction of such judgment, or to receipt therefor when the same is paid by the Treasury of the said United States in the manner provided by law, which payment shall be at the same time and in the presence of each, who thereupon shall sign a receipt or make satisfaction for such judgment or receipt of payment, or by their legal representatives, as by law may be provided; and the said Court of Claims shall have full power to make an order or decree in the premises as hereinbefore stated, so that one-third of the recovery or judgment determined and fixed by said court as by law may be provided, shall be paid to the said Christopher C. Campbell, and two-thirds thereof shall be paid to said Helen M. Ingalls, directly from the Treasury of said United States, and in no other manner shall payment be made for such use by the United States of the said invention and letters patent.

2258 Now, therefore, this deed of assignment and transfer in trust witnesseth, that for and in consideration of the sum of one dollar, to me in hand paid, the receipt whereof is now and hereby acknowledged, and in the further and other valuable consideration hereinbefore and herein stated as the main conditions upon which this instrument is now and hereby made and executed in trust, I, the said Helen M. Ingalls, have in trust so as aforesaid, sold, assigned, and transferred, and I do in like manner hereby sell, assign, and transfer in trust unto the said Christopher C. Campbell all the right, title, and interest which I now have or ever had in, to, or for the said invention and letters patent, and the several reissues thereof, which is as aforesaid stated, the entire invention, improvements, and letters patent named, dated, and numbered so as aforesaid and in like manner in trust and upon the same terms and conditions.

I also sell, assign, and convey unto him, the said Christopher C. Campbell, all the right, interest, and claim for and to the past use of the said invention and improvement under the said letters patent or any reissue thereof obtained by me from the said Marcus P. Norton by the said deed as assigned, dated the 20th day of October, A. D. 1869, and now of record in the manner so as aforesaid stated and set forth, intending herein and hereby to sell, assign, and convey in trust unto the said Christopher C. Campbell, in the manner herein provided and set forth, all my right, title, and interest or claim against said United States for the past or future use of the said invention and letters patent in the postal service of the said United States by the Post-Office Department, and also in like manner the entire invention, improvements, and letters patent and all and every reissue of the same since the 14th day of April, A. D. 1863.

The same and each and every thereof to be held in trust in the 2259 manner and for the benefit of each of the persons herein named and as herein specified and set forth, and on no other grounds and for no other use or purpose.

In testimony whereof I have on this second day of January, A. D. 1877, hereto set my hand and seal.

HELEN M. INGALLS. [SEAL.]

Sealed and delivered in presence of—
JOHN W. SMITH.

STATE OF NEW YORK,
Columbia County, ss:

On this second day of January, A. D. 1877, before me, the subscriber, personally appeared Helen M. Ingalls, to me known to be the person described in and who executed the within instrument and acknowledged that she executed the same.

JOHN W. SMITH,
Justice of the Peace in and for Columbia Co., N. Y.

Recorded March 23d, 1877.
Ex'd, H. M. H., C. K.

2260 *Def't's Exhibit No.* 16 (*Corse*).—*I. B., examiner.—January* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., Jan. 24, 1865.

A. C. CORSE, Esq.:

DEAR SIR: Mr. King has just left my room. The Postmaster-General sent the papers to Congress on the day he promised; they were referred to the same committee as the first ones were, who put the matter into the hands of Mr. Norton, the same as last year. He and Mr. King have fixed on to-morrow to examine the case and prepare the report for the House, which will be done in about two day', in all probability. King say that there will be no trouble about the report of the committee. He will recommend the gov't to pay us a handsome sum for the invention. Norton & King will try and settle upon some fair plan of payment. The question will be whether it shall be a fixed sum or a per cent. The committee seem to favor a per cent. of the amount saved in labor and then add to that a per cent. for saving in preventing frauds, also a per cent. in the expedition of the transportation of the mails without delays, &c. This would make an income annually almost as much as we ask for the patents. The first payment would be as much as $300,000.00, taking into the account past use, &c., of most two years. Will write you when the report to the House is ready. How is Shavor? Better, I hope, and fast getting well. I have seen the Gregorys but twice since you left, once Saturday and again to-day. Have not drawn for any money yet, but think I will have to do so to-morrow as I am near a point when I need it; still may not ask for two or three days yet. I think this matter is going ahead finely. We shall want Dr. Baldwin when the
2261 committee report to the House, which will be some time this week; will telegraph him when we want him; have him ready to come, as we want him to have Colfax push the matter ahead without delay, &c. Write me about Shavor, &c., &c.

Yours truly,

MARCUS P. NORTON.

Def't's Exhibit No. 17 (*Corse*), *I. B., ex'r, Jan.* 29*th*, 1878.

NATIONAL HOTEL,
January 25*th*, 1865.

A. C. CORSE, Esq.:

DEAR SIR: I enclose you parts of papers taken from the Congressional Globe, and have marked such places as refers to our stamp business and another referring to the Stanley case.

All things are going finely. I expect the committee soon to report on the stamp case. They won't receive the old papers filed last year because

they say the suit is conclusive, so they only receive our new papers filed this term; also Gen'l Dix's affidavit, Wakeman's letter to Postmaster-Gen'l as well as Gen'l Dix's letter to P. M. G. This is all in our favor. It makes our case clear and without any opposition of any kind whatever. Now for hanging up the matter, &c., &c.

The Stanley papers came to-day. How is Shavor? Hope he will soon get well and be out again.

Yours truly,

M. P. NORTON.

2262 *Def't's Ex. No.* 18 (*Corse*), *I. B., ex'r, Jan. 28th*, 1878.

[Office of Marcus P. Norton, attorney at law, counsel and advocate in patent cases.]

TROY, N. Y., *July* 22*d*, 1863.

A. C. CORSE:

I have a second call by my Albany attorney in the Hagan case to pay him balance of his bill, which is $140. This closes up everything in that case, and of course no more to pay. If you can do this for me to-day it would put me on fair ground. I mean, of course, if the co. can do it. The life insurance policy will be ready for assignment to you and Shavor in a day or so. It had to be returned for written consent of the company, as at the time we did not know to whom to make the assignment, and did not know until day before yesterday, when Mr. Shavor requested the assign to him and to you.

Can you meet Dr. Baldwin and myself at my office to-morrow evening at 7.30 in relation to the post-office matters?

I send you certified copies of Patent-Office search for assignments in our matter which show you the true condition of matters, and as I have always told you and Shavor. When Mr. Shavor was here yesterday we were busy in taking testimony it the Atwood case, and I forgot the Albany matter, although I had made a memorandum of it. I am to-day so lame that I can hardly walk.

Yours truly,

M. P. NORTON.

P. S.—The last patent does not seem to be assigned, or at least there is no record. If you have not the assignment I make one. Please
2263 look and see. This ought not to be left so. I want it just as we agreed. I think I made the assignment, and that you have omitted to have it recorded.

You will keep these certificates sent you herewith

NORTON.

Def't's Ex. No. 19 (*Corse*).—*I. B., exr. Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., Jan'y 27, 1865.

SHAVOR & CORSE:

DEAR SIRS: I enclose you copy of letter this day sent to House Com. by Mr. King in relation to certain exhibits which make for us a strong case on the question of perfection in the cancellation. It is a capital hit. Just as soon as Congress get our papers printed I will send you a copy of the same, which will not be long, as they have been duly sent to the Gov't Printer by vote of the House.

Mr. King met the postmaster here to-day, from St. Louis, Mo., who

gave us a certificate of the saving of between one-third and one-half of the labor in his post-office. This was another big point, because St. Louis is so far away from Washington and New York post-offices, and they all agree so well as to am't of labor saved. He would have stated one-half fully so, but he thought as "Shavor" has always thought better not over-state the case, but it would be better for us to understate it. I think that our case is going first rate and successful to us. It wants watching and hurrying up. That is just what I am doing. It will not be many days now before we shall get a vote in the House on the bill. The
2264 committee are all in our favor, and are now examining the matter of the amount of the compensation. I shall telegraph Dr. Baldwin when we want him. Hoping that Shavor is getting well I remain,

Your ob't ser.,

MARCUS P. NORTON.

Def't's Ex. No. 20 (*Corse*).—*I. B., examiner. January 29th*, 1878.

NATIONAL HOTEL,
Washington, D. C., Jan'y 28, '65.

A. C. CORSE, Esq.:

DEAR SIR: I send you enclosed the Congressional Glob' with a little item marked by which you will see that we have sent to Congress some additional papers. Our papers are now all before Congress, and in the hands of the Congressional Printer; when printed I will send you a copy. Having the printing done now will greatly aid the passage of our bill through the House. As it will be put upon its passage immediately after it comes completed from the committee room, which will be sometime next week. We are getting along finely and quite rapidly with this business now.

How is Shavor? I have not heard from you since you went home. I hear from Shavor every day or two through my clerk and from my family. I do hope Shavor will get well and about soon. Wheeler is here and is pushing ahead the Stanly matter. We hope for a report from Senate committee next week. I see no reason why it may not be favorable to us. I drew $100 on Gregory & Brother a day or two ago, and gave my receipt for it as the attorney of Chas. Eddy & Co.

Yours, truly,

MARCUS P. NORTON.

2265 *Def't's Ex. No.* 21 (*Corse*).—*I. B., examiner. January 29th*, 1878

MAY 15, 1868.

A. C. CORSE, Esq.:

DEAR SIR: I received your telegram yesterday, but not your letter you spoke about in the dispacth.

I am and have all the time been trying to do what is right here in the stamp matter, in the Pierce case, in Stewart's and in several matters connected with the Hogan invention for gold separation, and I hope to be able to convince you all that I have acted honorably and rightfully. It is by no means pleasant for me to be here, away from business, away from home—from children—but I dare not leave matters here yet. I want the papers in the Pierce matter, but they have not come to me yet as agreed upon, but then they will come. Impeachment has delayed me one full month. I am tired out almost, and never so homesick as I am now, and yet I have some work to do yet which must not be omitted.

I have done a large amount of work here for which I may never have credit or payment, but I will do all I can and all that is required of me, and if others complain I can't help it. I'll do my best for the best interest of all I may represent.

No vote will be taken by the Senate on impeachment until conviction becomes sure. God grant it may be very soon. I hope to get your letter to-night.

Truly yours,

M. P. NORTON.

2266 *Def't's Ex. No. 22 (Corse).—I. B., ex'r.—Jan. 29th*, 1878.

[Office of Marcus P. Norton, attorney-at-law, counsel, and advocate in patent cases, patent and copy rights procured, assignments or deeds prepared, opinions given, infringements upon patents or copyrights prosecuted or defended.]

TROY, N. Y., *Dec'ber 26th*, 1868.

A. C. CORSE, Esq.:

DEAR SIR: I sent to see if I could see you on Thursday evening last, but I think you did not get word.

The printing of the case sent from Washington was completed Wednesday and 15 more copies sent Merriman by express. Then, not to be caught again, and while the type was set and in printing order, I had extra copies, for which was only charged, extra, the cost of paper and for press work.

He came here on Thursday and I had to raise the wind and pay it. Now I would like that you would send me check for the same, as I am straped by the Stewart matter and will have hard work to get along. The bills are enclosed herewith. I want to see you about Stewart stove matters just as soon as I can; if you can't come let Charles come. Don't pay one cent, and I'll tell you why. I understand that a person was to go to your house and make a proposition. This is in confidence, &c.

I hope you will give me the amt. of bills enclose to make good what I settled for to day.

Yours, truly,

M. P. NORTON.

2267 *Def't's Ex. No. 23 (Corse).—I. B., examiner.—January 29th*, 1878.

[Office of Norton & Cowen, attorneys and counsellors. Marcus P. Norton, Esek Cowen.]

TROY, N. Y., *Jan'y* 25, 1869.

A. C. CORSE:

DEAR SIR: I think you ought to go to Washington, even though you do not get there before Wednesday morning. The probabilities are that it will come on to-morrow, and it will take two days, &c., and it seems to me that you would be of great service there. Those Washington men hardly comprehend the case, and I am really afraid of them unless you are there to keep up the line of operations. I do hope that after so long a while that we shall now succeed, and so we will if there were brains and energy in the matter at Washington.

Yours, &c.,

M. P. NORTON.

2268 *Def'ts Exhibit No. 24 (Corse).—I. B., examiner.—Jan. 29th, 1878.*

[Office of Marcus P. Norton, attorney-at-law, counsel and advocate in patent cases, patent and copyrights procured, assignments or deeds prepared, opinions given, infringements upon patents or copyrights prosecuted or defended.]

TROY, N. Y., *February* 27, 1869.

A. C. CORSE, Esq.:

DEAR SIR: I would like to see you very much indeed on several matters. The Stanley stove case ought to be seen to before I go to Washington. I want to see you about the P. O. stamp matter; I want to see you also about the Stewart matters and many other things. Swett was here last eve. about Hanks' matter and spoke of the Stewart affairs, and said the stove men would stand by me and would, &c., &c., &c. Now it is really necessary that I go to Washington on Monday next, and you will concur in that when you have seen me, and I have telegraphed I would go at that time; but I ought to see you first, and the question is whether or not I can. I did expect to see you yesterday afternoon. I am out in the boat, far from land, in the reservoir of P. P. Stewart, and I hope things will go as suggested. I have written the papers and everything just as Swett required, and Keep took their papers away last night at 6.30—railroad time. Now, will I see you before I go to Washington, as before stated? I think matters are important enough for you to see me, and still I may be mistaken.

Truly yours,

MARCUS P. NORTON.

2269 *Def'ts Ex. No. 25 (Corse).—I. B., examiner.—Jan. 29th, 1878.*

NATIONAL HOTEL,
Washington, D. C., April 8th, 1869.

A. C. CORSE, *Troy, N. Y.*:

DEAR SIR: All the claims have been allowed in your reservoir stove case, with one broad claim on all two flues combined with reservoirs. The patent will be sent to my office in a few days; it is a good and full one.

I have been expecting you here for a long while, as I wish to see you about your reissue case, and was in hopes you would come here, as it is here that I could see you best, because of matters in the Patent Office about which I wished the conference.

What about the P. O. stamp and matters connected with the same? I hear that the Hogan case in New York has been gained, and that there is a prospect of getting a big pile of money. Where are your papers? Where are mine in this case and matter? I think it not right that certain matters are left as they now are, and when I get home I mean to see to matters, and, so far as I am concerned, they shall be put in shape. It is said here that you have loaned me about $12,000 and Shavor about $18,000. If this is so I think we better settle our affairs, and that you should have all refunded that you have loaned; so let us settle it up as soon as I return.

The $250 note I will pay you as soon as I get home. It is all a loss between us. Have you seen the decisions? only one judge of the five was for us. What shall we do in this matter? Will you be here; if so, when? I shall go home about the 20th inst. Congress adjourns on

Saturday next. I suppose that I am to lose all of the Stewart matters, but there is a time coming, &c.

Yours, in haste,

M. P. NORTON.

2270 *Def't's Ex. No. 26 (Corse).—I. B., Ex'r.—Jan. 29, 1878.*

NATIONAL HOTEL,
Washington, D. C., April 14th, 1869.

A. C. CORSE, Esq., *Troy, N. Y.:*

MY DEAR SIR: Your letter, the only one that I ever received from you since I came here this time, came to me this evening, and without waiting a single moment I answer it. What I say is, confidential. I am much surprised at the matter you mentioned about one Mr. Green. No arrangement of any kind whatever has been made or proposed by me with him or any one else in Troy about our P. O. stamp. I think it quite time that people outside better let our business alone and attend to their own. We want no such arrangement as proposed. We care nothing about Low, Hatch, or any one else in that case, so long as you and I can agree to work together. I am deeply affected and grieved at the course that Shavor has taken with you as well as with myself. Let work together just as we agreed to do, if such a thing be possible. This outside meddling and interfering in our matters is a mean thing, and what I call dirty business. For Heaven's sake make no arrangement with Green or with any one else, but come here, if possible, early next week, and if I succeed in a certain undertaking, then we have cash on hand at once. Green came to see me about the Atwood Stove and Car Wheel case, and commenced a large amount of talk concerning what he would do were the matter in his hand, and I think he put as much as $500,000 into our pockets, to all of which I simply said "Yes," "I think so," and this was only to get rid of talk which was about a matter that was none of his business. What could he do here with this Ad-
2271 ministration whom he knows nothing about. What business has he to see Low or Hatch? I hope you have given him no authority at all. If we now can't manage our own matters, then we ought to lose it. We ought to move with as much quietness as possible. There has been already too much outside talk. Why, Corse, what could J. D. Green do here that we can't do? I think a piece of impertinence and of intermeddling with business that is none of his business. What I may do you will certainly be consulted, and that is just what I want you here for. Come if possible. I think it really necessary you should come as early as Monday next.

Let Stanley go to Charley, but wait until I get home for preparing the case. Come here and we will certainly get cash soon. The Hagan people must do by us as they agreed, or we will go into the crockery house.

Truly, yours,

MARCUS P. NORTON.

Def't's Ex. No. 27 (Corse).—I. B., Ex'r—Jan. 29th, 1878.

NATIONAL HOTEL,
Washington, D. C., Mar. 23, '63.

JACOB SHAVOR:

MY DEAR SIR: The "bids" were opened yesterday. There are five bids on our improvements, to wit, the Boston house, who have bid at $5 and $3.50—their lowest bid on our stamp. Hoole has bid at either

$5.25 or $5.50, I do not know which; a New York house has bid, but I do not know at what price; Zevely's brother has put in a bid, but I do not know how; so with some one from Albany. The committee will meet on Tuesday and will decide on Wednesday next. It is a secret committee, and no one can see them, but Gen. Skinner is chair-
2272 man of that com., and I have seen him. The Boston man is here and working hard for himself, also for us. To-morrow I am to have an interview with P. M. General as to price of patent fee; should we not agree, I shall propose to refer the matter to the next Congress for adjudication. One thing is settled; it is this: the government must use our improvements; they can't get around it. Postmasters from all sections of the country are sending here for it; this makes a demand for it. The New York office has given it the highest kind of a recommend; I shall have a copy of the letter to show you when I get home; it is a big thing. I never saw the letter until yesterday. It is now on file in the Post Office Department. Now, I think we must have our price for the improvements, and if the department will not now come to it, it will be much better for us to wait, with all this proof, until the next session of Congress; in the mean time get the case in an ample condition, and have Griswold present the case, backed by Colfax, Corning, and others of that class. I think we can do much better to take such a course. Indeed, I should be unwilling to attempt to close anything less than I have talked with you, under such circumstances, without first having seen you and Corse. The whole thing is moving right and doing well.

Yesterday another patent was granted to us on P. O. stamps, which is a good one, and, I think, the best one of the lot. There are still three cases behind and not yet reached at the Patent Office. We now have four patents. By this course we have cut off effectually about 30 different applicants, and put ourselves in the strongest possible condition. We have no competitors who can do us any harm; enough stand ready, but it is no go with them. I have great confidence in our final success in this matter. The Boston man—Hoole—Zevely, and all who know anything about it, say the same thing.

I shall try and get up the Morning and Evening Star case before I return home. Will write you again.

Yours, truly,

MARCUS P. NORTON.

2273 *Def't's Exhibit No.* 28 (*Corse*).—*I. B., Ex'r. Jan.* 29*th*, 1878.

[Office of Marcus P. Norton, attorney at law, counsel and advocate in patent cases.]

TROY, N. Y., *January* 10, 1864.

J. SHAVOR, Esq.:

DEAR SIR: I was up to see you Sat. eve' about the balance due to Boyce in F. & Co. case, but found you absent. Mr. Corse said he would call your attention to the fact when you came back. He would have given a c'k for it but for the fact that he had heard you say that you would do no more in the case. Let the whole thing rest until I return, and then there will be no mistake about it.

I have take' copy of our Congress petition to New York with me to have the P. M. there endorse it, and hope to be able to have him do it. If so, it will be a good thing. The papers and model will reach Griswold on Monday morning. I wrote to Europe an answer to that letter.

Yours, truly,

MARCUS P. NORTON.

2274 *Def't's Exhibit No.* 29 (*Corse*).—*I. B., Examiner. Jan.* 29, 1878.

[Office of Marcus P. Norton, attorney at law, counsel and advocate in patent cases.]

TROY, N. Y., *February* 27, 1864.

DEAR JACOB: I enclose to you a letter received last evening from Mr. King, Buchanan's "Postmaster-General," which you will see is just to the point. We can now have everything our own way. I want to leave here on Tuesday afternoon for W———, and remain at New York over Wednesday, for the purpose of getting Gen. Dix's statement, and then go on to Washington and get the report of House committee. I shall want to see you and Corse on Monday evening, unless you had as soon come here this evening, and of this you will please inform Charlie.

The assignments of desk patent, punching patent, &c., Charles will make out to-day to you and Corse. I have the specifications all done, except that on the desk, which will be done to-day, and all cases sent to W——— to-night, so that I can get them through, or at least the desk case while at Washington. There are three of these, $15 on each, $45; express and gov't stamps will am't to $5; in all $50, which send to me, and I will shove these all over the course. This stamp-punching matter will complete all that we patented in Europe, and make our position strong against improvements of others, but after Congress pays for the pat. of 1853, of course we don't care for the other stamp patents only so far as the internal revenue is concerned; then we may hope for a 2d slice.

Yours, truly,

MARCUS P. NORTON.

2275 *Def't's Exhibit No.* 30 (*Corse*).—*I. B., Examiner. Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., Mar. 11*th*, 1864.

JACOB SHAVOR, Esq.:

DEAR SIR: The post-office stamp matter goes on finely. The House committee chairman is to meet Mr. King, Gale, and myself at the Postmaster-General's room in the department to-day at 10 o'clock this morning. The former report which did us so great injustice is to be entirely withdrawn and a new one handed in, after which the whole matter will go straight through Congress in our favor. The proofs taken for the House committee will answer the Senate chamber when the case gets there. I think I wrote you that I would send you a copy of Gen. Dix's affidavit, but I have only just had it copied, and will therefore bring it with me to Troy when I return. It is the thing for us. We have also two certificates in favor of the stamp from the city post-office here, which you know is one of the largest post-offices in the country as to mail matter. These certificates are also to go to the House committee with the other papers. They are strongly in our favor. Mr. King has furnished me with extracts from the files at the Post Office Department, which I will also show you on my return. I can see nothing to prevent our complete and most certain success. Gale, King, Olin, and Griswold all concur with me in this belief. Mr. Gale has had the matter all talked over with "Judge Olin," and Olin is with us in this matter, and will do what may be necessary to be done for us so far as within his power to do; and he can do a great deal.

Ransford has not been here yet. You no doubt have seen him
2276 at Troy since I came here. Of course you will have no conversation with him about our movements here or at New York on this

stamp matter. He was at my house just before I left Troy, and wanted I should write him as to what I did at New York on this matter, but I could hardly see the point; and coming myself to the "unanimous" conclusion that it was no more his business than that of Dauchraw's, I did not write him either from New York or from here. He must not be at all recognized under these patents, no more than what I do by way of "soop." They are none of his in any way, shape, or manner. He has not spent a single cent for or in anywise relating to the same. The patent of 1859 is a condemned thing by the department for reason which I have heretofore given you and Mr. Corse. I suppose, of course, that you communicate my letters to Mr. Corse.

The desk patent has just been granted to me. We will push that right into market, and we will get enough out of that to more than pay expenses in the stamp matter. I will assign this to you and Mr. Corse, just as we agreed, on my return home.

Your original assignments in the stamp matter I had to leave with the House committee, as well as the original patents, which we can get again if we have use for them.

I am, indeed, well pleased with our matters here.

Yours, truly,

MARCUS P. NORTON.

Def't's Exhibit No. 31 (*Corse*).—*I. B., Examiner. Jan.* 29, 1878.

METROPOLITAN HOTEL, *March* 20, 1864.

DEAR SHAVOR: I have received two letters from Mr. King
2277 since I came here. The Washington stamp matters are all going along finely. He encloses to me a certified copy of a certificate from the Washington post-office which he has obtained. It is signed by the postmaster, his chief clerk, chief stamper, and postage-stamp canceler, and one other clerk. It is a first rate certificate. You will be pleased with it; so will Mr. Corse. The original goes before the House committee. I go to Phil. to-morrow morning early in Atwood extension case, and on my return to Troy will see you and hand you Mr. King's letters. Atwood and his expert Kellogg yesterday threatened to whip me while conducting the extension case. Only think of 210 pounds averdupoise being whipped here in New York and so far from home; but the duty to clients must be fully and strictly observed, let the consequences be as they may.

I shall want an interview with you and Mr. Corse on my home return.

Yours truly,

MARCUS P. NORTON.

Def't's Exhibit No. 32 (*Corse*).—*I. B., examiner.—Jan* 29, 1878.

JACOB SHAVOR:

Please pay McGreggor, the bearer, twenty dollars for copies of papers—affidavits and caveat papers in the post-office stamp case.

Troy, N. Y., April 27, 1864.

MARCUS P. NORTON.

(Endorsed:)

Gave check April 30, 1864. $20.

SHAVOR.

B. McGregor.

2278 *Def'ts Ex. No.* 33 (*Corse*).—*I. B., ex'r.—Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., May 2, 1864.

JACOB SHAVOR, Esq.:

DEAR SIR: Our matter before the committee for sufficient reasons has been postponed until Friday next. I saw Mr. Norton this morning in company with Mr. King. He says that in the best judgment of the committee, so far as he has information, we are right in our views of the stamp matter, and that it was very valuable, and would be well paid for beyond doubt.

I will write you again to-morrow. I have been much engaged in the Atwood case since I came here. The examiner in charge has reported against Atwood. We go now before commissioner on the 5th inst., when we expect to "cook his goose" thoroughly.

Yours truly,

MARCUS P. NORTON.

2279 *Def'ts Ex. No.* 34 (*Corse*).—*I. B., ex'r.—Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., May 11, '64.

JACOB SHAVOR, Esq.:

DEAR SIR: Your letter of the 9th inst. came at hand this morning. If you did not get my letter, referred to in your letter, the fault was not mine, for one was certainly written and mailed to you. I am sorry that my letters "caused unpleasant feelings." Your confidence in me (which has never for a moment been betrayed) seems to have been lost. For what cause I cannot now say. One thing is most certain, that for more than five long years I have steadily and without reservation labored hard, at many times during the small hours of the night, for the success and best interest of your firm, as well as for you personally. In nothing yet have *it* failed to accomplish for you which I have in my profession undertaken. In this you will bear me witness. It has sometimes taken a long while and has cost considerable money, but at last, finally, we have triumphed and our rejoicings have been mutual. Now, because I have not written you so as to make you feel good on paper, you scold me rather hard. But, Shavor, what I have written to you is the truth. Would you have me do more? I know you would not, but I think my last letter contained important information to you and Mr. Corse. As to the Ball paper you very well know why I did not settle with "Corning, Winslow & Co." and wipe out all of that paper. I was working night and day even without rest for the best interest of the firm of Chas. Eddy & Co., which add to that the stamp matter and I ask you if I did not have all that I could do? and then thus there could be no delay in either.

2280 You say that "it appears that you have been engaged in the Atwood case ever since you left Troy." In the first place, this is not so. I have been and am engaged in the Atwood case, but I have neglected nothing for you and Mr. Corse. I have been twice heard by the committee, and had private interviews as occasion might require. I have established your and Corse's claim to the introduction of cold air downward upon the fire in numerous small streams or jets in stove covers, a thing which you considered doubtful at the time. I spent some two or three days in seeing Mr. Hoole and getting our matter

right there after Ransford betrayed me by his lying promises. I made the point good with Hoole, and will have his affidavit to show you when I return. I went to see the agent for the sale of the patent chair, and arranged all things right there with the full assurance of a speedy and satisfactory sale. I went to see Mr. Wakeman and got all things right there; all of which hindered me so that I did not get into Washington until Sunday morning next after I left Troy. The committee waited for me until on Tuesday following. Then there are many other things which would appear as though I had been attending to something else besides the Atwood case. Then, again, let me here ask you if you have not a vital interest in that case? Atwood claims $40,000 against your firm up to now. Should his extension be granted and he succeed in his suit where would you then be? Just look this whole matter over again, I pray you. They are bearing my expenses in that case. Now, suppose they should turn upon me and say, you have been engaged in your stamp matter and in Stove-Cover case for Shavor & Corse—let them pay your expenses, what would you say? If I had nothing but my own personal expenses to pay, the expense would be very light compared to what they are. But every case is attended with its own expense, whether legitimate or not. Washington in that respect is unlike any other place in this country. Past experience will inform you all about it. But the business comes always right.

2281 On Tuesday of this week I met the House committee in relation to the P. O. stamp, when it was expected I would know their full decision, but Mr. Alley had that morning been called away on account of the Army movement and could not be present nor could a quorum be had, so it was postponed until Friday of this week. Mr. King was with me. I have the full assurance that we will be perfectly satisfied with the report or decision on the stamp matter. My faith is without a waver on that matter. There will not be any doubt but that we will come very near if not up to the figures which we have fixed. Patience we must have for our legislators move slow. Mr. Norton says that the universal opinion of the committee is that the invention ought to be paid for, and well paid. He says that we have made a strong case for good pay, and not one word has yet been said against the sum we have named. This matter has gone just as fast ahead as it could possibly. The Army movements makes a considerable difference here as to business. Much more than it would at Troy. I am also in hopes of getting something tangible as to the chair on my return to New York; such was intimated to me when there. I shall, of course, be here all of this week and perhaps some of next week. I shall not leave here until the Atwood patent expires, which is Saturday night of this week. There is not a particle of doubt but that we shall give him a good sound threshing. He deserves it. I will trust nothing here alone in that case when so much is hanging on it; and when I beat him I hope you stove men will at least thank me for it. I hope to telegraph to you before you get this letter of his complete defeat.

The committee meet again on Friday next at 11 o'clock a. m. I shall always write you when I have something to write. Now, Shavor, I hope you will try me a little longer. I may be of some service to you after all. You have stood by me like a man and I will not forget you or your interests, or that of Chas. Eddy & Co.

Yours truly,

M. P. NORTON.

2282 *Deft's Exhibit No.* 35 (*Corse*). *I. B., Ex'r. Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., May 15, '64.

JACOB SHAVOR, Esq.

DEAR SIR: Your letter of the 11th came duly at hand. I was sorry to find you in such bad spirits. But when you find that everything is just right, as you certainly will, and when I explain to you why I did not write you earlier than I did, you will not blame me any, and you will feel much better. Atwood is badly whipped. Nothing left of him. This is as I told you it would be. The Commissioner in person signed an order yesterday, at 3 o'clock p. m., denying him any extension. It could not have been done by him any earlier than the 14th, the day on which the patent was dated. The appeal board decided against him on Thursday afternoon. The House committee concur in every position taken by us in the stamp matter. That is also a sure thing—no mistake—particulars when I see you. I have one more interview, which will be on Tuesday, on the question of compensation. It is a big thing, they say, and we must give them time to figure and make also estimates, so that no censure can be put on them for recommending a large appropriation.

Charles Eddy is here and in my room. Simmons is also here.

Yours, truly,

MARCUS P. NORTON.

2283 *Deft's Ex. No.* 36 (*Corse*). *I. B., Ex'r. Jan.* 29, 1878.

TROY, *Aug.* 31, 1864.

DEAR SHAVOR: I want to pay Robinson for copying papers in the stamp case $12.50, and $16 in the Atwood case. He has left Mr. Gale's office and wants to settle up.

Yours, in haste,

M. P. NORTON.

Deft's Ex. No. 37 (*Corse*). *I. B., Ex'r. Jan.* 29, 1878.

AUGUST 30, '64.

DEAR SHAVOR:

DEAR SIR: Please send me $12 for house money, if you can. I want to see you here this evening about stamp, &c. The suit papers are most ready for you to sign. Is Corse here? We have everything just exactly right in the P. O. stamp; all papers will be served this week, which well insure us trial in October next, certainly.

Yours, truly,

M. P. NORTON.

Deft's Ex. No. 38 (*Corse*). *I. B., Ex'r. Jan.* 29, 1878.

SEPTEMBER 3, 1864.

DEAR SHAVOR: The cuts of stamp came last evening. The charges are $16.65, express included. This completes the full set under the new reissue drawings, and Charlie wants $8 for board money.

Yours, truly,

M. P. NORTON.

2284 *Deft's Exhibit No.* 39 (*Corse*). *I. B., Examiner. Jan.* 29, 1878.

METROPOLITAN HOTEL,
Dec. 29th, 1864.

DEAR SHAVOR: I did not reach here until 6.30 last evening; the train was about 3 hours behind time. I have been to the post-office to-day; have seen the P. M.; he has fixed upon to-morrow to see me. I saw Hoole. He is most emphatically with us; he is to make an affidavit to-morrow fully sustaining the points made in our letter by Mr. King to the "Post-Office Department," and it will have weight of course. Smith is quite ill at his house. I go there to-morrow to see him, and *and* if he is well enough I shall get what I want from him; at any rate Hoole's statement will answer the purpose however; I have the stamps in the hands of the engraver. The P. M. could not see me to day in an interview of any length, because of Post Office Department business, but has promised to give me attention to morrow. I saw Hogan at his office. I now believe that he will make the "Water Gas" a great success. I have to-day seen enough for that. I have seen the company whose works are at "Pougkeepsie" and at "Spuyten Duyvul" about the "Railroad Chair." They are to take it just as soon as I return from Washington, and say that they can make and sell them by the hundreds of tons. Will write you to-morrow.

Yours, faithfully,

M. P. NORTON.

2285 *Deft's Exhibit No.* 40 (*Corse*). *I. B., Examiner. Jan.* 29, 1878.

METROPOLITAN HOTEL, N. Y.,
January 13, '65.

DEAR SHAVOR: I wrote you by telegraph to-day that our papers were all signed and executed just right. Hoole * Smith came right up to the mark. Smith says that our invention saves seven clerks in the New York office, at an average salary of $900 each per year, which would be $6,300 in all. Hoole has made an estimate of the value. His lowest sum is over two millions of dollars. His separate letters are quite lengthy, so I will send you copies of them from Washington just as soon as I get there and can copy them before filing them with the committee. You will be much pleased with them, as I can assure you I am. These letters are in addition to his affidavit and in answer to a letter signed Shavor and Corse. I have them with his and Smith's affidavit. They are all strong documents, and now I see nothing to prevent a good and substantial consideration for the invention.

I saw Hogan to-day. He is going to Troy Saturday night. It is quite important that you and Potter see him at once. The details would be too long for this letter. He will give them to you. The matter is an important one. That invention is more valuable than we have hitherto supposed. It should be taken care of at once. Do not sign any assignment or any paper which will change or affect your title. It is the Hogan patent to be reissued, so you may say "we hereby consent that Wm. E. Hogan, of, &c., may reissue said patent, not, however, in anywise relinquishing our right, title, and interest therein and thereto, as well as to all reissues of said patent." This will be sufficient to enable him to reissue the original patent granted to him, which should
2286 be done in two separate patents. One patent on that part of the invention sold to the Hogan Co., and one on that part reserved

"&" erased in red.

to and belonging to you. Potter & Hogan, so have Reiley, make two sets of drawings after you have seen Hogan. I will write you from Washington. I am in the best of spirits; I feel that we are right and that a good Providence is with us and directing our movement.

Yours truly, and in the bonds of a lasting friendship,
MARCUS P. NORTON.

Deft's Exhibit No. 41 (*Corse*). *I. B., examiner. Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., February 3, 1865.

JACOB SHAVOR, Esq.,

MY DEAR SIR: I have just received a letter from Mrs. Norton, and am so happy to hear that you are getting better, and that the prospect of your being out soon are so bright. God bless and preserve you yet many days and years.

I wrote to Dr. Baldwin yesterday. He will let you see the letter. I wrote to Mr. Corse day before yesterday and again to-day. I am happy to inform you that all of our papers submitted this year to Congress have been printed, and each member of the House has now on his desk a copy in print. "Mr. King" and our friend "Norton," of the committee, are to day at work making the report of the House Com. on the P. O. & P. R., to whom the matter was submitted or referred. King will see that all things are right. He has been requested by the
2287 Com. to aid Mr. Norton in this matter. This is confidential. What precise plan of compensation they will agree upon I cannot to-day tell, but shall know when the commitee act on that question, which will be just as soon as Norton writes up his case. The Committee, you will recollect, referred the matter to Mr. Norton to draw up the report of the committee. There is not one of them but that are for us, because they say it is right and just. Mr. King told me last evening that he and Norton would get it all completed this week, and perhaps to-day. I shall send you printed case to-morrow or Monday by express to Charlie, who will see that you have the same.

We have beaten Bowsley before the appeal board on our revenue stamp matter. I mean the one which cancels by tearing or separating the same across the center. The Commissioner of Patents has also given us a patent upon our punch stamp for canceling revenue stamps by punching a hole through the same while giving date, name, &c. So this is first rate on the revenue stamp matter.

The patent on the Mabbitt machine for the manufacture of railroad chairs has also been granted, and will issue on Tuesday, one week from next Tuesday. The patent upon Lane's stove has also been granted in good shape, too. The Stanley matter don't go quite so fast as I wish it might. Foot has hold of it and will do all he can for its extension. I will write you again in a day or two.

Rest assured of one thing, that everything is going all right, and that I shall neglect nothing pertaining to our business. I am quite well satisfied with it so far, and hope that you are and will be. Dr. Baldwin will explain to you about his coming here. We shall want him soon. By the way, Mr. King and his entire family are Baptist people, and also the very good friends and acquaintances of "Speaker Colfax." In this we were most fortunate.

Hoping that you will soon be well again and about business, I remain, as ever, your friend and ob't s't,

MARCUS P. NORTON.

2288 & 2289 *Def't's Exhibit No.* 42 (*Corse*). *I. B., examiner. Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, D. C., February 6, 1865.

MY DEAR SHAVOR: In great haste I now write you to inform you that I was with the House Committee on Saturday evening last, and with Mr. King. They were all agreed that we were and are entitled to liberal compensation. We meet again this eve at 6 o'clock on that question. Some are for a fixed sum—a majority are for a per cent. Either way will make us a handsome fortune. To-morrow they have fixed for completing their report and drawing up the bill for Congress to pass on, which will be introduced on that day, or early Wednesday. Of to-night's result I shall write you to-morrow morning; will send you copy of their report and bill just as soon as printed. The papers which Congress printed I sent to you by mail, under the frank of "I. O. Norton," who is on that Com. I sent one to Corse, and shall to-day send one to Dr. Baldwin. When the bill, &c., is introduced I shall send for him. I may telegraph him to morrow. I have written you two or three letters within as many days, almost, giving you the facts. Hearing that you are much better, I now address my letters to you. I am feeling well indeed about our business here. I have been quite well for me, with the exception that a few days since I had one of those most terrible nervous prostrations, the result of overwork, but am much better now. We have done a great deal of hard work since I came here, and a kind Providence has favored us with grand success and in good time. I may write you again this evening; shall in case
2290 our conference is over in season. Mr. King is faithful and most untiring in his efforts. We have got the matter before Senate Com. too, and the chairman says our bill shall go through just as soon as it comes from the House. I will give you the details in my next about this Senate matter. It was a Yankee operation.

You' faithful friend & ob't s't,

MARCUS P. NORTON.

P. S.—Don't let my family know yet about the little nervous matter mentioned above, as it will worry Mrs. Norton; will write you more about it in my next.

NORTON.

Def't's Exhibit No. 43 (*Corse*). *I. B., examiner. Jan.* 29, 1878.

NATIONAL HOTEL,
Washington, Feb. 10, 1865.

DEAR SHAVOR: I have just received an assignment made by you and Holdridge to Hogan in a letter written by Potter. He wants it put on record at the Patent Office in case I was of the opinion that it was "all right." I am not of that opinion yet. I do not see the necessity of so doing, and shall hold on to the assignment, and neither record it or give it to Hogan unless you so direct me. I have not time to-day to give you my reasons and get this off in the mail. I see from my bk. book that your note for $200 is due the 14th and 17th inst. I will write you

to-morrow about this, also to Charlie, and make provisions for its payment; wrote you about stamp last evening at length.

Yours, truly,

MARCUS P. NORTON.

2291 *Def't's Ex. No.* 44 (*Corse*). *I. B., Ex'r. Jan.* 29, 1878.

NATIONAL HOTEL,
*Washington, D. C., Feb.*1, '65.

JACOB SHAVOR, Esq.:

MY DEAR SIR: I received a letter from Mrs. Norton this morning, in which she informs me that you have not seen the letters which I wrote to Mr. Corse since he went from here. These letters were details about the stamp matter. Congress has printed all of our papers filed since I came here this time, and they will be ready day after to-morrow, when I will send you a copy just as they have gone before Congress. When these papers are printed and sent back to Congress, then comes next the report of committee, which is now understood to be strongly for us. When this report is laid before the Speaker, then I shall want Dr. Baldwin to come here, and shall telegraph for him. Then the coast will be entirely clear, and we can rush it through. Printing our papers gives the members the opportunity to examine our case and claim, and be ready to act when the report comes in from the Committee. It will also carry it to and through the Senate without any delay. This is some of Mr. Colfax's work, at the request of Mr. King, who are special and good friends. The printing would have been done to-day had not the express company delayed our engraving cuts, which I sent for by telegraph to Charlie, just the moment Congress ordered the printing of our papers. They came this morning, and are now in the hands of the printer. King and I took a carriage and made things hum for about two hours in the forenoon. We are now all right, and the matter is all right. It is a go, certain.

The Stanley matter hung fire yesterday in Senate Com. Senator Foot has taken hold of it to-day, and says it shall go ahead.

2292 I do hope you will soon get entirely well. I have written to Dr. Baldwin to-day. I wrote you a day or two ago.

In great hurry, your frind & ob't s'v't,

MARCUS P. NORTON.

Def't's Ex. No. 45 (*Corse*). *I. B., Ex'r. Jan.* 29, 1878.

[Mr. Foot presented two communications from the Postmaster-General to the House of Representatives, and printed by order of the House as Executive Document No. 27 of the present session, on the subject of a patent canceling and marking stamp used by that department; which were referred to the Committee on Post-Offices and Post Roads.]

NATIONAL HOTEL,
Washington, D. C., Feb. 24, '65.

JACOB SHAVOR, Esq.:

DEAR SIR: I will write you only a short letter now, as Dr. Baldwin wrote you yesterday about the stamp. We are fairly under way in the Senate. The plan now is to vote in both Houses on the same bill at same time, so as to get it through this session. Senator Collamar agrees with the report of the House committee on the stamp subject. He

went to see the P. M. Gen'l this morning about the out-and-out purchase of the patent. Collamar thinks that the gov't should make the purchase at once. The P. M. Gen'l has agreed to send a letter to Congress to-morrow recommending the absolute purchase. If he will do this, our case will go through before the adjournment of Congress. I am still full of confidence that we shall go through all right now. The report, with bill in each house, will go in as early as Tuesday
2293 next for the purpose of voting, &c. This will make quick work of it, for then there will be no necessity of sending either bill to the other house for confirmation, because the bills thus passed will become a law, upon approval by the President; so says Mr. Callamar. The P. O. D., the House, and the Senate Com., each and all agree that we are entitled to a fair and just compensation.

I was at the department to-day, and saw 60 new stamps just from Hool's works, and every one of them were cork. I saw there two for the Troy P. O., and they will be there the first of next week. They are splendid ones. The gov't intend to put it into use in all the P. O. just as soon as they can get them made. I was told there that postmasters would have nothing else. It grows more popular every day. The department told me this day that it is the best stamp ever used, and would not, could not be superseded by any other, as that question had already been settled. We are all right, and going ahead. I am sorry that Dr. Baldwin was oblige' to go home to-day. He will see you and explain to you such facts as he may have obtained while here one day. I could have made him useful had he staid here. Will write you again, when I learn what the P. M. G. writes about an absolute purchase. All things shall move to the point, and everything will be done to secure the thing so much desired, to wit, success in money. I have to-day agreed to take gov't bonds of 1881, and asked Mr. Collamar to provide in the bill an exemption from gov't income tax. I had one of those most terrible spells of nervous prostration, which lasted for about five hou s, but Nellie, being here, knew just what to do, and took good care of me. I am better to day. Over taxation of the nervous system is the cause of them, but they will wear away after awhile.

Yours, truly,

M. P. NORTON.

2294 E. P. S. has gone to the front. I let him have in all $30. He will need no money for promotion; we can get it for him. I have his papers and his trunk here. His time was up.

M. P. N.

Def't's Exhibit No. 46 (*Corse*).—*I. B., Examiner. Jan.* 30, 1878.

WASHINGTON, D. C.,
August 2d, 1865.

DEAR SHAVOR: In the case which Charles said we had got into trouble, I have put through, and a patent will now issue to us. I inclose you receipt for the balance fee. We may have no special use for this pa ent only as a "tub to throw at the whale" in defending our great paten , which by the way is now very popular with the Postmaster-General. I called to inquire in relation to it, and was then informed that it was in more favor than ever before and was now considered an almost indispensable improvement. That the only fault found was that the department could not get as many made as it had demand for, but that the contractor was making large quantities of them, and that the P. O. D.

was putting them into all the post-offices where stamps are used. There will be no trouble in getting the department to do the handsome thing by us next fall. It is now promised us.

This $20 I paid out of draft on C. & E. & B. for $55, and the balance went for other fees, such as appeals, &c., in the same case. I became anxious about this case on account of the information which Charles brought home to you and Corse, so that you now see where we again are—as always, "all right."

2295 I shall see Hogan in New York, on Friday or Saturday.

Have got all of Lillie's cases, reissues, new patents, extensions, &c., &c., "all just right."

Yours, truly,

MARCUS P. NORTON.

Def't's Exhibit No. 47 (*Corse*).—*I. B., Examiner. Jan. 30th*, 1878.

U. S. PATENT OFFICE,
Washington, D. C., November 14th, 1865.

DEAR SHAVOR: I am now in the Patent Office, and write you from here so that you will get the letter to-morrow. I have carefully examined the Mason cases, and I find that he never had a caveat on file for the inventions which he took patent for—or at least such is the record here; and I have for that and other purposes ordered certified copies of such record. His matter, I am satisfied, is a great wrong, and his patents cannot be maintained in law or in equity. Something ought to be done here, but I do not know as I ought to do it, because I have no instructions from you or from Potter. Mr. Holloway is now absent, and in the State of Indiana, and is expected home every day, when I shall expect to get a certificate from him in relation to the Hogan matter. Mr. Combs, who was on the appeal board at the time of the granting of the Hogan patent, is now practicing law here, he having resigned his position on the board of appeals. I think it would be well for the New York men to get his services secured if they want immediate ac-

2296 tion, by way of an opinion to counteract the D. A. Burr opinion given in favor of Mason. I have made some inquiries in relation to this Burr, and I find that he is a new man in the patent business, and his opinion is not of great value in patent cases and matters.

I have daily expected that you would send me the post-office certificates, and King and I would then see the Postmaster-General about the stamp business. Mr. Norton is now at the National, and will be here all of next winter during the session of Congress, and says that he can and will help us through with the p. o. stamp matter. He was on the committee last winter, and had charge of the case then. I shall see Colfax on the 17th inst. We are getting along finely with our business here.

Yours, truly,

MARCUS P. NORTON.

Def't's Exhibit No. 48 (*Corse*), *A.—I. B., Examiner. Jan. 30th*, 1878.

NATIONAL HOTEL,
Washington, D. C., Nov. 19, 1865.

DEAR SHAVOR: Your letter is at hand. The package came by express late last evening. Mr. King came in in a few minutes after, and I gave it to him, and he will take it to the department to-morrow. Mr. Coombs is now writing out an opinion in your favor, in the Hogan mat-

ter. He will have it done to-morrow or Tuesday, and I will take it to New York with me. Mr. Holloway has not yet returned from Indiana.

Colfax is now here; I shall see him to-morrow. Norton, who was
2297 last winter on the P. O. Com., says that we ought to have the $300,000, and that he will help me to urge this matter, and secure with members of Congress at the next session. Mr. King says the same. Senator Collamer is dead, and I do not know who will take his place on that committee in the Senate, but it will be some good man who may be more liberal towards us than he was last winter. I think, on the whole, that we will be quite as well off in the Senate. Our claim and case is now a pretty strong one. About the chair I will say that I enclose you a letter from N. Y. I shall see to the matter on my return there, and hope that they will be far enough along to be able to close the matter up. I shall leave here on Wednesday next, and remain there long enough to finish up the case, if possible, and will take papers to your men which will offset Mr. Burr. All our matters now look well, indeed, much better and hopeful than ever. Don't lose the *the* letter.

Yours, truly,

MARCUS P. NORTON.

Def't's Ex. No. 48 B.—I. B., Examiner.

TROY, *Feb.* 28, 1865.

MARCUS P. NORTON, Esq.:

DEAR SIR: Our papers are at last ready. How long do you remain in Washington? Please answer by telegraph to 180 Broadway.

Yours, &c.,

N. E. HAGAN.

2298 *Def't's Exhibit No. 49 (Corse).—I. B., Examiner. Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, Nov. 22, '65.

J. SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I shall have to take to New York with me to-night Coombs' opinion in the Hogan matter, which knocks Mr. Burr's opinion into pie. He was on the appeal board, and of course perfectly familiar with the case. He does not think much of Burr's opinion. Holloway has just returned, and will also give certificate. I go to New York to-night, and meet Mabbitt and our chair men there to-morrow, and hope to arrive to a definite fact and close up a bargain. The note you gave me for the Bishop matter—$450—is due the 23d and 26th of this month. I hope to get home before then. We will have to get a new note discounted to make this one good, which I can get next discount day, one week from to-day, without any mistake. The post office matter came all right, as I wrote you some days ago. Mr. Colfax, in case he is made Speaker, will do as we have proposed about committee, and I think there is no doubt about his election. Our certificates please the department much, as now it has something definite to act upon. We are advised to put our case in the first thing after the organization of the House and formation of committees.

Hoping to see you soon, and that the Hogan matter will now go ahead without any more stops, I remain,

Yours, truly,

MARCUS P. NORTON.

2299 *Def't's Ex. No.* 50 (*Corse*).—*I. B., Ex'r. Jan.* 30*th*, 1878.

NATIONAL HOTEL,
Washington, D. C., March 7, 1866.

MY DEAR SHAVOR: Your letter is at hand just as the New York mail is about to close, and I hasten to write you by this mail.

The stamp business is going just right, so far. There is nothing wrong about it. Both the House and Senate committees have agreed that we are justly entitled to compensation, and they have called on the Post-Office Department for information as to the average price paid clerks in the New York and other post-offices, which is to serve as a basis for them to get at the amount in round sum, or in some of the per cent. plans we have talked over. We had interviews with these committees in session last of last week. The department have this day promised the statement, in writing, as to salaries, &c., &c., within this week, and the committee will then report to the house immediately after agreeing upon a bill. We shall be able to get through with it long before the close of the session. We are arranging with members now, so as to have no opposition when the bill is reported to the House. If there were anything wrong about it, I would write you just as soon as I would on good news, but I was waiting, hoping for this report from the department by this day, so as to let you know what it was, but shall have to do that at some other day. I have no doubt but that it will be satisfactory. I hardly believe it will be necessary for the Dr. to come here, as the matter does not yet meet with any opposition. Should it be necessary I will advise you in time. I want to save this expense if
2300 I can. The man here who makes the stamps for F. & Co. does it for $5.75, all complete, out of good steel, and the department say they are a great deal better than Hoole. Hoole cheated the department in the making of the stamp. He expected to bring us and the department under his control—so thinks the stamp agent in the department. Only think, a good combined steel stamp, all ready for use, at $5.75. We have paid a big figure for all our work on stamps, and I am ashamed of myself that we did not find it out sooner in some way. Have you received the new stamps yet which we sent to New York, and for the offices you named?

The department are putting our stamp into all the offices as fast as it can get them made. Mr. Davis, the agent of that department, told me to day that he had just given the largest order ever given since he had been there, which is about 15 years, and every one of them are our cork double stamp. He says that postmasters won't use anything else; but once in a while they find a P. M. who don't know how to use it. He says, also, that the P. O. D. will have to use our bag within the next year. The committee are going to see Davis and witness the stamping of letters in the Washington P. O. I have got all things ready for them in both places. This is to aid them in drawing up their report to present to the House, and to give them argument to use in favor of the passage of the bill. I will keep you fully advised. The central perforated tube matter I will write you about this evening or to-morrow morning; also, finish answer to your letter. I have struck this by the power of "lightning," so try and read it.

Yours, truly,

M. P. NORTON.

will go to New York to-morrow in time for the 24th inst. He says the case is sure, and that Kellar says so too. Good.

Yours, truly,

MARCUS P. NORTON.

2305 *Def't's Ex. No. 54 (Corse), A & B.—I. B., Ex'r, Jan. 30, 1878.*

NATIONAL HOTEL, *March* 27, '66.

JACOB SHAVOR, Esq.,

DEAR SIR: I send you a copy of the act passed the House yesterday so you can see the failure of the envelope scheme of the P. M. G., and that stamps are still to be used, by permission, to change the design, if found necessary so to do by reason of any counterfeiting, any and all of which will require cancellation. This being now out of our way we will hurry up the matter. All is going well with committee.

Yours, truly,

M. P. NORTON.

The following is a copy of the amended bill as passed:

A BILL to amend the postal laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of April, eighteen hundred and sixty-six, prepaid letters shall be forwarded at the request of the party addressed from one post-office to another without additional postage charge; and returned dead-letters shall be restored to the writers thereof free of postage.

SEC. 2. And be it further enacted, That the tenth section of the act entitled "An act to establish salaries for postmasters and for other purposes," approved July one, eighteen hundred and sixty-four; and so much of the twenty-eighth section o the act entitled "An act to amend the laws relating to the Post-Office Department, approved March
2306 three, eighteen hundred and sixty-three, as requires postage to be charged at the prepaid rate, to be collected on the return delivery of letters endorsed with a request for their return to the writers, be and the same are hereby repealed; and all letters bearing such endorsement shall hereafter be returned to the writers thereof without additional postal charge.

SEC. 3. And be it further enacted, That the third section of the act entitled "An act to establish a postal money-order system," approved May 17, 1864, be, and the same is hereby, amended so as to authorize the issuing of a money order for any sum not to exceed fifty dollars, and that the charge or fee for an order for a sum not exceeding twenty dollars shall be ten cents, and for an order for a sum exceeding twenty dollars twenty-five cents.

SEC. 4. And be it further enacted, That a money order shall be valid and payable when presented to the deputy postmaster on whom it is drawn within one year after its date, but for no longer period; and in case of the loss of a money order a duplicate thereof shall be issued without charge on the application of the remitter or payee, who shall make the required proofs; and the postmasters at all money order offices are hereby authorized and required to administer to the applicant or applicants in such cases the required oath or affirmation free of charge.

SEC. 5. And be it further enacted, That all railroad companies carrying the mails of the United States shall convey without extra charge, by any train which they may run over their roads, all such printed matter as the Postmaster-General shall from time to time direct to be transported thereon, with the persons in carge of the mails designated by the Post-Office Department for that purpose.

SEC. 6. And be it further enacted, That if any person or persons shall wilfully and maliciously injure, deface or destroy any maila-
2307 ble matter deposited in any letter-box, pillar-box, or other receiving boxes established by authority of the Postmaster-General of the United States for the safe deposit of matter for the mails or for delivery, or shall wilfully aid and assist in injuring such mailable matter so deposited as aforesaid, either by pouring into such boxes oil, water, or other fluids, or by any other means, every such offender, thereof being duly convicted, shall for every such offense be fined not less than one hundred nor more than one thousand dollars, or be imprisoned not less than one year nor more than three years, at the discretion of the court.

SEC. 7. And be it further enacted, That whenever it shall become expedient, in the opinion of the Postmaster-General, to substitute a different kind of postage-stamps for those now in use, he shall be, and is hereby, authorized to modify the existing contract for the manufacture of postage stamps, so as to allow to the contractors a sum sufficient to cover the increased expenses, if any, of manufacturing the stamps so substituted.

SEC. 8. That section two of an act entitled an act to establish salaries for postmasters and for other purposes, approved July 1, 1864, be amended by adding the following: Provided, That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is ten per cent. lower that it would be on the basis of commissions under the act of 1854, concerning compensation, then the Postmaster-General shall review and readjust under the provisions of said section.

Mr. Schenck, of Ohio, from the Committee on Military Affairs, gave notice that he should at an early day report the Army bill and ask its immediate consideration by the House.

2308 *Def't's Exhibit No.* 55 (*Corse*), *A, B, C & D.—I. B., Ex'r, Jan. 30th*, 1878.

WASHINGTON, D. C., *March 28th*, 1866.

HON. T. W. FERRY,
A House Committee on the P. O. & P. R's:

SIR: Your answer to my letter of the 26 instant with copy report of the Postmaster-General in relation to the use by the government through the Post-Office Department of the invention known as the "Norton post-marking & postage-canceling stamp" is received, and in reply thereto, I have to state:

That I am much surprised at the inadequate compensation recommended by him for the past and future use of the said invention. It is not a fair or just sum for the purchase of the said stamp. His recommendations are formed upon a wrong and entirely unsatisfactory basis, which will become apparent as I proceed with this letter in answer to yours and that report.

The main and more substantial points of advantages, gains, and profit of said invention to the government are briefly as follows, to wit:

1st. It certainly saves in labor alone one-half the clerk-hire in all the larger offices where stamping clerks are required, and the Postmaster-General says in his said report that it now saves in the different offices in this country "two hundred and fifty-four clerks," who, at an annual salary of $800, would receive (but for this invention) the full sum of $203,200 (two hundred and three thousand and two hundred dollars). This is, therefore, the amount in round numbers saved to the government annually, and for the three past years this invention has saved the Post-Office Department $609,600 (six hundred and nine thousand and six hundred dollars).

2309 2d. It is a most complete and perfect invention for the successful and permanent cancellation of the postage-stamps, whereby they cannot be cleaned chemically or otherwise for the purpose of a second or reuse of the same in fraudulent payment of postage, which to the government is another item of certainly great interest and importance in the saving of the revenue of the Post-Office Department.

It will be remembered that a few years ago many persons were engaged in advertising for the procurement and purchase of old or once used postage stamps for the purpose of converting the same into "papier mache" which were to be sold for the purposes of educating young men for the Christian ministry. Into the work of supposed charity many good people went with great will and effort, and thus many hundred thousand of old or once used postage-stamps were collected and given to such charity; not a single device of the kind named was ever made out of these postage-stamps, and of course not one person was educated for the Christian ministry as thus proposed, but such stamps were washed or cleaned by a chemical process and sold and reused in payment of postage whereby the government was defrauded out of many, many thousand dollars. But when this invention of Norton's went into general use in all of the larger post-offices, this fraud, though beginning upon a small scale yet ending in a gigantic one, had a most certain and positive end, for the postage stamps then became permanently canceled so that no chemical process, or wash, or other device would so clean the said stamps without the entire destruction of the design, which would immediately discover the fraud if an attempt were made to reuse the same; to what extent this invention has already or may hereafter save the government in dollars and cents by permanently checking and stopping this fraud, which with some scoundrels had become an extensive business, cannot with a certainty of course be known, but it is fair to draw an inference from this fact and surrounding; for this purpose the said invention is of great value.

2310 3d. By the use of the said invention the mails in the large post-offices are made up with much greater rapidity than ever before, by means of which there is no delay in the dispatch and transportation of the mails. Previous to the use of this invention, in the large offices it very often happened that a large number of letters, papers, &c., had to remain over for one mail because the full number of letters could not be mailed in time for the trains. This of course would be a great injury to all kinds of business men, whose letters were thus detained. Now by this invention every letter or other matter is made ready for transit as soon almost as received at the mailing office; of course there is no delay; more than that, postmasters may now hold open their mails to a much later hour, and then receive, and mail, and send in transportation the correspondence of business men, which to all kinds or classes of business men is of considerable importance. For this reason the said invention is of importance and value not only to the department, but to the busi-

ness men of our country. It thus confers a permanent benefit upon business community and hastens transit of mail matter.

There are many other ways set forth in the petition for compensation for past use and for the purchase of the said invention, by which the entire business portion of our country are much benefited by the use of said invention, so there are many others therein set forth by which the government itself, through the Post-Office Department, is very much benefited, and money saved, which I do not deem best to here mention at length *length*, but I do ask for them your careful consideration, for small items in a great country and government become large, very large.

The Postmaster-General in said report says that in 1860 I sold to the New York office a number of these stamps for use there. *His* is a great error. I never sold a stamp to that or any other post-office in my
2311 life, nor did any one by my authority. The stamps then and since used in that office were made by the then government contractor by direction of the Post-Office Department; I have not directly or indirectly received from the government or from any other source a single dollar in compensation for this invention, nor have I in any way or manner whatever given my consent for the Post-Office Department or any sub-post-office to use the said invention without a fair and just compensation, but, on the other hand the understanding has always been with the department that when the matter came up in Congress justice should be done in the purchase and payment of this invention; I did consent to a full and thorough trial of this invention in the New York office so that the department might have as it had expressed a desire to prove the value of the said invention before undertaking to put the same under contract for manufacture for its use in post-offices, and having by a fair test proven its great utility and value to the postal service it adopted it and let a contract to Fairbanks & Co. of New York to manufacture stamps containing said invention for a term of four years (more than three of which have now expired), knowing at the same time that Fairbanks & Co. had no right whatever to make for the department such stamps and sell the same to the government. This question has also been determined against them, i. e., that said contractors or their subcontractor, Edmund Hoole, had no such right. This was settled in a suit of the assignees against said Hoole, wherein it was also determined by judge and jury that said Norton was the original and first inventor of said invention, and that suit with its surroundings was necessarily an expensive one, and had to be brought, because the late Postmaster-General, in order to prevent the payment of a fair and just compensation for said invention, assailed the patent thereon by denying that said Norton was the original and first inventor thereof as by the law required in order to maintain the title in the patent. It was decided in Norton's favor at a large expense in money and loss of time.

2312 Out of more than 28,000 post-offices in this country, but a few comparatively have it now in use, and yet the Postmaster-General was compelled to admit the fact which I have before stated in relation to the enormous annual savings by the use of this invention, to wit, more than two hundred thousand dollars per year, which would amount in 17 years, the life of said patent, to $3,454,400 (three millions four hundred and fifty-four thousand and four hundred dollars) just for the offices alone in which the invention is now in use and leaving about 27,000 post-offices yet to provide for, and in about half of which post-marking stamps are now used, and which are to be supplied with the said Norton

invention so soon as there old stamps become worn out; so says the Postmaster General in said report. Now upon his basis of calculation for every thousand offices which use said invention there is and will be saved more than 3,000,000. A few figures will show you the immense sum counted only by millions for the lifetime of said patent.

Any patented invention to be valuable to the inventor must of course be used, and it is the use of said invention by the government which makes this one of great value to the inventor. The Postmaster-General is entitled to great credid for the discovery that unless the department used said invention that it would have no money value to the inventor. Would not this have been so with the rubber patent, with the tel graph patent, and many other valuable inventions if not used? But the fact is, the department use this invention and extensively, too, and it is putting it into still more extensive use as fast as it can; so says the Postmaster-General in said report.

No one will for a single moment believe that the department intend to discontinue the use of said invention which in three years has saved to it more than $600,000. This is merely an effort to get this invention for a small sum, "a song," to wit, $20,000. There is no danger of
2313 said invention being superceeded by another; if there is, why has it not been done before now? And again there is no necessity for it. This does just what is required to be done, and it was the result of many experiments, labor, and money expense, and such argument of the P. M. General is inequitable and is for the purpose of obtaining said invention for those low figures, to wit, $20,000. More than that the department has deliberately decided and determined this the best one, and without any right in law or in equity put it into extensive use to its own great gain and profit and still so continue it.

It appears upon the face of said report that the Postmaster-General made his low estimate, to wit, $20,000, upon the assumption that the present Congress would pass a law compelling the people to use "stamped envelopes" only, that no detached and adhesive postage-stamps should be allowed to be used in payment of postage. This impractical and inconvenient thing or plan will not work, for the House Committee, whereof you are a member, has already refused to recommend such bill to become the law, for such an act would have been one of great injustic' to the people at large as well as to our manufactures; detached and adhesive stamps for payment of postage must be used always. Business requires it. In some cases stamped envelopes are convenient, but in all cases the separate and adhesive stamp is always the more convenient.

These are in my judgment only arguments of fancy and of an equitable mind in order to fix the arbitrary price of a valuable and meritorious invention at the small sum of $20,000, and thus forbid that right and justice shall be done under the law which gave to the inventor property in this invention. That same government which now uses said invention by the law of force only gave to the inventor the exclusive right to and property in said invention, and it now has no right to convert it to its own use without a fair and just compensation, and no one will pretend under all the facts that $20,000 is anywhere near a fair or just sum.

2314 The $20,000 recommended would not pay me the usual rates in my profession for the time and trouble expended upon this invention in the getting it into public use, in getting patents and in prosecuting a suit in regard to the validity of said patents when a former Postmaster-General sent me to test the validity of said patent, he having, as before stated, denied to your committee my right to the invention as

the original and first inventor. As before stated, the courts decided the case in favor of the patent. I made no charge to the expenses for this service and labor, nor for counsel who were employed with me in the case; I ought to have 6,000 for such service and labor, and $4,000 for payment of associate counsel in the case; these sums would but be fair and usual charges in such case.

I am authorized to state that the $20,000 recommended by the Postmaster-General is not anything like a fair, just, or equitable compensation for the past use of said invention and for the purchase of the patent, and that the sum of $100,000 for such purchase of the patent, and $12,282 $\frac{70}{100}$ cash expenses, and $10,000 for attorney and counsel fees, for labor and services rendered, in all the of $122,282.70 free from income tax, will be received as a round sum for the transfer of said patent to the department, together with the interest on the money expended as recommended by the P. M. General.

It is well here to call your attention to the fact that it is within the power of my assignees and myself to prevent the further use of said invention by the issuing of an injunction against all who attempt to use it, and to prevent the contractor from manufacturing it as according to his or any other contract with said department, but we much rather that a fair, just, and equitable course should be pursued towards us than to be driven, because justice is withheld, to stop such use and manufacture, and thus at once compel the department to put into office the "two hundred and fifty four clerks" per par, which the P. M. General
2315 says are now saved to the department, which would be the best and most honorable course for government to pursue. What shall encourage and stimulate invention for the benefit of the public at large and for the maintainance of the government!

I am authorized to say also, that instead of a "round" or fixed sum the said invention may be purchased for the price of the annual saving in labor alone for the term of three years, as reported by the Postmaster General in said report, provided that settlement is had upon that basis and the payments made on settlement and transfer of the patent in 1866.

On the 3d day of June, 1864, Congress passed an act *act* or joint resolution agreeing to pay for a "shell and fuse" patent for war purposes the sum of $100,000 (one hundred thousand dollars). It does not appear whether or not the government was benefited by this last-named invention, while the said stamp and canceling device is not only admitted to be one of great benefit to the government, but is shown to be so by a large amount of proofs. I have expected that the government would at least consider this invention as fairly as it has many others pertaining to the War and Navy Departments.

I have no objections to going to the Court of Claims to establish the price by positive proofs at which the government shall purchase the said patent and settle and pay for past acts of infringements, provided that costs shall be allowed for such course, and that the said court shall fix the sum upon the proofs produced as to the saving and the actual value to the government, and give judgment therefor.

It is a well settled rule of law that the inventor bringing suit for the infringement of his patent is entitled to recover all profits made by the vendor, manufacturer or user of his invention, and in the case of the user the rule is that what he saves by the use of the invention and advantages materially and permanently gained are to be considered
2316 as the profits made by such use. I have no doubt but that the best way for the government is to pay the sum first proposed, and

as proposed, as it would be much the cheaper, and it ought not to expect to use and continue the use of this invention, by which it annually saves such large sum of money, without a fair and just compensation in proportion to the benefit conferred by it.

I have made this communication as short as I could in justice to myself and the department, and I think your committee will have no trouble in coming to the conclusion that the Postmaster-General in said report begs the question, &c., &c.

Very respectfully, your ob't serv't,

MARCUS P. NORTON.

Def't's Exhibit No. 56 (Corse).—I. B., examiner.—Jan. 30, 1878.

NATIONAL HOTEL,
Washington, D. C., March 29, 1866.

JACOB SHAVOR, Esq.:

DEAR SIR: Your letter is at hand. If it had intimated that you would undertake to stop the use of the invention unless gov't a fair and just sum for the same, by an injunction, and being wholly in relation to the stamp matter and the P. M. G.'s report, I would have handed it to the committee, for your ideas in relation the report and use of the invention are first rate. Now, if you think best to send me such a letter, I have no doubt but that it will work well.

Mr. Ferry will report as an allowance the sum of $122,282.70, and just as soon as I can get the papers and get copies from them all, I will send you them, and then you see how it came about. You wrote
2317 me to take $100,000, round sum, or I would have had more reported. This is, perhaps, as large a sum as we can get through in round sum. He has proposed two other plans, either of which would give us more than three times that sum, and I believe would go through the sooner. Now, he will certainly report on Friday of this week or Tuesday of next, and any suggestions you may make to me will not be out of time or place, in my judgment. If you would show fig t by court or injunctions against every person who makes or uses this stamp, it would have a good effect here.

I shall answer your letter more in detail in course of a few days, say this week, just as soon as I get the papers to copy. It will go straight ahead as soon as the report is made.

The Hagan matter in New York has occupied considerable of my time in hunting up an' sending papers to New York, and I am so glad that I am here so as to get it all O. K. He writes me that the case is a sure one for us.

Shavor, the governor of Montana has been here to see me about the great invention—Hagan process. He says it is the greatest invention of the age, and worth millions—and he wants to get a slice. He is coming to see me again to-night. A lady friend of Nellie's introduced him to me. He is sound on the greenbacks. After I have had another interview with him I can tell you more about it, but don't part with that invention for any small sum. With the New York suit won you may then rest certain of a big pile in three months—so he says. He is anxious that you should win.

Yours truly,

MARCUS P. NORTON.

2318 *Def't's Exhibit No. 57 (Corse). I. B., ex'r. Jan. 30, 1878.*

NATIONAL HOTEL,
Washington, D. C., April 3, 1866.

JACOB SHAVOR, Esq.,
Troy, N. Y.

DEAR SIR: Mr. Ferry makes his report to-day to his committee, and then a bill will be drawn up and submitted to the House at once. He recommends in round numbers $122,270 $\frac{70}{100}$, or the saving for the years, based upon the Postmaster-General's report of annual saving of 254 clerks at $800 salary per year, immediate settlement and free from income tax. The papers, he says, will be ready to furnish copy to-morrow, and I will send them all to you just as soon as we get them.

It came just right in our New York suit by my being here. Will write you more about this suit next time. The governor of Montana was on a visit to our rooms here last evening. He wants to get an interest in the patent in case you win the suit, &c.

I send you draft on Allen for $260 at one month. He is the one I drafted on before, and who paid the draft. I did not dare to risk a sight draft on him here for fear he might be from home. He told me to draft on him for any money I wanted in his business, so I have used for him some money out of our general fund and now draft for it back and some more to use right here. I want to make the matter just as light as possible for you. In exchange for this draft I have drawn on your Co. for same amount. This discount and other expenses, if you will name them to me, I will send it to you by letter from here.

Charlie says that the Providence man will be in Troy and pay his draft, &c.

The New York man is now in Ohio, and I am expecting him
2319 here every day, when he said he would pay your draft by draft to your order on New York. Please pay my draft on your house and put my draft on Hon. J. L. Allen to my credit, in place of my draft on you, which will make this transaction even when you let me know the charges, &c. The Stanly extension case will come up in committee to morrow. The chairman has promised me to put it through, but his bankrupt bill has, until now, prevented his action, &c.

Yours, truly,

MARCUS P. NORTON.

Def't's Exhibit No. 58 (Corse). I. B., examiner. Jan. 30, 1878.

NATIONAL HOTEL,
Washington, D. C., April 15, 1866.

JACOB SHAVOR, Esq.

DEAR SIR: I am preparing the bill which are to be submitted to the committee, and they has specially assigned Friday next for that purpose and to hear me on the subject. I will send you copies of them on Tuesday next. There is but one of the nine on the committee who sides with the P. M. General, and he will have to submit to the others, so says Mr. F. He thinks that we can put it through in the early part of next week.

I have sent to Wm. E. Hagan, New York, the balance of English and other patents and duplicate models which I found all complete when I got back here, and which completes all for the defence and prosecution of the New York case. This I suppose gets in all the testimony on both sides.

The examiner in charge reported against the extension of the Earle's Smut Machine Patent on the ground that Leonard Smith of Troy had a patent on the same thing. I don't believe it, and so have gone
2320 on an appeal, and have no doubt but that I shall get the extension. I shall know by Wednesday or Thursday next. I will say that I will get the extension. I will have a copy of his report sent to you. The copy of patent you and I talked about which will kill Littlefield's patent will go to you about Thursday next. Wrote you Friday last.

I mean to get through here in the next two weeks. Jencks will take up Stanley Wednesday next.

Yours, truly,

MARCUS P. NORTON.

Def'ts Ex. No. 59 (Corse). I. B. ex'r. Jan 30, 1878.

NATIONAL HOTEL,
Washington, D. C., April 18, 1866.

DEAR SHAVOR: Your letter is just received. In relation to the expenses here I have to say that I paid some of them for Hagan case out of our general fund of $750, which I brought with me in addition to my railroad and other expenses here, allowing stopping of two days in New York, say $100, in all about $850. I wrote to Mr. Hagan, asking him who should pay these expenses, and I have his letter (which I will look up and send or hand to you) in which he said you and Potter were *were* to pay them, so I thought I would get them all together and then make our fund good by draft. Now, we have had a large amount of English cases—patents as well as several from our own country to get, and to get them when we wanted them we paid more than the regular fees. But one thing more, I had duplicate models made of Mason's patented models, which I have sent to New York, and on which I was blis-
2321 tered somewhat, and after I supposed all things were just right, and had made my draft and was about to box up the duplicates, &c., I discovered that there was something wrong about the duplicate, so I had to wait until Monday last (Saturday being a day in commemoration of the lamented Lincoln, all business was suspended and departments were closed). On Monday I went to Patent Office, and found that Mr. Mason had patented an invention not shown in his model, to wit, the treating of ores with gases through jets—Hagan's invention—but on examining the original drawings on which the patent issued, I found the Hagan invention. Of course, I had to have "fac simile" drawings on thick paper, which shows the whole things just as we want, and which show Mason's whole course to be one of most willful and positive fraud. These drawings will cost me $25 more, and will go to morrow to Hagan. I will, of course, explain everything, and particular to you on paper or by word when I see you.

The new Groom case here is certainly a big thing. I wish you could see the model, and you will at once agree with me that Winslow and any one who use the Bessemer process in the manufacturing of iron and steel will have to dance to your music. I have to-day great confidence in it and am pushing it ahead. It was filed in the early part of the year 1862, which is all right for us. I want to get it out before the New York men get here.

It is very doubtful whether Congress will adjourn or not this season, so Mr. Jencks (chairman of Com. on Patents) told me at his house last evening.

I am busy to-day on our bills and will try and send you copy to-morrow. Friday is the day set down by the vote of the committee for the consideration of the bills and to hear me and Mr. King. I have written in great haste, and of course in a bad hand, but you can read it.

Yours, most truly,

MARCUS P. NORTON.

2322 *Def't's Ex. No.* 60 (*Corse*). *I. B., ex'r Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., April 22, 1866.

DEAR SHAVOR,
Troy, N. Y.:

The gov'r of Colorado has been here to see me, and had quite a long chat with him about gold and silver mines in his Territory, and the main point was in relation to the Hagan invention. He says that it is a "big thing," only manage it right and it is worth millions of dollars. He owns largely in the mining interest of that section.

He is elected United States Senator for that Territory, and will take his seat in the Senate just as soon as it is admitted as a State, which will probably be decided on Tuesday next. He knows all about the Mason patent and its use in his Territory, and when he heard of the Hagan case he would not touch it farther. He now waits to see how the suit comes out, then he and many of his friends will dip in. He is as enthusiastic about the matter as the governor of Montana was, and about which I wrote you. Both are with and for us, and hope for our success in New York in the suit, when, as they say, "Money will go to you like a flood." They say it is the only really valuable and successful invention of the kind for that purpose. They will dip, and help their friends in New York and elsewhere to dip in too, as soon as you get things settled in your favor by the court.

I succeed in getting the Earl's Smut Machine Patent extended yesterday for a term of seven years from the 27th inst., and the patent will be sent to him some time this week, but it cost him $265 to do it, else it would have been lost. This I drew on your company for, and which draft must be charged to him on his Smut Machine Patent Ex-
2323 tended, &c. The examiner who examined the case went at first dead against the extension, and so reported to the Commissioner, and after about ten days of fighting arrangements, I gave a dose which operated like an anodyne, but may have produced the gum-piles. At any rate yesterday witnessed the extension of the patent.

I will write you to morrow about the stamp matter. I wish it was passed just as we want it, for I am tired of this Washington; I much rather be at home, but hanging on will at last get what we want, and no other course will, so I content to stay it out. The P. M. G. begins to be a little ashamed of his $20,000 and $13,000 recommendation. I send you enclosed a printed scrip in relation to gold, &c., &c., taken from a paper here.

I am quite well.

Yours truly,

MARCUS P. NORTON.

Def't's Ex. No. 61 (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., May 2d, 1866.

JACOB SHAVOR, Esq.

DEAR SIR: The entire committee go to the post-office to-morrow

morning at 9 o'clock to witness the operation of post-marking letters and in cancelling the postage stamps thereon, and will vote on the next day.

P. Low has not yet called upon Mr. Ferry, nor have I seen him since he left here soon after you were here. Did you take him home with you? Mr. T. says that his com. will not go into his story of "Misfortunes," &c., at all. I shall keep you posted, and of course will write you to-morrow after the operation at the p. office here.

2324 I suppose you will have seen to the Earl's matter before you get this, but do not entrust him with the "confidence" or any one else. I would rather lose it and go to the poor-house first before I would be guilty of betrayal of confidence, although I never consider it any betrayal to let you into the matter, as I know it will stop with you.

Yours truly,

MARCUS P. NORTON.

Def't's Ex. No. 62 (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., May 5d, 1866.

JACOB SHAVOR.

DEAR SIR: Peter Low called here last night, and has taken rooms at this hotel. He went to see Griswold yesterday, and he told Peter that he would not undertake anything against us, and therefore could do no more for Peter than to show him the com. room. So Peter went to see Mr. Alley, the chairman, and told his "yarn." Mr. Alley told him that he might come before the committee to-morrow, but that his committee would not act upon his pretended claim, as it had already been settled in and by the court, and could not be reviewed by him or by Congress. We are going into the case to-morrow, and I will then write you all about it. The com. went to P. O. to-day at 9 o'clock, but have seen none of them since. I will report to you to-morrow. Ferry says it is all going just right.

Yours in haste,

M. P. NORTON.

2325 *Deft's Exhibit No.* 63 (*Corse*).—*I. B., examiner, January* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., May 8, 1866.

JACOB SHAVOR, Esq.,
Troy, N. Y.

DEAR SIR: Your letter came at hand on Sunday evening, but I was quite ill yesterday and could not write you. Not hearing from you on the day I expected, I thought your family were quite ill, and so I thought I would not wait, but at once provided for the draft, which I send to you, enclosed. The law provides for payment as its fee on extensions of $100, no more and no less, and no one ever pretended it was any more. If you will look at your letter I wrote you on the matter you will see what I stated, and that the course pursued by me, though successful, cost him $265. Now I shall not have any talk with Mr. Earls about this case, for certain reasons, but for the course I did pursue he could never have had the extension, and when I acted it was in good faith, and hav

ing done business for your house and for you since 1858 or '9, I think you will say that I have been faithful and successful, and that what I told you at any time during that time was not only reliable, but the truth. I would never have done the case for him had I not have understood that your house were to see to my wants, as very few extension cases are successful, being very difficult to manage, and failing on one of the six main points the whole fails. I have never lost an extension, however, though I might have done, but for careful and personal attention, and I have also defeated every extensioncase which I have undertaken.

This is a matter which I can't well afford to lose, and yet I shall
2326 lose it, except it be that he is to pay my fees for services, and yet I made no arrangement with him. The best way is to let it entirely alone. Live and learn.

Our stamp matter is being voted on to-day, and I will write you to-morrow about it, as I will not know about it until 5 o'clock. Mr. Ferry seemed to think that they would vote $100,000 and expenses.

The Com. would not act upon Mr. Low's proposition and set me down, refusing to hear me, on the ground that they had no jurisdiction over a matter settled by the courts. Griswold would do nothing for Low, so he (Griswold) told me personally.

The Stanley extension has passed the House Committee, and I will send you to-morrow or next day copy of the act.

I wanted $150 of the Stanley fund for that use and purpose, and having the draft to pay, and my last month's bill I drew for the $300, and will make the other $150 good, as I want to use it from another source. Part of my family here will go to Troy Friday next, as I am being kept here very much longer than I expected, but I mean to stick it out until we get our funds.

The draft states it is for Stanley, which is the amount agreed upon to be used, and which I told you I would want at $100 at the time, and so I would, but I come $140 short on all payments to be made. Draft $265; bill, $317; dead ducks, $200; but I can make the Stanley $150 good, when I need it, which I think will be satisfactory to you. Will write you to-morrow again.

Yours, truly,

MARCUS P. NORTON.

2327 *Deft's Exhibit No.* 64 (*Corse*).—*I. B., examiner, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., June 6th, 1866.

JACOB SHAVOR, Esq.,
Troy, N. Y.

DEAR SIR: Your letter came this morning. I wrote Charlie some time last week to see you and say to you that Monday of this week was the day fixed upon for the vote in the House on your bill, but Mr. Ferry has been quite ill, and was on that day unable to present the case. He has had what they call here "chills and fever," and to-day is very much better, and says that he will be well enough to attend to it on the next regular day, which will be Monday next. The Senate committee has examined the case and are only waiting the House bill, and it will go through there in less than a week, so I am credibly informed. It can't be otherwise than short work; the shorter the better it will suit me, for I am tired of being from home and business so much, but I will stick by this thing if we never get any more than enough to pay you and Corse the expenses.

I am glad your North Carolina matter looks so well. I hope it is all your returned friend says it is, and that you all will get rich as gold out of it. I would liked to have been in condition to have taken some stock in the thing, but being poor of course could not, and so I must lose the opportunity to become wealthy. We are not all born to be in luck or at peace. My lot has been to be poor, and either to surrender the sacred rights of clients to opponents at the loss of character and reputation, or for the time undergo scandal and to suffer wrong and thus be at war; so rather than betray clients or depart from the most
2328 strict line and rule of truth, or in any way to commit any act which would reflect upon my moral or religious life, I chose to receive the threatened storm of scandal, persecution, and slander, and so my lot has been what it is. I would that it were better, but I have no complaints to make, no remorse of conscience. I shall ever hope and struggle to do just right between man and man, and if in all things I err in judgment I can't help it. Men who have plenty of money can always get along. They are always ready for anything and everything. The hardest part of the fight is to get the first few thousand dollars on hand for the start, and then the rest is easy enough.

I should think that the better way for you would be to sell off the million of dollars worth or more and then keep the balance, as even then you will have more mining property than you expected, and of course you all will be very rich. It cannot be otherwise according to your letter.

It is quite warm weather here, with frequent rains. There will be nothing wanting on my part to put the stamp ahead to a complete and final result at an early time.

Yours, truly,

MARCUS P. NORTON.

Deft's Ex. No. 65 (Corse).—I. B. ex'r. Jan. 30, 1878.

NATIONAL HOTEL,
Washington, D. C., June 12, 1866.

DEAR SHAVOR: I wrote you yesterday, enclosing a draft on Chicago, and explaining the draft on your house dated yesterday, which I hope will be satisfactory in all respects. Your note of $500, due the 15 and 18, I think, I propose to pay by your discounting Stewart's note,
2329 endorsed by Humiston and enclosed herewith; the balance you can hand to Charlie, or retain $75, to pay you enough to make up yesterday's draft, but he will want some, how much exactly, I don't know.

Stewart's note you had for $500 will have to be renewed for three or four months, so I propose to discount your note for that purpose, instead of the one enclosed. It will be due 19 and 22. I will send one for you to make in time for its payment, and Charley can take the money and go and pay it. I will write him about so that he will know what to do about it and have no mistake. Yours will be due 15 and 18 I think, and this endorsed note will make you all O. K.; and yours, when I send it in a day or so, will pay the Stewart owned by you, due 19 and 22, and give Stewart new time without damage to any one.

I will write you about stamp business in the evening, after I shall have seen Mr. Ferry and got my information.

Yours truly,

MARCUS P. NORTON.

Deft's Exhibit No. 66 (Corse).—I. B. examiner. Jan. 30, 1878.

NATIONAL HOTEL,
Washington, D. C. July 15th, 1866.

DEAR SHAVOR: I have for the past ten days been expecting to be in condition to write you by telegraph of the passage of our bill, but it has been daily crowded out by some tariff or appropriation bill. It is now reached in the committee of the House, and no other committee can be called until after this bill is disposed of, which certainly will be this week. I showed Mr. Ferry your letter to me in relation to that matter, and he said that he would not cut down the sum unless the House
2330 compelled him to do so, which he did not think they would. One thing is certain, that by this delay we have secured the consent of Mr. Fink, the democratic economy man, and he has promised Ferry that he will not oppose the bill, but would go in and vote for it. This will certainly carry the bill through. I hope to say to you by telegraph in a day or so that it has passed. When it passes you will have to come here so as to receive and receipt the money.

I am now much encouraged about getting the Stanley case through all "O. K"; such now are the assurances. All will depend upon the temper of the House.

Congress will adjourn in about two weeks from Tuesday next, at the farthest. Congress seems to be backing down to the President.

How about the Hagan patents? I suppose the suits are all through with by this time, and if so, how did the matter go? There is a great and pressing want for the use of that invention, as all other kinds of machinery are very expensive, and do not possess much economy in the working of the mines. It seems to me that that matter ought to receive prompt attention. There is scarcely a day but that some one inquires of me about the invention. Senator Nye, who is Dr. Baldwin's special friend, would call the attention of miners in his State to this invention and its importance.

How about your North Carolina mine? Not having for the past three or more weeks heard anything from it or in relation to it, I take it for granted that you have given it up for some good and sufficient reason.

Senator Wilson, from Mass. said to a friend of mine that it was not only a shame, but a disgrace to our government to vote the $50,000 for the stamp, for, said he, it ought to have been at least four times that for so valuable an invention as that, but, said he, we will give that now, and more by and by.

2331 I have for 14 days been very ill; so much so that my doctor's bill was only $60; medicines on his order $20 more. I was very sick for five days, and hence I have not written you, but I am feeling very well indeed, now. Step by step I am getting over my great camp or hospital poisoning fever and illness of more than two years' standing. But I tell you, Shavor, it is very hard work sometimes. The Dr. here, who was the leading surgeon in our Army, says it will go entirely away, but that he did not see how I lived in and through it unless it were my iron and strong constitution. He say that it will take just about one year more to get entirely rid of it.

Your faithful friend,

MARCUS P. NORTON.

Defendant's Exhibit No. 67 (*Corse*) *A. & B.—I. B., Examiner. Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., July 21, 1866.

JACOB SHAVOR, Esq., *Troy, N. Y.*

DEAR SIR: In answer to your letter of the 17th inst., I have to say that I have waited until this evening in hopes that our bill would have been passed; also, in order to have conversation with Mr. Ferry about your North Carolina gold mine. Mr. Ferry will go to the P. O. D. on Monday morning, to get a letter to Congress from the Postmaster-General, asking Congress to pass at once the bill as a matter of public necessity and economy. If he gets it, as no doubt he will, the bill will go through both houses in less than no time. Every possible effort is being made to have it pass. Mr. King has given up the matter and gone North on a summer visit, which we will remember of him in the
2332 day of accounts. He wanted some sort of writing, but he got none fixing to him a certain share. He seemed to care more about this writing than he did in getting the bill through. But Ferry says that it shall go through, and I have great confidence in him both in and out of Congress. I know one thing, and it is this—if we had had Gov. Randall, who is now Postmaster-General in place of Gov. Dennison, to have referred our petition to instead of Dennison, we should have had a recommendation of at least of one hundred and fifty thousand dollars, and very likely fifty thousand added thereto, which would make $200,000. I have this from one who knows Gov. Randall, now Postmaster-General, and who speaks on authority. Randall was at the time First Assistant P. M. General, but had no power to act for the P. M. G. He has always said that the report of Dennison was all wrong, in fact as well as in principle. But it is now too late to reach him this session, in order to change the report now made to Congress, but he could do so at the next session of Congress, but we can't and won't wait, and so all is now being done to get it through in a few days.

Now, as to the gold mine business, I have shown your letter of the 17th inst. to Mr. Ferry, and he says that he will take the $3,000 stock, but would prefer $5,000. He would have handed me draft for the amount to send to you, but for the fact that your Mr. Eddy is coming here, and he therefore prefers to wait and see him.

As to myself I have to say that I really wish that I had at least $5,000 of the stock, but I cannot take any, as I have no money which I can command to pay for the stock you name. I have spent almost all my time here since middle of February last, and also nearly all the funds set aside by me to defray the expenses of the campaign here. The amount I dare not now name, no more than to say that whatever I have done has been in perfectly good faith, and for our mutual benefit. My two years of illness has put a very heavy load on me, which, taken
2333 with necessary expenses of a family, and also added to the expenses here this year, has put me into such condition that there is not the least use for me to talk about taking any stock in your company now formed to carry on the gold business in North Carolina; I do most earnestly wish it were so that I could go in with you, but I can't, and so I may as well make the best of it. Had it not been for the stamp you would never have had this mine, as you well know, and I am pleased that after all the expense of time and money in that case, there has something come out of it which will let you and Mr. Corse get rich in fact; and such being the case I am content. Men who have the money

can always do about as they may wish; but how can a person having no money do anything in such a matter as you have been pleased to name to me? It is absolutely impossible; but I have as strong a wish or desire as any one of your company, who have gone into the matter and put in their money, which they only have to draw a check for. Nothing would please me any more than to go into the thing if I had the means to do so, for there can be no doubt of the most complete and thorough success, and no doubt will pay you all much more than you have really anticipated, making you all as rich as gold. So now I am compelled to dismiss the matter, as there is no way to come "to time," and I'll try and do the best I can to get along. I had fondly hoped that the stamp would have been disposed of a long while ago, and our money in the bank. I expected that the R. R. chair also would have gone into a fair sum of money; also, that the desulphurizing ore, &c., patent would have long since been closed up, and money paid to us, and then there are other things upon which I depended. None of all these contrivances have as yet reached any one's bank for a deposit. In them all I have spent a very large amount of time as well as what money I thought I could spare, so it is quite plain to you that I can do nothing, from the statements I have made, towards the taking of the stock you name.

2334 I do hope that the Hagan patents will be sustained by the court, and of this I have no doubt—not the least doubt. I regard it as one of the most important and valuable inventions of this or any other age, and all who know anything about it say the same thing. Of course I do not know anything about the proofs, trial, or hearing of the case, and of course cannot say about the result, but I hope for the best; and I know you must win if no tricks have been played with or upon you in the progress of the case.

Your telegram in regard to the draft of D. G. Littlefield came to me on the 20th inst., saying "I cannot accept." I therefore expected that you would return me the draft, so that I could get it to-day, but I have not received it as yet; perhaps I may get it in next mail. If you have not returned it to me please do so on receipt of this, as I shall cancel it and return it to Mr. Littlefield, as I cannot use it, and I will wait until his time comes about, in which he says he will pay it both on the face of the draft and also by letter. That money would have been used for our mutual interests, but I will now get along without it in some way, and trust to luck for what I may need to get along with. Everything will at some time come out all right, just as certain as the world; but when—can you tell? I cannot, with any degree of certainty. But it must all come out right somewhere and sometime.

When will Mr. Eddy be here? Give me the day, and I will try and have my friend "Ferry" ready with his "green ink" and paper, properly mixed, to pay for his stock.

Your ob't s'v't,

MARCUS P. NORTON.

2335 *Def't's Exhibit No.* 68 (*Corse*).—*I. B., examiner. Jan.* 30, 1878.

(Evening.)

NATIONAL HOTEL,
Washington, D. C., July 30, '66.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I enclose to you herewith a letter which I received from

Mabbitt in relation to the chair, and accordingly I shall stop at New York a day or two, say Friday and Saturday of this week. I hear nothing from your Mr. Eddy, so of course it will be safe enough for me to leave here on Thursday for New York, as he very likely has gone home, although he promised me that he would write me in any event, and would telegraph me in case he might need me. This was one week ago yesterday morning. I am in hopes that we shall get enough out of the chair to pay current expenses, as "stamp" and "desulphurizing" have gone over for about four months. I shall accept any fair and reasonable offer made to me in New York. To-morrow or Wednesday I go to P. O. D., by appointment, on stamp, &c.

Yours, truly,

M. P. NORTON.

2336 *Def't's Exhibit No.* 69 (*Corse*).—*I. B., examiner. Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C. July 30, '66.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: Congress is over, and so are we over for this session; but our case is, on motion, set down for action in the first week of next December, and, under all the circumstances, I believe it to have been providential that the result is what it has been, for these reasons: 1st. Many of the committee were for giving us $100,000, interest and expenses, which would make $25,000 more, in all $125,000.

2d. We have a friend to us now for Postmaster-General, to wit, A. W. Randall, who will certainly recommend to Congress more than $100,000 next November. He says we are entitled to it; that it is a valuable invention to the gov't and his depart.; and 3d, General Skinner was on Saturday last confirmed as 1st assistant postmaster general in place of Mr. Randall, made P. M. General. Now, General Skinner is our very especial friend, and, both holding both positions, can and will do the fair thing by us, but advised its postponement until after the fall elections and Congress comes together again.

4th. A friend of mine in the P. O. Department told me that we could get at least $150,000 recommended by the department, and he thought more, if we managed the thing right. Now, under all these facts, you and Mr. Corse will not care much about the delay, but it certainly will be a most serious thing to me. How to get along I can't say. I have been here just 148, the cost of which for board and fires for me alone has been, on the average, $6 per day, in all the nice little sum of
2337 $898.00. Then there are other little necessary expenses to add to that for me personally, and then, in addition to that, I have been obliged to have some one with me all the while, which has been on an average for board of $4.50 per day, am't to $584.00 in all, for these two items alone $1,556.00. Then the other expenses which I deemed necessary here to get the case along have not been less than $3,000, as my vouchers will show. Now, instead of this being paid, I have to wait until the case goes through. Now take this $3,000, and put with the other $4,556, for which I have vouchers, you and Corse paid on this $375, and $300 on the Stanley, making $675, which will make to me most $4,000.00, and the loss of over 5½ months' time from the office will make me really poor. There is no chance for speculations by me. Put with all this my illness, and will readily see why I

have been compelled to ask of you, as a friend, some favors, and now they are cut entirely off; and yet I am not discouraged, for some time and somewhere they will all come right. I shall not leave here until Thursday evening of this week for N. Y., as I am to have an interview with Gen. Skinner and Mr. Randall on the stamp and bag matter, as requested.

I have done the best I could, and Mr. Ferry will write you a full explanation.

Your friend,

MARCUS P. NORTON.

2338 *Def't's Exhibit No. 70 (Corse).—I. B., examiner, Jan. 30, 1878.*

NATIONAL HOTEL,
Washington, D. C., October 24, '66.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: Your letter came at hand yesterday. I am glad you sent it, as it will aid much in the Henderson cases here. His patent will issue in two divisions. Now I think I shall take the papers with me home, so as to have conference with you on the matter.

Mr. Horatio King has not been near me since we came here, nor have I seen him this time here.

I have some things moving in the stamp which will suit you and Corse, and which I will relate to you when I get home and can have an evening's interview with you and him. School will keep this much, I will say. I will get home Saturday evening next. Mr. King wrote me at Troy, and Charlie sent me the letter here, in which he remarked that he wished I would get from you and Corse the paper, implying that you had promised some paper. So I let the case stand just exactly there. You and Corse understand the matter perfectly well, and of course can manage the thing.

I have just had the pleasure of giving Keller another dressing out in the line of our profession, and he had two assistant counsel at that. He is the man who wouldn't believe me under oath, and who is trying hard to get clients from Troy. He has already stated that you, Hagan, and several others have thrown me overboard, and that I can do no more business for you.

He has taken occasion to mention about that draft which you spoke to me about once, and to Charlie about. But for you, and the fact that I
2339 never desert a friend or go back on persons who have done me favors and kindness, I would show all about that draft. So I would much rather endure the wrong than have others suffer on my account. But I am sure of one thing, that you or Chas. Eddy & Co. will not find any one who has or can serve you with the energy, faithfulness, and success that I have done. Sometimes it has been expensive, but I did what I thought was for the best. The business come all right, and now if any one is to be blamed or censured for any act, let it come on me. My trust is in a power higher and stronger than that of man. I mean to do right, but I often fail like as other men do. We are none of us too perfect in this world, and therefore I will judge no one. I shall stand by you and Corse, come what may, and I only regret that you are not, for some cause unknown to me, satisfied that I labor for what I think is for your best business interests. One thing you will find, that I, in the end, will come out right.

There were many reasons why I could not engage professionally for Potter, Paris & Co., beyond the taking out of their reissue, and when you understand them, as I and Cowen and others understand them, then you will no longer blame me, you nor Chas. Eddy either. I will go on in what I honestly believe to be my duty, and wait for events.

Your friend & servant,

MARCUS P. NORTON.

2340 *Def't's Ex. No.* 71 (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., December 15, 1866.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

MY DEAR SIR: I have had an interview with Mr. Ferry, concerning the petition. He says that it is all in order and properly drawn; that he will take it just as soon as it gets to his committee, and go personally to the Postmaster General with it, and then make every effort for us concerning the stamp. He thinks that it will carry for a very much larger sum than the $50,000, and he will, in addition, get a letter from the P. M. G. to Congress, saying that what is done must be done now, and at this session of Congress, or the department will suffer more loss than we now ask for the stamp. This is first rate. I saw Mr. Griswold and gave him the petition, and he said that he would present it at once, and have it referred to the proper committee, and that he will do all in his power to do for our cause.

I have, to day, been to the Post-Office Department, on the business of the stamp, and have things working well there for an increase of the amount of compensation, which question will be hurried square through —no delays as last year. We are promised that the whole thing shall be in voting order immediately after the holidays are past. I shall get everything just right by that time, as to any increased amount of the compensation. The Senate Committee is now formed of good men, and who will do us justice in the matter.

I paid up the Humiston matter of costs with the clerk of the U. S. Supreme Court, amounting to $236.55, his half of the costs charged
2341 in all, against the case, $473.10, and then $473.10 paid by the government for the printing, and making the full sum or grand total amount to $946.20. I will send you your bond which you gave in the Humiston case, on Monday next. I found that the concern were quite angry about the matter not being settled, and were inclined to blame you as boudsman, and me as attorney, because of the delay, and they were trying to injure our matter here before Congress, so I paid it up, and also the settlement in your case was had upon the same ratio, and the costs were not as much, because the case was not as large in the printing part, as Humiston's, and in doing this made them our friends, and stopped talk in any direction against us. I took their footings for the settlement, all around, and will bring you the proper vouchers when I come home. To meet your case, only, I drew on you without any advisement with you, as I wanted no delay, for I was much threatened and fearful of considerable annoyance when I came to certain positions in the stamp case, as they were neighbors and acquaintances with persons in the department whom we wanted, as well as acquainted with a good many members in Congress, so I did as soon as I could what I thought was for the best in the premises, and hope you will find it just

all right and satisfactory, as I will make it. Will write you Monday or Tuesday next.

Yours truly,

MARCUS P. NORTON.

2342 *Def't's Ex. No. 72 (Corse).—I. B., ex'r, Jan. 30, 1878.*

NATIONAL HOTEL,
Washington, D. C., December 29, '66.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

MY DEAR SIR: I have been to the Post-Office Department again today, and I find that our matters there are working most excellently. The P. M. General means to have his report in his draft on Monday next. At all events, he promised me it should be ready for the very first day after the convening of Congress, just after the holidays are over. Your petition and my letters have, from all appearances, done good work there. The only thing for us to get over is the action of that miserable Dennison, who was once P. M. G. Why, Shavor, but for that, I really believe that we could now get the $300,000 on the showing we have made this winter. One thing is certain, that department conceded the facts set out in our petition and the two letters, copies of which I sent to you, and which please return to me, as I may need them before the committee. I am going first into the Senate, now, and we will go through them in good shape and on time, and then it must of course go through the House in haste, as then all things are ready for action. All say that this is a capital plan. All I want is for the P. M. G. to go the figures, and then I can carry it without giving any one anything. So that all we will pay King on by the 5 per cent. will be the $50,000, less the $13,000 expenses, for whatever may now go beyond that will be our doings alone, and of course we shall have, as it will be right, won't it? I will keep you posted. If you could come on here by and by, it would do you good and give you rest. I am pushing—pushing the stamp right square on. I hear that you have had an awful snow storm.

Yours, truly,

MARCUS P. NORTON.

2343 *Def't's Ex. No. 73 (Corse).—I. B., Ex'r. Jan. 30, 1878..*

JANUARY *3d*, 1867.

DEAR SHAVOR: I was oblege to write you a very long letter yesterday, and yet not cover all the points in your letter. Now, the reason why I thought it best to go to Senate first on the stamp this session is only this: I thought we could get the bill passed at once there and then take it to the House, and thus it would go through quicker, even then as it would be a Senate bill. If you were here I think I could convince you that this is the best plan, and yet if you don't approve it, say the word, and I'll push it in the House first; at any rate it would be moving there, for at same time the Senate com. were at work I would have House com. at work, only to hold on for Senate bill.

I do hope you will carry the New York case and I believe you will—my only fears are about Judge Smalley, who I don't like as a judge when there is any one about to "wine up." That is all.

About the King matter, I wrote you that what you had written on

that point was just my idea exactly, to wit—5 per cent. on all deducting the expenses—which we can make quite a sum which would not take his 5 per cent. and even that is too much. But between us we can manage it. If he writes you for a paper on that point as he told me yesterday he would—you can reply, and say that you have been delayed a long while, and that it ought to have gone through last session, and that you are not satisfied with Norton's course last session and that your habit and principle of business has been to do just right and that you propose to do right by him. That on my account you cannot give any paper which touches the said patent, as if you did it might give
2344 me an advantage over you, by Norton which he would certainly take under the circumstances—or something like it—that, is if you answer at all before you see me.

Yours truly,

M. P. NORTON.

Deft's Ex. No. 74 (Corse).—I. B., Ex'r. Jan. 30, 1878.

NATIONAL HOTEL,
January 5th, 1867.

JACOB SHAVOR, Esq.:

DEAR SIR: Your letter of the 4th inst. came at hand this day. In reply I have to say that I did not intend to find fault with it. The construction which I put upon it, the language will warrant perhaps; but I did not believe you meant to be so understood. It is all right with me anyhow. I find no fault with you or Corse. I am putting the best face on things about the stamp that I can, and my promises made to you in relation thereto, and my hopes of complete success at the present session, are all founded upon what the P. M. G. told me in person at the time I wrote you, and he seemed to mean just what he said. I shall keep you posted in the matter. I want to get as big a sum as possible, and then add to the same the expenses. We shall have no more trouble about the division of this part of the case any more than of the other. I think I wrote you the reason why I put in separate item of expenses, and was anxious to make it as large as I could in the truth of the case, and so I made my estimate cover last year and this year. Only think, last year run down to July 29th, about six months' time, so now you will understand that part of the case.

I shall try and do right in all matters relating to this or any other case, and I know you and Corse will do the same.

2345 Everything is all right, and I am satisfied with all you have said or done.

Yours truly,

MARCUS P. NORTON.

I hope to give you the exact figure on Monday next.

N.

Deft's Ex. No. 75 (Corse).—I. B., Ex'r. Jan 30, 1878.

NATIONAL, *January* 9, '67.

DEAR SHAVOR; I have only time before mail closes to write you today, but will do so at some length next mail. Your letter is here. In reply I have to say that I had shaken off the man you name, but on that day we met at department by accident, and it was while there that I thought he would write you a letter. He can't hurt us any or anywhere.

You are perfectly right about. It will go with or without him. I do not go near him, but I find him hanging "around as the circle swings about."

I want you to come here about the middle of coming week for certain reasons and purposes about the matter of stamp, and it will do you good, too, so come and stay as long as you can. Shall I get room for you here? Things are better than they were once here in all respects.

I want Mrs. Norton to come on with you, and she will be all ready to come, and *and* she will give you money for all her expenses here. Will you do me that favor to simply attend her to me, as she will be of no expenses to you? If so, will you call and see her about it? Will write to-night to you particulars. All right here.

Yours truly, friend, &c.,

M. P. NORTON.

2346 *Deft's Ex. No. 76 (Corse).—I. B., Ex'r., Jan. 30, 1878.*

NATIONEL HOTEL,
Washington, D. C., Feb'y 1, 1867.

DEAR SHAVOR: I write you early in the day because Dr. Frust and I am going to the Capitol at 1 o'clock to-day to see Mr. Ramsey & Fessenden, and I may not get back in time to write and get the letter in the mail.

Dr. Frust says that Mr. Randall's letter went to Ramsey last evening, so we have to go to the Capitol to-day to arrange the matter spoken to you about yesterday, after which I will, of course, write you again.

Dr. Frust read my letters (as now corrected) to P. M. G., and was so much pleased with them that he advised printing them, and handing copies to the committee, and then put one of each in the envelopes you addressed. He thinks we can cut the end, as you suggested, and put them in, and that there will be no need of resealing that end—we will try it.

Your friend King was in here last evening, and meeting Mr. Ferry here he enquired of him what was being done about stamp. Ferry told him that Senate was working on it, he understood, &c., whereupon out went your friend King, who thinks life is so uncertain unless he gets ¼ of that which in no wise belongs to him. It was an outrage to ask the ¼. I am preparing a digest of services rendered by him as fast as I remember them. We all can manage him. He told me that if I would stand by him that he should get of you the ¼—Bah! Ass!

Of course we will do just what is right, trusting for grace and wisdom to enable us to do just right, and I think $1,000 (one thousand dollars), with what he has had, a just compensation for any services he may have rendered in case our bill goes through and I am conscientious in the matter at that. Write.

Yours truly,

MARCUS P. NORTON.

2347 *Deft's Ex. No. 77 (Corse).—I. B., Ex'r, Jan. 30, 1878.*

NATIONAL HOTEL,
Washington, D. C., Feb'y 2d, 1867.

JACOB SHAVOR, Esq.:

DEAR SIR: I have only time to say that I had an interview last evening with Mr. Van Winkle, of the Senate, to whom the stamp matter had

been referred for a report, which he will be ready to make on Tuesday next to his committee—the finance. He said that when he got all the papers before him that he would make quick work of it. We shall stick for as large a sum as possible when he reports; then it is to go on the P. O. appropriation bill as an amendment; if so, it will go right through.

Yours truly,

MARCUS P. NORTON.

Deft's Ex. No. 78 (Corse).—I. B., Ex'r, Jan. 30, 1878.

[Office of Norton & Cowen, attorneys and counsellors.—Marcus P. Norton, Esek Cowen.]

TROY, N. Y., *Feb.* 5, 1868.

JACOB SHAVOR & A. C. CORSE:

Enclosed you will find 3 telegrams. It does seem to me that we ought to do something, and by a strong effort we shall certainly carry out all of our plans, for they are well laid. Patience and push ahead will make us all O K.

Can you and Corse see me at 7:30 or 8 this evening. Send word, please, by boy.

Truly, &c.,

M. P. NORTON.

2348 *Deft's Ex. No. 79 (Corse).—I. B., Ex'r, Jan. 30, 1878.*

NATIONAL HOTEL,
Washington, D. C., February 5, '67.

JACOB SHAVOR.

DEAR SIR: Your letter is at hand. I am really sorry that your wife still remains so very ill. Of course, it was right that you should give her attention before going to our house. I have done land-office work since you was here in the stamp case. I have collected all our papers —my letters to Randall, the Attorney-General's decision, and the $100,000 shell case passed by Congress in 1864, and written a letter to Senator P. G. Van Winkle, and enclosed all the above-named documents to him, and had two interviews with him, one with Dr. Frust, one alone. He said to me this morning that he would bring the matter before his committee this day—the finance committee. I did succeed in getting into his head the whole case, and he took liberal views of it. I will see him this evening and write you to-morrow. He is willing and anxious to have this put upon the bill of appropriation, which will carry it through, certain.

You need not come here now for say a week at least, or unless I write you by telegraph to come, which I will not do unless really necessary, and yet I would like you with me; but take care of the wife first and above this business, for we can in some way get along.

In haste, your faithful friend,

MARCUS P. NORTON.

2349 *Deft's Ex. No. 80 (Corse).—Jan. 30, 1878.*

NATIONAL HOTEL,
Washington, D. C., February 6, '67.

DEAR SHAVOR: The patent to prevent frauds on the revenue in the

distillation of whisky, &c., issued yesterday and to-day, has gone to the Treasury Department, and will meet with immediate attention. The post-office Senate committee will to-morrow move to put the stamp matter upon the P. O. appropriation bill. I have not yet been able to see Van Winkle as to am't fixed on yesterday, as he went to Baltimore in the afternoon, and only came back this day about 11.30 a. m., and then he went into the Senate; but he will see me this evening at his room here, and to-morrow I hope to be able to write you good, better, news; that is, with amount so fixed as to make it perfectly satisfactory all about.

My arm won't let me write yet very much. I hope your wife is better.

Your true and faithful friend,

MARCUS P. NORTON.

Deft's Ex. No. 81 (*Corse*) *A. & B.—I. B., Ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., February 10, '67.

JACOB SHAVOR, Esq.

DEAR SIR: You will see from the enclosed that there has been something done since you were here, and when I tell you that I drew
2350 up the report of that committee for the stamp as well as the bill which has been reported in the Senate, and also got the House committee, through Mr. Ferry, to endorse, in advance of their regular meeting, the Senate report and bill, so that it can now be taken from the speaker's table and passed at any time after it gets in there from the Senate, you say that I have had something done, and my arm and shoulder have troubled me so much, too, that you will not blame me for not writing all the details to you. So much writing as I have been compelled to do since you were here, in order to move at all, has brought my arm and shoulder into bad condition again; but I am determined to go through it, and as long as it was going right, I did not think you would care for details. I tell you I had to watch this thing early and late to get it done, and now I have just concluded that hereafter we will do all of our own work, as in the end we have to do it. The new helpers made a mistake in getting the case sent to the finance committee. It had to go back to P. O. committee, and we lost nearly a week's time, which caused me this hard work to right our case up again, and put my arm back again. I will tell you about it when you get here. It is not rheumatism that troubles my arm, but it is the strain caused by the rapid and hard labor of the steel pen. If some of these five and ten per cent. fellows had to do half the hard work I have done and have to do in the case, they would "caterpillar" at once.

If you get here, say on Friday morning of this week, I think it will be early enough, as that will be private bill day in the House, and I shall not really need you until then; and yet you can come when you please, and I find it necessary to telegraph you to come before then, which I certainly shall do just the moment I think you are needed here, and want you ready to come. Dr. Frust and I can manage the matter in the Senate, but we want you for the House. It will have no rest until it goes through both houses. We have one thing for Dr.
2351 Baldwin to do in view of the way-bill envelope matter, and it is to make Ferry chairman of H. committee next Congress. You and I will arrange the matter when you get here. Ferry and I have

planned the thing (confidential); this will shove that matter square through. I am preparing the assignment to gov't, to send you for Corse to sign, and you can sign here; but my arm was so lame yesterday that I could not finish it, and as I don't like to do such things on Sunday, I have waited until to-morrow morning, so it will be mailed you in time; if not, he can sign it and return it to us by mail. This is to facilitate the transfer of title to gov't, so as to get our greenbacks, &c.

I suppose Colfax will be speaker of the next house, which commences March 4th, 1867. Alley, of Mass. the present chairman, will not be in that Congress, so we must go in for Ferry to have that place. He and I have talked it all over. If he gets that place he will hold it for two years from 4th March next.

I will write you to-morrow. I am very well except my arm, which pains and troubles me much.

The letters you mailed or directed will go into the Senate to-morrow morning early.

Yours, truly and faithfully,

MARCUS P. NORTON.

Deft's Ex. No. 82 (Corse).—I. B., Ex'r, Jan. 30, 1878.

(Confidential in part.)

MARCH 6, '67.

J. SHAVOR, Esq.

MY DEAR SIR: I have been so much engaged all of yesterday, all of last evening, and all of to-day, up to this short time before closing the mail, that I can't write you all I want to, but can give you the 2352 line. I have the Court of Claims in good shape so far, and new bill for $120,000, which I will copy and send to you, and write you all about it this eve. Griswold says we did right; hold on and it will certainly pass for at least the $100,000. Many members were ashamed of their course. Every member opposed to us have gone home. Will write you in full on that point and committees.

I will send you copy of a letter sent to me on the next evening after you went away, which would close up my staying here another day but for the instant relief I had by draft on you for one month's board here. The failure of bill caused it, I suppose. I cried about two hours over the affair, as I did not know what to do under the circumstances, but could not move a peg or stay another day until I did just what I did. For Heaven's sake don't let the draft come back. I'll send you the letter to-night, so you can see it all. I will send you all the chair stock if you say so, and put in market for sale, but I will stand to this case to the last, and we shall get well paid. The Colorado man wants to meet you at St. Nicholas, in New York, about the Gold patent. Mail is up—will write you all to night.

Your true friend and brother,

M. P. NORTON.

Deft's Ex. No. 83 (Corse).—I. B., Ex'r, Jan. 30, 1878.

MARCH 13, 1867.

DEAR SHAVOR: Your letter has just reach me as I come to my room. I wrote you some days ago that I had sent the assign nent to the parties

in New York who are entitled to it. It must have reached them on Monday last. I cannot write much as it is mail time. The case is right so far.

2353 I have three letters from you, and I am only sorry at heart that I do not please you any better. I am much discouraged by reason of these letters, so much so that I hardly know what to do. Please tell me just what you want, and I'll try and do it.

I have been from home more than three months, without seeing those who are as dear to me as any of your family can be to you, trying to do as much for you and Corse as for any one else, and yet I am willing and ready to do; but tell me what to do, so that you will find no fault. When I show you, as I will, a certain letter sent to me about the draft, you will say I could have done no different. I only wish I had had it before you left here, instead of same night you left. I will write more to-morrow.

Yours truly,

NORTON.

Def't's Ex. No. 84 (*Corse*).—*I. B., Ex'r, Jan.* 30, 1878.

MARCH 14, '67.

DEAR SHAVOR: Your letter has just reached me, and I have to write the third time that I have long since sent the assignment to Emerson Foote. I am glad that you are not to be fooled into taking of stock for this money, now past due, $1,500. Why they should think of such a thing I can't contrive.

As to the stamp, I think I shall have good news for you very soon. There is something on foot which if it goes will put you in funds at once, but I would much rather wait until to-morrow as I can tell by that time. At any rate, we are right; it is only a question of time.

If you have any letters in relation to the stamp, please send
2354 them to me before you give an answer to any one. I am full of hope and faith yet, and only regret the need of money now; but we shall come right, God willing.

Yours truly,

MARCUS P. NORTON.

Def't's Ex. No. 85 (*Corse*).—*I. B., Ex'r, Jan.* 30, 1878.

MARCH 16TH, 1877.

JACOB SHAVOR, Esq.:

DEAR SIR: The Postmaster-General has written for us a "smashing" good letter, which goes to Congress to-morrow, or I should say early on Monday morning next, and if Congress remains in session through the week, Congress will pass our bill, which will, perhaps, be as good a way to dispose of it as any other way. I hope to have a copy of the letter to send you. I hope Congress will stay during the week.

Gov. Evans, of Colorado, has gone to Phila., and from there he will go to New York, and from N. Y. to Chicago, and then to Colorado. He wants to see the operation of the gold and desulphurizer and separator in New York, and if it will do half what I have told him, he says that he wants to put some money into it and put it at work in his country. Can he witness the operation in New York, on any satisfactory basis? If so, he will "go in" on the thing. I have written Hagan, but he don't

answer me. Could you meet Senator Evans at New York, concerning this matter, say the last of next week, or the first of the next week?

Yours truly,

MARCUS P. NORTON.

2355 *Def't's Ex. No. 86 (Corse).—I. B., Ex'r, Jan.* 30, 1878.

NATIONAL, *March* 19, 1867.

JACOB SHAVOR, ESQ.:

DEAR SIR: I enclose you a letter from Mabbitt, which will give you all the information you desire about the chair and the payment, &c., &c. Emerson Foote's address is 40 Broadway, New York, care of Foote, Vibbard & Co.

Gov. Evans, of Colorado, is on his way to New York, and will be at St. Nicholas Hotel on the last of this week or forepart of next week. Mr. Sanders, whom you met here, is now at that hotel. I have written Hagan three times, but get no answer. Some one ought to show this thing up to these men; both are rich, and Evans, you well know, holds important offices, &c. They want an interest, &c., &c.

The Postmaster-General sent a big communication to Congress today about the stamp, which ought to carry our case through in three days certain. It is the biggest of all letters sent there. I will try and get a copy. I am pushing things.

In haste, yours, truly,

MARCUS P. NORTON,
Gold Pen.

P. S.—King is up a stump; he can't find out what is going on. We will now pass him over to nothing, &c.

NORTON.

Def't's Ex. No. 87 (Corse).—I. B., Ex'r, Jan. 30, 1878.

MARCH 28, '67.

DEAR SHAVOR: I send enclosed two copies of brief for the argument next Monday on the first part of the case. The other part is not
2356 ready yet, but on Monday the whole case will really be decided. There will be nothing left but the question of amount, and you will see from the enclosed what our views are on that point, and we not hope to carry them, but we expect to carry.

Hoole has put in the bid to-day for stamp.

I will write you to-morrow all about it. This contract will give us all the power we want. I had him give the patents and the date thereof, and to whom they belonged, in his papers, and on each model or sample I had two made for him, one with the punch in and one with punch and cork combined. He furnished the others. After this contract is all right, will come an offer to pay for past use, as I have wrote you, so we certainly shall get cash in a few days.

Yours, truly,

NORTON.

Def't's Ex. No. 88 (Corse).—I. B., Ex'r, Jan. 30, 1878.

NATIONAL HOTEL.
Washington, D. C., March 31*st*, 1867.

JACOB SHAVOR, ESQ.,
Troy, N. Y..

DEAR SIR: I have your letters and will answer you more fully on to-morrow or Tuesday, as I am adverse to writing business letters on

Sunday to any considerable extent. I have three packages of seeds for you, and Mr. Ferry has promised me to go with me to the department about some wheat and other seeds, as I want you to have all that there is, and they told me that they did not have any wheat. I have waited for the wheat, &c., before I send the 10 varieties which I now have on my desk for you. I will hurry up the others and send them to you at once, as you will need them. I will send them Tuesday evening
2357 without fail, by express, paid through. I would have put them in the box as I expected to but for the waiting for the wheat, &c. We were going yesterday, but I was taken quite ill Friday afternoon and did not get out until yesterday afternoon, when I brought every effort to bear and out I went off the bed, and to-day I am well again and in "fighting order." I was all alone with one of my "sick spells" from 2 o'clock p. m. until 11 o'clock same eve., when some one came in by accident almost. Nellie came last evening, so now I shall feel at rest. I had over done that day, having stamp matter and the internal revenue matter on hand and all demanding attention; so the revenue matter had to be postponed until Tuesday next because I could not attend to the engagement made for Saturday. The whole thing is going just right. We shall get some money right away—how much, can't say, but we shall be satisfied with it for the present and we shall do much better out of the stamp than to have taken the $100,000. The Attorney-General matter was not known until I found it out just before writing you. The plan now is this: Settlement and payment for past use up to April 1st, 1867, either by Court of Claims or else under the Attorney-General's decision authorizing Gov. Randall, the P. M. G., to settle and pay us; then go to Congress for past use from April 1st, 1867, to the passage of the bill, which will be almost another year, and at same time purchase of the patent, say by the bill, a copy of which I sent you, to wit, the $100,000 for patent, &c, and the $20 odd thousand dollars expenses, interest, &c. I have not a single doubt but that it will all work, completely so, God willing, and to this end I am pressing things so far very successful indeed.

I will be able in my next to write you about the 4 years' contract. It is to be decided to-morrow or Tuesday as to who will have it; I think it will be Hoole. Why, he bids at $5, all complete. He is still here and is our firm friend. Good-by until I write.

Yours, truly,

MARCUS P. NORTON.

2358 *Def'ts Ex. No.* 89 (*Corse*), *A. & B.—I. B., Ex'r, Jan.* 30, 1878.

NATIONAL, *April 3d*, 1867.

J. SHAVOR, ESQ.:

MY DEAR SIR: Your letter is at hand. The garden seeds, in large quantities, will go to you to-day by express, paid through. The wheat could not be had just now, and if I get it in a day or so it shall go to you.

Now as to business. I have written you all the points in the premises, and I beg of you to give me time to carry out some one of the plans. Here is just what delays me: The Court of Claims may not render the decision in the court until Monday next, as that day each week is the day in which they read their opinions in open court. Coombs and I went up, and "went in" the court on Tuesday—yesterday—as there was no court on Monday of this week for some reason of which I have no information. I do not believe that there is a doubt but that

we win; all say so who heard or know anything about the case, or about the law. You shall be advise' the very same day I am of the decision. Now for the other plan—I mean the Attorney-General plan. This is the cause of delay: The Senate is now in executive session on confirmation of appointments, and this is about all it has done for the past three weeks. This takes up so much of the time of the P. M. G. and the Att'y-Gen'l in arranging and making appointments for the President to send to the Senate for confirmation as to prevent me from getting our case heard there, but I am promised that as soon as the Senate gets out of the way that we shall have immediate attention. Then, again, it is and has been no small labor to get ready these cases, let me assure you. We have had to have a large number of certified copies from the Post-Office Department, such as letters, &c., for which we have to pay nothing, only wait their time. Now as to the whis-
2359 key matter, the commissioner, Mr. Rollins, considers it of great value and importance, and they are now devising some way to arrange for the use of the patent. I think that the Att'y-Gen'l's decision in our stamp case will govern that case as to mode of payment, but I do not know as to a certainty just yet. When you remember that I have been most four months from home, you may remember that I shall not idle away any time nor lose a point to get you and me some money very soon out of this matter in one of the two ways I have proposed to you as to the past use. Then, again, I have been preparing for the next Congress to buy the patent by seeing that a contract is let to make the stamps under the same agreement as before, which has been done for four years from the 1st day of this month. That "critter" which Alley used as having a better invention, and which beat us through the meanness of Alley, put in a model and a bid, and his model and whole concern was, with his bid, rejected, so that thing is out of the way. It has been pronounced good for nothing, and that part which is good has been determined to be an infringement on our patent. This is good so far.

Who is it that has leaked about the Court of Claims operation? I have a letter from Troy on that subject to-day. I wish you would see if it came from my office. I know it did not come from you. I have made every effort to keep our matters out of the papers, as they can do no good. I will write you about the note to-morrow.

Truly and faithfully yours,

MARCUS P. NORTON.

2360 *Deft's Ex. No.* 90 (*Corse*).—*I. B., Ex'r. Jan.* 30, 1878.

APRIL 23, 1867.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: The letter which I mentioned in my letter of yesterday I find was omitted, but I enclose it so that you can see some of my troubles in connections with yours, while I am doing my very best for you, Corse, and all in the stamp and other things.

"Ham" Gregory can tell you where the loan of $500 would make a bigger point than has ever been made as to the question of the amount of recovery in Court of Claims, as that is now the only thing to settle in that case. I have a very hard sick headache to-day and cannot write more.

Yours, truly,

MARCUS P. NORTON.

Deft's Ex. No. 91 (*Corse*).—*I. B., Ex'r. Jan.* 30, 1878.

[Office of Norton & Cowen, attorneys and counsellors. Marcus P. Norton, Esek Cowen.]

TROY, N. Y., *October* 16*th*, 1867.

J. SHAVOR, Esq.:

DEA' SIR: I would like to see you here this evening at 8 o'clock if such a thing be possible. There are many matters here about which I wish to talk with you. I have two letters from Merriman, one about the "spirit meter" and other matters.

2361 There ought to be some sort of an arrangement made about the stamp matter. You said the other day that you had some one in Washington who would put the thing through for us in Congress. If that be so, it will not be necessary for me to go there at all next winter. Indeed, I do not see how I can go for two reasons: 1st, I have not the ready means this year, and 2d, I have other inventions of more value and thus far presenting very flattering returns, all of which really demand my attention home. Now cannot it all be got along with without my going to Washington at all on that business?

Truly yours,

M. P. NORTON.

P. S.—Please send me word by the bearer.

M. P. N.

Deft's Ex. No. 92 (*Corse*).—*I. B., Ex'r. Jan.* 30, 1878.

[Office of Norton & Cowen, attorneys and counsellors. Marcus P. Norton, Esek Cowen.]

TROY, N. Y., *October* 31, 1867.

J. SHAVOR, Esq.:

I have all the papers from Post-Office Department which we want.

I expect to have to be away all of next week after Tuesday or Monday perhaps, and I want to arrange the note due the 8th inst. before I go away. It is for $650 as per the slip enclosed. It will take three or four days to complete our testimony in Court of Claims case and I am anxious about it, and yet I suppose if we get it in in November next the case can be tried the same as though it were in now, as Weed will stipulate to that effect, no doubt. I have written again to-day to Mr. Merri-

2362 man, urging him to come to time as soon as possible. I hear nothing yet from Hoole, and will write him to-day. We will not need much more testimony in view of the proofs we now have from Washington under seal.

I send you one copy, but I want you to return it as soon as you are through with it, as we want one for the court, one for Congress.

Truly yours, &c.,

M. P. NORTON.

Please sign and return the enclosed note and I will arrange the other one, & I think I will have to get the money on it and pay the other one, for certain reasons which I will speak about when I see you.

NORTON.

Deft's Ex. No. 93 (Corse).—I. B., Ex'r. Jan. 30, 1878.

NATIONAL HOTEL,
Washington, D. C., March 1, 1868.

J. SHAVOR, Esq.:

DEAR SIR: I have been so very busy since I came here that I have not had time to write you, and for that reason sent you telegram yesterday. We have got business well started. The case is put on the trial docket for this month, and it will be tried. Testimony here is good so far, and to-morrow we shall finish it, and then the testimony will be printed and the case got ready for trial. The whiskey matter is going on, but we have not yet had time to go fully into it. Our party here claim that we shall win; and so we shall, if we can get a practical test of meters. There is a great pressure here upon the committee I hear in many different directions. We shall do our best.

2363 The Pierce matter I have got started in good shape and shall prepare two affidavits and send on for the proper oath at Troy. I can't find Pierce yet, but am in hope of seeing him in a day or so. The committee will not act upon his case until after the impeachment business, which will give us time enough for all purposes.

I think we are doing big work and that, too, in two days, and I have great faith in our whole matters here, but we will know more in a few days. Please send to me by mail that copy of the New York testimony I let you have at your office. It is the last testimony taken. I forgot it.

Truly, your friend and ob't s'v't,

M. P. NORTON.

Deft's Ex. No. 94 A & B (Corse).—I. B., ex'r, Jan. 30, 1878.

NATIONAL HOTEL.
Washington, D. C., March 9, '68.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

MY DEAR SIR: Your letter of Saturday last came this, Monday, morning. It is the bluest letter I ever had. You have even outdone Shavor himself. Why, Shavor, if I were to get as blue as your letter is we would never do anything. The only trouble with you is expenses and want of patience, and perhaps I cannot blame you, and I would not blame you for anything, for you have always been very kind. Now, my dear sir, not one thing named in your letter about stamp will take place. Why they are scart almost to death now for fear that we will get out of patience and stop the use and manufacture of the stamp, which would cast blame upon the administration of the department and cost

2363 the government more than a hundred thousand dollars at once, too, to go back to the old plan, besides the delays, &c., &c., and I tell them to walk up and do the fair thing, and we will hold on awhile.

Postmaster-Gen. Randall is to be examined as a witness to-morrow or next day. Would have been to-day, were I well enough, but I have been very very sick since Friday morning last, and am a great deal better to-day and will be out to-morrow if kind Heaven will permit, as thus far it has. I came near a fever this time. It was the result of over work. Why, Shavor, only think what I have had on hand since I came here. And When Mr. Corse went away I saw a great deal more work to do, as he was most valuable service here. I went to work to do it and got sick, but I will "fight it out on this line," God willing.

The testimony is being printed and will come in time ready for use. Tell Corse that I contracted with Gregory's friend at $1.45 per page, with the understanding that it should come with promptness, &c. Corse will explain all this to you.

Now as to the Stanley case. It is true that we were through with the case last winter, but Ruggles seems to have been determined to get the court to reverse its decision on the question of title. In other words, to decide that he owned the patent for the 7 years instead of your company, and took up the appeal for that purpose. What should I do? Should the court reverse and decide that he actually owned the patent, where would you be? You would lose all that you have paid Stanly. You would get sued as infringers for 7 years, and have seven years' damages saddled on you. Of course I must fight, and faithful as your attorney I went at it, and to day have sent you copy of my points, made and printed since I came here. I have no doubts as to final result, but had the case gone without an appearance, and by default, you might have had more trouble than you ever have had. I shall win
2365 the case on every point, and am much grieved that you and Mr. Eddy should find fault with me for doing my duty and saving you perhaps untold trouble. Mr. Eddy will never see or recognize any use or service on my part towards your firm until something happens that will cost you a large sum of money. I have save' you many a time, and I hope you will see it by and by. I know that you and Corse recognize and understand the whole thing. Now about the meter. Had Corse been here Saturday or to-day we could carry our meter. They were all right but Gurley. Green went for us at one time. Then the commission got into a quarrel among themselves and flew off in all directions. Had Corse been here he could have managed Gurley and Green, and then we had two of the others at any rate, which would have given us four, and Prof. Henry would have come over to our side, and we would have had 5 out of the 7. This is all for the Hutchinson or Baltimore meter in which we hold ¼ of the patent, a better and larger part than we had in the Augenstein meter. All for going over with our influence to Hutchinson's meter. Our influence is considered strong and powerful, and I suppose it grows out of the fact that we have been so long familiar with Congress. The assignment was to have been made to us on Saturday last. I have not been out, and don't know whether or not it was done. The Hutchinson meter will be the one after awhile. The com. will not recommend any at this time, but will ask for another trial. At the first trial Hutchinson beat them all, and but for Hillgar would have gone through at once. At the next trial we will succeed if Hutchinson's meter will work as well as it did this time, and he says he will make it perfect. The commission have had all sorts of outside whiskey influence, &c., and have not distinguished themselves much.

I am tired now and must stop here for to-day. Let me hear from you, but don't get quite so blue again, if your honor pleases.

Yours, truly,

M. P. NORTON.

2366 *Deft's Ex. No. 95 (Corse).—I. B., ex'r, Jan. 30, 1878.*

NATIONAL, *March* 18, 1868.

J. SHAVOR, Esq.:

DEAR SIR: Mr. Hodges of Boston, one of Pierce's counsel in his extension case before Congress, came to me yesterday, after the hearing before the committee, and wanted to know that if Pierce would give us

a license for the 7 years, if we would withdraw, and he also wanted to know how many of the remonstrants I represented? I gave him the following: Chas. Eddy & Co., Sheldon & Green, Morrison & Colwell, Burdett, Paris & Co., A. & W. H. Ingraham, Bussey, McLeord & Co., and he said that he would send Pierce to see you, and get you to withdraw. But can part withdraw and not all. Then, again, can you trust Pierce to give you license after the extension has been granted? He cannot give it before then, and have it valid and right. He has no right to give any such paper until after the extension is granted. It would be good for nothing if given before the extension by Congress. It was given you before on the 2d day, I think after the extension, and he would not have given it then but for the hold we had of him. He kicked on that agreement, and he never came up to the exact agreement as to dollars by some three hundred dollars. I think we shall kill his case if we bring out the long guns upon him.

I have one of our Colorado men here, and he wants to go into that patent matter, and says that he can make a big thing out of it, if he can only get a chance at it. I heard that you had lost the New
2367 York case; if this be so, what do you propose now to do? If not so, has the case been heard and decided?

The stamp case is all ready save the deposition of Blair, and the printing of Merriman's points and brief. Perhaps Blair may not be examined. He can't hurt us. Mr. Randall will submit his by letter, which I am preparing to-day. I ought to have been here before, as I have had to work very hard all the while.

Truly, yours in haste,

MARCUS P. NORTON.

Def't's Ex. No. 69 (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., March 19, 1868.

JACOB SHAVOR, Esq.:

DEAR SIR: Your letter came this morning. I send you to-day copy of some parts of our testimony in type, such as has been taken here, including my "old caveat." The remainder is not yet taken in print, but I have proofs of some of it to read and correct. Skinner's testimony we do not print, as his was taken by the gov't, and under the rule each party does its own printing. Merriman is now going over the testimony, to see if it is all that we require to make a sure thing and a "big haul." King has not been here. I have seen him three times. He is awful mad at me. He won't call here at all.

As to the Pierce matter, I have only now to say that I had quietly been to the committee and told my story, and put it in writing and on file with "Senate Patent Office" committee, and had the assurance that that would be about all required, and that I might rest
2367 secure, as no report would be made, which of course would kill the bill in committee. But if anything new turns up I was to have due and timely notice. Well, I wrote you and felt greatly rejoiced that we had done so big a thing with so little expenditure of powder and ball (cash). When I had notice that further action was demanded, I went to the committee room at once, and there I found a great long petition from Troy, under the lead of an irresponsible agent here, which had caused notice to given to Hodges, Pierce's counsel, who came on here at once and stirred up a stink of large proportions. Whereupon I

was ordered to make a case in ample proofs if I wished to defend and be heard; and so I got time to do so, and you may think that I have not been mad none of the time, but if you were here you might have come to some other conclusions. I at first thought I would give it up entirely, and would have done so but for the fact of your house being in it; otherwise I would have let it gone. I have never before been interfered with, nor has there ever before been such want of confidence in me. Now, if they want me to defend, and will permit me to make a case such as is now required, I will go on and defeat the whole thing; if not, then let some one else go ahead on a cheap plan, and see how it will come out. Now some Albany people have sent in a petition in remonstrance to the extension, and they have contributed so much towards the extension. These petitions are just what Pierce wants to prove that he has a very, very big thing, that he is poor, has not been paid because he has had such a combination against him, and all of which magnify him into a martyr.

I was so careful about this, that I only disclosed one or two firms whom I represented, and thus made an effort to show that it was a small thing, not worth extending; that the public did not demand it, &c., &c. But I am now spoiled in this, and must fight it out on proofs and facts, and law, making me a hard two or more weeks' work, when, if
2369 the petition had been left alone, I would have had an easy victory. Petitions on politics will do sometimes, but on business they better be let alone.

I am awaiting instructions from the petitioners, through you, as I have written none but you.

Yours truly,

MARCUS P. NORTON.

Def't's Ex. No. 97 (*Corse*). *A & B & C.—I. B., Ex'r. Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., March 23, 1868.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

I send you cards to show that Pierce's counsel is on the alarm. He is trying to purchase me, or rather to buy my clients. I went to Library and saw him. We cannot get any hearing for final action until two weeks from to-morrow, in the meantime we shall see what we shall. I worked all the time after getting your letter, although knowing you could not consent to any extension. I had long before gone on with my preparation of the case just the same as though it were a court case, and I had succeeded in getting a good deal done by way of authenticated papers, duplicate models, &c., and was nearly ready, but really wanted more time as it was a hard tax on me to have "stamp matters," and "curve plate." Now we will have argument and all complete. Mr. Hodges wants to give you license to use "curve plate" for the next seven years, and wants me to withdraw all opposition and go in for the extension, and to that end he desired me to hold on to my further preparations to resist, &c. I told him I must write you about it; that
2370 it was none of my business; that all I had to do for now was attention and faithfulness to clients, and that I should do all that and let the consequences be as they may. If they come to see you and you conclude to settle in this way, you must take into the account the several hundred dollars expenses that we have been to here in order to get

a proper and successful hearing by and before the committee. Of course you will make him pay that, &c.

The printing of stamp testimony is and will be quite a bill, and I will pay that, and other necessary bills in that case, as I have already done out of my money I have with me, and also the "curve plate" matter, as I will not want my money until the last day of this month, and then I will have to pay board bills, &c., and will have to draw for it back again. I mean the "curve plate" money expenses. The other we will let stand, and I will try and manage to get along. When I came from Troy I supposed that the gov't did all the printing, but it only prints its own testimony, and compels us to print ours, as Corse will explain to you. I have had other testimony expenses to pay in the stamp case, for we went before Hollingshead and took over again Davis and Chancey's testimony, and improved it wonderfully. Of course had to pay it over again, and I can truly say it was worth it all. I have put in some most valuable testimony since Corse went home. To-day I put in four more certified letters from P. O. Department, and will send you print of it as soon as I can get it all right. The testimony is closing up on the big side for us—the biggest and best we have ever had about the stamp case, and it will all be in time. We are sort of waiting for old Blair to get into election matters in Conn., and he goes there to-day, and then we will push our case to trial, so get rid of his testimony. If Corse could come here next Monday I think it would have good results. He need not remain over two or three days. What say you? Mr. Gregory came back, as roads to Troy were awful. You will be pleased with stamp
2371 case proofs when you get them all. The Clerk of the House will to-morrow give us certified copy of our printed matter then, and then every word of that will be legal evidence for us, but we have some of it already in.

Mr. Randall will write a letter stating all that we want, which will be the same to us, and I think much better than his deposition, for certain reasons; yet either would do. It will all be complete and in print this week, ready for the trial just as soon as the case is reached on the docket. Next month Weed can take it up out of its turn without attracting any attention, for all can say it was on trial docket last month.

I will knock Pierce's case into an old hat, if that still be your order. You better get paper up for all who signed that petition to sign, and pay some of these expenses. Of course, I do not expect anything for my services, as that was so understood with you and Mr. Eddy, &c., but do expect necessary expenses here to be paid, and I must still say that *that* there would not have been much expense about it but for this great flourish of trumpets by a petition. When that came in, the chairman of the committee turned to me and said, "Now get ready, as you people have made a great case out of it." He said the petition shows that there is something important about the invention. Well, this I knew; had I not, of course I would have gotten up a petition and had all Troy, Albany, and all the stove men in the country sign it; and, had I done so, he certainly would have commanded so much attention before the com. as to have carried his case; but knowing this to be the effect of such things, I only asked for enough to join to make a case, and the four was plenty, and I really only appeared for two of the four until the petition came in; then I went in for all at Troy. And now, after all this, we shall beat them, but it has worked me almost to death. Why, sir, many a night I have been up and at work until 3 o'clock morning, and never in bed before 12.30 or 1 o'clock. It had to be done, or

else up would went the case. Now we have them where they are begging of us.

2372 - Have the Albany petitioners join you in expenses, and have it all done and money paid in into your office before any other move is made by Hodges for settlement, as, if they won't pay, you can say, very well, we can make ourselves all right, and let the extension go on, but not till then how. I have written to Whitman about the note, &c.

Truly yours,

MARCUS P. NORTON.

Def't's Ex. No. 98, (*Corse.*)—*I. B., Ex'r, Jan.* 30, 1878.

NATIONAL HOTEL, *May 3d*, 1868.

J. SHAVOR, Esq.:

DEAR SIR: I suppose that we shall know to-morrow about when the Court of Claims will decide our case there. Gen'l Skinner told me yesterday that it was the opinion in the P. O. Department that we would get from $150,000 to $200,000, as he and Gov. Randall and others there had talked it over, and they blamed Congress very much for not passing the $100,000 bill last session, but said, now let Congress take the consequences. Mr. Corse did splendid work while here. He pushed and kept pushing until he got the case on trial. I mean to have every thing so fixed and arranged while here as to enable us to meet all the Lows and Randsfords in this country, as well as to facilitate further claims on the stamp, so that we will not hereafter have such delays, &c. I made known some of my plans and some of the things I had been about here to Mr. Corse, and he approved them, and said you would also do the same thing.

I send a letter from Hodges in the Pierce matter enclosed here-

2373 with. You will see that Pierce has assigned to me the county of Rensselaer upon certain conditions, excepting those who made affidavits for him at Troy—one or two firms. This I will assign to Chas. Eddy & Co., and then you can assign to such as pay up at your own discretion, under the agreement. I must remain here and help him get it pass the Senate next Tuesday, one week ahead, and then I have other professional work to do in the premises; so you will need to sign only to those who pay up their share of expenses according to my vouchers and my oath of expenses explained to Mr. Corse when here. He will tell you all about them and the reason how they came about. Now, I have laid out of some of my cash for just a month, and of course need some of it back, and Corse said it would all be right when I completed my arrangement with Hodges; and so I have made draft for what I wanted at that time and marked it in the Pierce case, and will answer satisfactorily for them all when I get home.

Please do not let any one know of the Pierce arrangement until I get home, as it might do P. hurt here.

I must get Pierce, Stewart, and car-heater and some other matters right before I come home. Stewart will soon be in condition to pay all—every cent. Will write in a day or so, and will make the assignment soon, but keep it still for reasons.

Yours, &c.,

M. P. NORTON.

Def't's Ex. No. 99 *A, B, & C.* (*Corse*).—*I. B., ex'r., Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., May 16*th*, 1868.

J. SHAVOR, Esq., *Troy, N. Y.:*

DEAR SIR: I am enabled, after so long a time, to make and
2374 send to you to-day an assignment of Rensselaer County for the Pierce "curve plate" cooking-stove, and I think you will say that it is a pretty clean one, too. Now you have something which will bring back every dollar of the money paid out by you, and to pay out here in order to square up matters here and allow me to leave in a decent manner after having made the engagements I did here, in order either to defeat the bill or compel the assignment which Pierce made to me on the day named, and which I keep here in order to have the same put on record in the Patent Office, where Jones must go when you shall have collected in the money paid out. I will on Monday send you a statement of what I have had and of what is required to complete my engagements and to relieve me from much trouble and embarrassment in this case not only, but in any other case or matter when I might want favors and work done at some other time, then you can collect in your money and make a license to such as pay you. Give them shop or foundry license to make and sell—same as I convey to you. Charlie can make out such licenses as you may want to give to those who pay up. Here is a point which I want your firm to take into the account, to wit: I am bound in separate writing—a copy of which I will send to you on Monday next—to do certain professional work or services in addition to my withdrawal from the case all opposition under my control, and as you claim my services as by the year, it is no more than fair in them to allow my services to be your share of these expenses, and then let all the others pay the cash part expended here. I will send you a duly-certified copy of the very identical which gave me so much trouble here and would have defeated me before the committee, and, of course, left your house and out in the cold and at the mercy of Sam Pierce, who, smarting under his defeat in 1859, would have pushed you to a heavy expense or compelled you to have left out the extension of the oven under the fire-pit or chamber of the stove, either of which would have been expensive to you.

2375 There was, Mr. Shavor, no other course for me, either neglect your interests and business and let the whole thing go against you and others, or prepare, as I did, just such a case as would have been required in court. Having done this, and Pierce's counsel having got knowledge of it, he came to me, and made some other offer to me, which might have put more money in my pocket, as the price of what I called dishonor, and I told him I was not the person to satisfy, but that my clients were the ones, and thereupon gave him the names of the houses given to me at Troy. He went to Boston, saw Pierce, and came back here and saw me at my room, and agreed to accede to my demands and give you four the license. "All right," said I to him, and we went to committee room to get facts and date so he could make the necessary papers. and upon opening the files, lo and behold, appears that paper signed by your house, by all the remaining four houses for which I was serving here, and by almost every other house in Troy, and thereupon he at once refused to carry out the agreement with me, saying that to do so did not relieve him so long as your names were upon that paper, and more than that, if he must fight Troy, he might as well fight you

all in same batch, as he would not give licenses to all Troy in order to save a fight. Now, Shavor, in Heaven's name, what were I to do under all these circumstances? I could not get what I wanted for the four houses after that paper, signed by Troy and Albany, was found on file. He would not, after knowing that fact, give you and the other three houses the license. Of course I had to make such a fight as would bring him to my terms, or else give up the case and let you all go and suffer the consequences. I could not do that, for Norton knows no defeat in anything he undertakes, no matter how long it takes to carry out his plans, or how big the fight. Well, I went into the case, worked day and night until I came down sick, and remained so for 10 to 15
2376 days, and succeeded in making just such a case as has put your house into possession of Rensselaer County by the deed enclosed herewith, which I might withhold until I was paid every dollar of these expenses, but I could not do so mean a thing as that by you, or by Corse, or by your house, and so I send it just as soon as I could have the lawful right to make. I do hope you will let Mr. Eddy of your firm read this letter, and I hope you will look upon this matter in a candid manner, and by the power of this assignment do by me justly. I will send you sworn statement by to-morrow's mail of all expenses and of all needed; you then can collect as I have proposed from others and save yourselves from any expenses under my salary, as stated herein.

I shall be home on Saturday night of this week, or by Wednesday of next week. I would have been home before but for Pierce, stamp, Stewart, and car-heater, and some other matters which come in by way of filling in. Now, who pays me for these two and one-half months' time away from office, home, and family? Well, I hope it will come in some good source, and by reason of my success here. You and Corse have acted up to the mark in all these matters, and have done right. It seems as though your Mr. Eddy can but see this matter just as I have stated it, and just as I shall prove it. I will write you to-morrow if I can get all my papers so as to send them to you from the committee.

Yours truly,

MARCUS P. NORTON.

The last draft I made I omitted to state that it was in the Pierce case through error, but it was to that case, as I will show you when I see you, the $250.

G. G. Wolf told me that their firm would give $500 rather than fight Pierce; he now must settle with you, but I want to write you first, as I borrowed of them $130 since I came here, for my own private use, &c.

NORTON.

2377 *Def't's Ex. No.* 100 (*Corse*).—*I. B., ex'r, Jan.* 30, 1870.

MAY 24, 1868.

J. SHAVOR:

DEAR SIR: I intended have written you a letter on matters of fact here to-day, but I have had a sick headach' and been unable to do so.

I have good things to write you about stamps and other things, and will do so to-morrow (Monday), if not sick again, which I hope not.

I will have new assignment and will taken in West Troy, so hold that until I can get a new one, or else return that to me and I will make another one, &c. It is all O. K.

Truly yours,

NORTON.

Def't's Ex. No. 101 (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

MAY 31ST, 1864.

JACOB SHAVOR, Esq.:

DEAR SIR: I have made out new assignment of patent in the Pierce matter and sent it to you in separate letters. This is full and complete.

I send you herewith a letter from Mr. Hodges, which will give you proof that I am compelled to do services for Pierce under the agreement by which I have been enabled to make for the assignment.

But for this Pierce matter I would have gone home a month ago, but I had made an agreement with his attorney. It is true that I have done other work here at same time. There is work done in stamp case which some time you may say was necessary to be done by me—I know of many *many* things, but it is not necessary to name them now.

2378 I have a load to carry in Pierce matter, for which I am not even to have the cash paid back to me that I pay out. I will not get credit for aiding any stove men in Troy, and saving them from taxation under this patent. Pierce complains at my course and says that I have forced out of him such concessions as amount to at least fifty thousand dollars. My clients complain because the expenses are so much—so poor Norton has to catch it on all sides. Well, I will do as I agreed to do, and have, therefore, sent you the assignment, out of which your firm can pay all the expenses and relieve me, and, at same time, save your business from taxation under the patent. Mr. Shavor, I don't know what to do. I try to do right—God knows I do—but I cannot carry on a large case without making some expenses. I don't know what to do about the draft, and about other money due and pressed on me. I am sick at heart. I have written Albany to hold the Stewart until I get home—which will be about the 13th of June. You don't want the Stewart assignment I understand from your letter very well, only let us have it understood. He has beaten all who has opposed him so far.

Yours, truly,

MARCUS P. NORTON.

Def't's Ex. No. 102, *A, B, & C* (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., June 1*st*, 1868.

JACOB SHAVOR, Esq.

DEAR SIR: I enclose you herewith a letter from Pierce's counsel, refusing to concede to me West Troy, Green Island, and Watervleit at first, but on looking the case over, and seeing what I had to do, he consented to do as I wanted, and on Saturday last I got the whole thing. It is this and the preparing a new assign-

2379 ment for you of this matter which has prevented me from getting complete my sworn statement of the Pierce expenses, together with the fact that before I had it all complete on Saturday it was too late to get an officer to make the oath, and now I do not know as it is necessary since I am left as I am. You could never have had the assignment sent you yesterday, but executed on Saturday, had it not been for the course I have taken, and after the putting in of the remonstrance signed by you and many others, taken in connection with other things, you could never have defeated the bill, and where would you and they have been then? You would have been at Pierce's mercy, and you would have had to pay a royalty or go into a fight,

either of which would been as expensive as you would cared for. I do not know as I can succeed in making myself understood in this matter, or that I will ever get any credit save that of making a few hundred dollars of expense in order to save many thousands in patent fees, to say nothing of the trouble and annoyance you and they would have had. I have prevented a great many suits, not only against your house, but a very large number of other houses in Troy; but I get no sort of credit for such business, and about all the credit I get is that of expenses. A very large deal of work is required and expected of me as though I could do it all without any expenses, beyond a few dollars at the farthest. This may all seem so to you all, but yet it is not so. The very moment you put in that petition and remonstrance, so heavily signed, that moment you made a case for me, the same in all its forms, bearings, and expenses, as though it were in court. I could not prevent it. I could not get Pierce to give me any assignment at all until I had made my case and collected my proofs, which cost me many days' and nights' work and quite large expenses for duplicate models, certified copies, and other necessary things to make a case, so as to either
2380 get the assignment or else defeat the patent; one or the other had to be done for you and others. Now, Shavor, which was the course to follow? The defence had to be made to get one or the other. Well, you have got the assignment, and I am in the boat on expenses, which a few dollars cash would get me out. More than all, I have been compelled to secure my professional services for seven years on that patent in order to get all I did get. Who pays me for the services that Pierce may get from me on this patent, and for which I have almost only remained here for the two past weeks as I had agreed to do so, so as to be here and aid the final passage of the bill in the Senate, and which had been delayed on account of impeachment, as well as to enable me to get my case prepared, so as to either get the assignment, or else defeat the bill in the Senate.

You wrote me once that you signed that remonstrance before I came from Troy, and that therefore that thing could not have made any sort of difference with my case here, as though I had misrepresented the matter to you. You cannot find a time or place when I have ever done such a thing by you or your house. There has been some things about notes which have not come out, as I had a most solemn right to expect, but I never told a falsehood about it; I have the remonstrance paper before me, and I will give you the date, and to-morrow, when I go to the committee room, I will give you the date of its filing.

I left Troy for Washington on the morning of the 25th day of February last, and reached here on the evening of the 26th following. I had the Pierce case continued for three weeks, and went at once at work in the stamp case in getting our testimony complete, &c. This remonstrance was signed during that three weeks; and the first time I ever saw it, it was when Hodges and I went to the committee room, on Tuesday, March 24; and before going there he had promised to give license to the four houses for which I came for, but when he saw that paper
2381 he did not; he could not do so for the reasons I have before given you. This paper has written upon these words, to wit, "March, 1868." I was here at that time, and I think it was put on file about the 20th of March, for I remember the clerk told Hodges that it had been there only a day or two when we were at the committee room on the 24 of March, where this man was clerk. Now this is the living truth. It could not have been signed before I left Troy in February, for it was written in March some time.

I should feel very thankful if the expenses of that matter could be paid; it troubles and worries me very much. You have opportunity to get it back, and a great deal more, if you are pleased to do so, or I could have kept it, and made several thousand dollars out of it but pushing stove men to the point, and not called on you for a dollar of expenses, for I could have paid those out of monies collected from the stove men, and then put the balance in pocket; but that would not have been according to my agreement with you and your house—of course it would not have been honorable. I could have made money out of it, and not be suffering, as I am now, for want of the cash and mortified with shame that my eating and sleeping bill is not paid, as well as promises outside and inside to pay cash if (you) would do so and so; by you I mean my confidentials here.

I have been here on expense for somebody for more than three months, and being thus away I have been compelled to draw from State Bank in Troy the following sums of money, to wit: $150, $73, $130, $130, $150, $50—in all about $700, just $683, and this for little expenses necessary here and home for my family. Some of this has been collected in from business, and the balance I have borrowed fram D. W. Ford until I get home, for he paid my checks as they came—and the amt. I must add, one ch'k more of $128. I have mentioned this check matter to show you that I am getting my own resources down while attending matters
2382 here in Pierce, Stewart, and stamp case—and but for them I would not have been here at all—and in which—in all of them—you and your house are interested; your house in Pierce and Stewart, for, as Stewart has now got his patents, he will make stove men howl a' certain as the world; and I have saved you in Pierce, but you do not seem to care much about Stewart.

I hope to get home soon, and then I will have Mr. Stewart pay up all his notes you are on as well as the others within a few days thereafter; and he ought to feel well enough pleased to draw from F. W. & Co. at one hawl to clear them all out at one time; and I will make that my business to have them all paid up at once. If the Albany man sues before I get home, let it go, as I will be home before he can get judgment anyhow, and will have P. P. S. pay up, and I will try and get enough in to pay up your notes. Lillie and his new company promise to pay me all up when I return to New York on my way home; if they do, that will give me about $20,000, interest and all, and they have to pay me for they want my work, which will "no go" until I am paid.

I have been to see Mr. Merriman since 2 o'clock to-day, hoping to get some news about stamp case, but have not seen him, and of course do not know about it at this time.

I will write you to-morrow how about negotiations with the P. O. Department. They have said to me that we can make some sort of an arrangement which will be satisfactory to us all. I have written this long letter in order that you might see and understand my position as well as explain some things. Mrs. Norton went home about two weeks ago. I shall not desert you or Corse or your house, although you may cast me aside and find fault with me, but I do know that you will see things as they are some day. Truly,

M. P. NORTON.

2383 *Def't's Ex. No.* 103 *A* (*Corse*).—*I. B., Ex'r. Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., June 20*th*, 1868.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I mailed you this day a bill which has passed both Houses of Congress, and which is in relation to the Court of Claims, and in regard to the payment of judgments entered up by that court upon any matter growing out of any or either of the departments. I claim to have done something here in helping to amend and originate and to get passed this bill, as well as other matters relating to that court. If you will remember that about four months ago a clause passed the House in an appropriation bill, which I sent you a copy, whereby no claim in judgment of more than $5,000.00 could be paid. That still hangs in the Senate, though I have a faithful promise that it shall be stricken out in course of this week when the bill will be up for action in the Senate. But for fear that I might not get it done, I had the one sent yesterday gotten up and passed, which you will see will repeal the clause of $5,000.00 should it pass, and which new bill puts us and our claim in a better condition than ever it has been or could be in that court under any old law. But the real point was to get something, so that a judgment of that court could and would be paid at once, unless an appeal to the Supreme Court was taken. Here is another thing: Washburn, of Ill., has been all winter pitching into that court, and he got the House to pass the second $5,000 clause, which covered all judgments now unpaid, or which might be entered up by that court this term. No one saw it, as I suppose, for it was pinned on to some bill which had nothing whatever to do with the Court of Claims,
2384 and so no one opposed it, but I saw it by the merest of accident, and when that bill came up in the Senate a certain Senator moved to strike that clause out, and so it was done, and that matter of course was killed, and thus it was that the way was opened up for the new bill sent you to-day's morning mail. Now, I want to kill the $5,000 clause put in the appropriations for the next year ending June, 1869, and I think I will succeed. I shall early to-morrow, and hang on and get it stuck on by Senate for what would a judgment be worth in Court of Claims if the law would only let $5,000 of it be paid. Now, by this new law it can all be paid if it should be a $1,000,000. Have I been of any use here, do you think? I speak of it because you write me that there was nothing for me to do here in the stamp case. I only wish you knew some things which I know about that matter, and then you would never have written me those hard words which implied hard feelings towards me. Why you should think I would stay four months, long and weary months, away from home, children, &c. I send you copy of report in the Pierce case. By Sweatland telling the committee what Filley wrote him that he heard in Troy that Hodges and Pierce had bought me up; they thereupon made this report in its weak terms. Hodges is here, and many Senators have promised him that they will call up the House bill and cause it to be passed by the Senate notwithstanding this half-way report of the committee, there being a majority and a minority report. Well, sir, I am absolutely obliged to remain here so as to protect the stove men in Troy in some way, either by the license or by the defeat of bill. Should they put on a clause that no license or assignment made prior to the passage of the extension bill shall be valid, as is now suggested since the committee have had

advice of the buying up and selling out of the opposition in order to punish, as they call it, such sort of work; of course I will have to go at work and try and get the bill defeated when it is put on its
2385 passage in the Senate, for my license and yours would not be worth the paper on which they are drawn, and should we trust to Pierce to make assignment after the bill is a law, and then he should forget to do so, and having his patent extended, where would you all be in Troy?

This bill has so many at work at it in Troy that I hardly know what to do with it. I know one thing, that I got several hundred dollars in cash here of a friend of mine by the name of S. P. Bell. I brought several hun. dollars with me; most of it was used up in that case in good faith. Some of my agreements here for cash have been paid, some have not, nor has my money been replaced, but payment is refused, justice is refused me, and an advantage is taken of me which is cruel and wicked. I enclose a dun letter for work done in the Pierce case, and yet no one cares for me so long as they have either an assignment or of the Pierce case, or the bill killed. Well, in this case I have one or the other; with my assignment I have parted, but my bills are not paid, nor is the case disposed of finally. If you and those with you in this matter think that the treatment I am receiving is right you have queer notions of the right. I am by no means able to lose any such sum, nor would I stay here a single moment were it not absolutely necessary to protect you and others in your manufacture and business, and were it not also absolutely necessary to so secure and arrange certain things whereby the stamp claim can be collected and raised to the very highest amount in dollars and cents, and being on the ground and knowing what was going on, I acted without letting you or Corse know all I was about, because certain matters being in my line I knew all about them, and as you and Corse had always trusted to my judgement on all questions coming in the line of my profession, I set about doing them with as little trouble and with as few words as possible, and the bill sent you ought to convince you that I am not idling away time here, and also that there is
2386 and has been something done and to be done in the stamp. I do say that had not this bill passed, and the matter of $5,000 made to apply to all judgments unpaid and to be entered up of record prior to December 1st, 1868, we would never have gotten a dollar until Congress had made a special and extra appropriation to pay the same when entered up, as it will be in the month of August or October next. Now, there is nothing to prevent payment of this year's judgment, and so it is the case with any judgment for next year, only it is done without any petition next year, for Gov. Randall will refer the claims for the two years which will be due February 1st next, or 1869, right square to that court, under the new act of Congress sent you, and will request judgment entered upon the proofs we shall produce. Then we shall not want any attorney more than ourselves, nor will you have to go 10 per cent. here, 5 per cent. there, &c., but go square through on the facts. Mr. Meriman and I are going to take Gen'l Skinner's and Gov. Randall's deposition' anew in the course of this week, ready for the completion of this case, and to use in the other case. Randall will now swear, and will swear strong on all points, and will fix prices high up, and so will Skinner now. Now, Shavor, I do hope you will see things different, and have me paid up on the Pierce case. Will you write or not?

NORTON.

Def't's Ex. No. 104 (*Corse*).—*I. B., Ex'r. Jan.* 30, 1867.

WASHINGTON, D. C., *June* 23*d*, 1868.

JACOB SHAVOR, Esq.:

DEAR SIR: I sent you some days ago new bill in relation to Court of Claims, and one this mail which contains the $5,000 clause. Merriman and I are hard at work to-day trying to get this clause struck
2387 out of the bill, as the Senate is now acting upon this bill. I have just had my dinner and am going back to Senate in five minutes, and of course must write short letter now. I hope we will get this out. It effects us in this wise: The fiscal government year commences July 1st of each year, and ends of course on the 30th day of every June. The judgment in our Court of Claims case not having been entered up before June 30 of this year will have to go over into the appropriations of next year, because it cannot now be entered up until in August or October next, and in the fiscal year which this bill covers of course it could not be paid; I mean the judgment could not be paid until an appropriation was made by act of Congress. Of course it is of the very greatest importance that we fix this bill either by having that clause removed or else so modi ed as to let us in under the old appropriation of some $500,000 not yet paid out of the Treasury. This is the conclusion that Merriman and I both have come to, and he did not know of it or understand it until I went to him last eve' to see the Indiana Senator, Hendricks.

A new suit will come under the new bill, and of course any sum would be paid at once after the entering of the judgment.

Judge Casey told Merriman last evening that we had lost nothing by the delay, and wanted him to influence you and Corse so that no injunction would issue, intimating that he would agree with the other judges when they again got together.

The judgment will be a larger sum than you have ever anticipated. I have this from good authority.

Please look over this ground and case, and then tell me if you so think it, that there is and has been nothing for me to do here in P. O. stamp case.

I am much pressed here on account of having been led to think I would find protection in what I might do here in Pierce, stamp and such matters. I do not know what to do.

Truly yours,

MARCUS P. NORTON.

2388 *Def't's Ex. No.* 105 (*Corse*).—*I. B., ex'r.*—*Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., July 6, 1868.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

I have *to* learned one thing which perhaps would do you and Corse no hurt to know. It is this: Since Congress refused in the Senate and House to limit the payment of judgments of the Court of Claims to $5,000, which was in fact limiting the jurisdiction of that court to that sum, but left the jurisdiction unimpaired, and gave that court the right to do as it pleased, Judge Casey, the chief justice of that court, has expressed himself highly pleased at that result, and he says that his court can now go on and do its work without any fear from Congress, as it was a great

vindication of that court, as the argument in Congress, particularly in the House, were in support of that court, and at least a great triumph for that court. Instead of fear from Congress in the entering up of judgments for large sums in just and equitable causes, they would now have its support, for that action settled that fact for many years to come. I think he was right about it.

That court has this year dreaded to enter up large claims in judgments for fear of Congress. This bill has been pending all winter, and I am told has been a source of dread to those judges, but they were not so they could even mention their wishes in regard to that becoming a law. That proposition was a direct stab at that court, and it going through the House when first proposed with such a tremendous heavy vote, they did not think it could be removed from the bill, but the Senate did the work, and then I had my men ready in the House to make speeches in support of the Senate, and so out it had to come,
2389 and I am glad that the court feel relieved. I now believe but for that bill that court would have agreed upon the amount in our case. The chief justice will now go with us, and that will give the whole court, but it will not be done until in October next, as the whole court will not get together in August. This Chief Justice Casey told to warm lady friend of Mrs. Norton, who lives next door to the chief justice; and this is in confidence to us, and of course you will so receive it. They are going to put in many good words to the chief justice, Casey, and his family, as they are very intimate, and visit back and forward almost every day. Had we known this before the court adjourned we could have reached Casey, and he would have felt different as to a large judgment, but we only knew of it within the last week. But we will now make use of it, only you and Corse must know these things from me. Now that that court has gotten such relief and endorsement from Congress, I do think that they will go in on our case and give us a big sum. The removing by Congress of that bill will make more than $50,000.00 difference with us and in our favor—that much certain, judging from what I hear.

Truly yours, &c.,

MARCUS P. NORTON.

Def't's Ex. No. 106 *A & B* (*Corse*).—*I. B., ex'r.*—*Jan.* 30, 1878.

NATIONAL HOTEL, *July* 18, 1868.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: Sometime ago I sent to you a part of the Congressional Globe, showing that the $5,000 had been striken out from the bill. That bill is now a law, it having been signed by the President. I stated then that Mr. Trumbull had made an effort to increase the sum
2390 appropriated to pay judgments of Court of Claims, but because he had not given the one day's previous notice as required by Senate rule it could not be done on that bill. Since then another appropriation has come along, and he put on the sum of three hundred thousand dollars ($300,000) for that purpose, and the Senate passed the bill with that amendment attached. Now if I can get it through the House I shall be glad. I send you slip enclosed in this letter. I wish Congress would adjourn, for I want to go home, but it is not at all safe to do so, for several reasons which you may know if you desire. There is to be an effort made to put on this bill another clause limiting the payment of judgments in that court to $10,000, which would be just as big

an outrage as the $5,000. But we have friends in the Senate who will never vote any such a thing if some one will call their attention to the matter so that it will not be passed in the absence from the Senate. I do not think the House will vote such an amendment, but it is to be tried on in a day or two. But I think it will fail. This is another appropriation bill and different from the other. We can keep it down. If this passes, there will be the sum of $400,000.00 appropriated this year by Congress for paym't of judgments of that court, and there is now in Treasury the sum of between $400,000 and $500,000—in all about one million dollars—for that purpose, which ought to pay any judgment we may get in October next, which, from all appearances, will be a large one, at least so say the P. O. Department, in a confidential way.

If some one would take Bill Merriman in Troy and break his head or neck it would be a good thing for citizens and for the community in general. He went and published a mess of stuff in one of the Troy papers by pure guess work, without any one knowing it. I would not had it done for anything in this wide world, but it will now do no sort of hurt.

2391 I had it contradicted here in the press, and its source shown up. It was a mean thing in him. Your telegram to Gregory was an amusing thing. I would have supposed that a man of your sense and judgment would have known better the moment you read the lie. Why did you not ask me or Merriman? He as well as I think very strange of your telegram on that point. Mr. Weed will in all probability be 1st assistant solicitor, or I should say attorney-general under the new law. This is one thing I am helping in so as to secure his confirmation by the Senate, there being some 8 or 9 Senators boarding at this hotel.

Merriman wants to be postmaster in the post-office here, and I am helping him. He or Judge Embry, of Kentucky, will have, and either of them will do big things for us on stamp. Embry and family have sat at our table all the past winter, and are good friends of ours, without any sort of doubt. It lies between him and Merriman. Embry is brother-in-law to Senator Fowler, &c. When all these things are done, Weed sure to all right, and postmaster here all right. The $300,000 appropriation all right and the way clear for payment of any and all judgments—no matter how small or how large—rendered by the Court of Claims, then I shall start for home, and not till then, although you have said I am of no use here, and that not another dollar of my expenses here of any kind whatever will be paid by you or any of your people. All right. But I know just what I am about, and I know just what I can do here, and of what use or service it is for me to stay here.

Do you think I would stay from home and from my family all alone as I now am unless it was of the very greatest use and imperative necessity?

The Pierce case has been put over this session until the 2d Monday in December next, and I have sounded enough so that I do know it will pass by a large vote, and his 7 years will commence on the 6th day of December next.

2392 P. P. Stewart has got all his cases through, and the patents have gone home to him. He has beaten only 18 different and cracked lawyers in the case, and he has every claim allowed him. Your cooking stoves, having reservoir and warming closet and many other things, now infringe both of his patents, and there is no use in talking, for he will always maintain his case and these patents. Not a cooking stove made with such contrivances but that infringe his patents. When I get home, some of the infringers will be put into court,

after the passing of a proper length of time. And at all times and in all places I will support and maintain in the law those patents.

Mr. Hooper; formerly Commissioner of Patents; Hon. R. Conklin, U. S. Senator; and Gifford, of New York, and Harding, of Philadelphia, & Hodges, of Boston, are secured as counsel with me for him.

Truly yours,

M. P. NORTON.

Def'ts Ex. 106 *C* (*Corse*).

[By Mr. TRUMBULL: Repealing all laws making appropriations for the payment of salaries of solicitor, assistant solicitor, and deputy solicitor of the Court of Claims, and of the Assistant Attorney General for the year ending June 30, 1869, and appropriating $12,400 for salaries of two Assistant Attorneys General, one clerk, and two clerks of class four, and $300,000 in addition to the sum already appropriated for the payment of judgments of the Court of Claims.]

Def'ts Ex. No. 107, *A*, *B*, *C*, *D* (*Corse*).—*I. B., ex'r.*—*Jan.* 30, 1878.

[Office of Marcus P. Norton, attorney and counselor at law, solicitor and of counsel in patent cases, in the circuit and Supreme Courts of the United States.]

2393 POULTNEY, VT., TROY, N. Y.,
August 23*d*, 1873.

JACOB SHAVOR, Esq.:

DEAR SIR: I have your letter under date of the 22d inst., and am sorry that you should have misunderstood my last two letters to you. I did not write them in a fault-finding spirit, but only that you and those with you in your efforts to destroy me in 1871, should now do not only justice to me but also to yourselves. Those persons who were engaged in that business, entirely unbeknown to me, when I was over four hundred miles from Troy, and when, too, I had lost large sums of money by the treachery and villany of others on J. D. Green and F. G. Ransford, I have been indeed very proud that in all of Troy no man could be found who would go into such business. I am glad that you have forgotten it; would that I, too, might forget it—in that I have long since forgiven it from the very bottom of my heart at the command and in the imitation of the Heavenly Master. I was by no means complaining, Mr. Shavor, but merely asked that now you and they who had so deeply injured me without cause, should correct the wrong. That is all I asked of you.

Inasmuch as you have forgotten what you did on that occasion, let me write it all out so you can see it once more, then if you say you and they did me no wrong, I will say no more about it, and leave it for that great day when "on the other shore" we shall meet to answer for all of our doings in life's great battle. You cannot have forgotten that our troubles first began by your two or three letters you wrote and sent me, while at Washington, in 1869, which I now have, as well as the original one you
2394 sent to the Postmaster General, in which you informed him and myself that I did not own a single thing in or about the right and title to my inventions in postmarking and cancelling hand stamps, and that I was a swindler, and that he must make no settlement with me about my own patent invention, and that, too, when I had not offered to have any settlement there. Now, I write this in the very spirit of friendship for and with you, and shall not copy those letters for you at all

unless you wish it done, for I have the same with me here. Right on the top of all that, only about two years later, you made the following deposition and put it on file in the Patent Office; it was on the the 25th day of August, 1871, just two years ago next Monday, to wit:

JACOB SHAVOR, being duly sworn, says:

"Question 1. What is your name, age, residence, and occupation.

"Answer. My name is Jacob Shavor; my age is 55 years; I am now living at Troy, N. Y.; am a retired manufacturer.

"Question 2. Do you know Marcus P. Norton's general character for truth and veracity in this community; if so, what is it, and how have you become acquainted with it?

"Answer. I do know his character in that respect; it is bad. I have known him since 1859, and I know his character from personal experience, and from a large circle of business men with whom he had dealing, and there is but one opinion, which I have stated.

"Question. Would you believe him under oath?

"Answer. I would not."

I have a certified copy of this deposition of yours made by you on the 25th day of August, 1871, at Troy, and which I never knew was made, or anything about it, until we came to the hearing of the suit of Robinson v. Secombe Man'ing Company," last winter in the U. S. circuit court, New York; I have also a copy of one made by Ransford, also one by Green. Now, do you say you never made this deposition? If
2395 you did make it, do you suppose you could make any one believe it who knew all the facts—also, that for so many years in Troy I maintained a proud position at the bar in all the courts, second to no one, and at same time for many of those years, earned cash from $20,000 to $26,000 each year and on that paid gov't tax. Of course you would claim no such thing. Now, it is because you knew I was not present at that time either in person or by counsel, not having any previous notice, and because you put this deposition, manufactured under those circumstances, upon a public record, that I want you to correct the same, and do me what you well know is justice, as well as the right, and to do it now.

About the indictment of which you wrote, I am told that you knew all about it, that it was planned at the house of Ransford by Green, Ransford and by you, that you and Green had correspondence about it as well as with Mr. Low. But this matter must now be set right, and it can be done by those who planned it and carried it on; if not by them very soon, then I know of a way by which I can have it done. It was a most wicked and infamous thing, and everybody well knew why it was done. It was a great wrong. Now, let it corrected, and it will all be as it should be—right. So far as I am concerned, as to the stamp business, I shall at all times do right, or at least will make that my effort, and by me there will be no troubles as to that; it will all depend on others; if each one desires that each shall have his right and his property, there will be no trouble, but should any one fail in doing right, and become so avaricious as to want everything and go in for that, why I have no doubt there will be trouble. We all must united on the right and we can each secure a fortune and that right soon. The best way to do this is to commence to set matters right in those places where I have been injured. That is the first business, and if any one has ever been wronged by me, let it be pointed out and I will hasten to make ample rights.

2396 As to signing the name of Ransford and Low beyond the mere

copy of it, or writing the same as I have written yours to-day, and thousands of times in your business, it is a wilfull, malicious lie, and I trust you or Ransford, and any one else will not again charge me any such thing. It is too "thin," and too foolish a thing to charge on with, and I trust you will look at it in the light of the law as well as on all other grounds. There are some on the grand jury at the time you name, who have said in Washington, that had they not been deceived, or had all the facts been known, not only would I gone out square, but some other persons would have been indicted. But we will let this all pass. All I want done is that these things now be set right as I have so often been promised they should be, and then there is nothing in the way of our march to an ample fortune. You cannot blame me at all in this thing for wanting done what I have written.

Your letter would show your great wish and desire to be friendship and peace. You are right in this, and this is just what I, too, want, and it is just what I am after, and the way to have it permanent is to do just what I have suggested and requested in my letters to you. To save writing to Mr. Green and Ransford, you can read, show or send them this letter as well as my other letters; I also think you ought to show them to Mr. Corse and Eddy.

I am so anxious that I want it done at once, then I want the reissue put right through, and everything gotten ready for the very first Monday in the next Congress at Washington, so that we can have early, very early by Congress on our bills, thereby to get cash. I have named to you the persons whom I recognize in this business, and did so that there should again be no misunderstanding.

This is a long letter, but you can get through it. Remember that I am for peace, friendship, for exact justice for all of time, and for cash, for the most cash, too.

Your friend of years, &c.

MARCUS P. NORTON.

2397 *Def't's Ex. No.* 108 (*Corse*).—*I. B., Ex'r.—Jan.* 31, 1878.

[Office of Marcus P. Norton, Attorney at Law, Counsel and Advocate in Patent Cases.]

TROY, N. Y., *Jan.* 21, 1864.

DEAR SHAVOR: I enclose herewith the two assignments which you handed me to prepare the petition to Congress. I send you also an assignment of the patent of 1863, which through mistake had not been assigned according to agreement. I have dated it at the time when it should have been assigned. What do you think about seeing the British consul at New York about our English matters? I wrote to Griswold that I thought I would be at Washington some time during next ——. If I go I shall want to see you and Corse here alone some evening this week, and then we will call on B.

The amount of funds required as proposed last evening, is: appeal, $25; new application, $15; on your loom patent, $20; in all $60, which send me and I will forward to-day and get that matter into shape for next week.

Yours, &c.,

M. P. NORTON.

Defendant's Exhibit No. 109 (*Corse*).—*I. B., Ex'r.—Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., Feb'y 24, 1866.

DEAR SHAVOR: I have been here two full days and business is well going. Mr. Ferry is stopping here; he, Nellie and I occupy one table of four seats, one of which we have reserved for Dr. Baldwin
2398 when he comes. The member of Senate committee to whom was referred our P. O. stamp matter, also boards here, so you see we have the thing just right. Mr. Ferry will make his report just as soon as Mr. King and I can get our bill drawn up in draft form for him to submit to his committee. We have good promises and great encouragement. There are to be no delays which can be avoided under the rules. I shall have more to write you on this subject about the middle of the week.

I found on file the very papers which we want in the Groom's case. It seems that I returned them to the files soon after your settlement with Hagan. The whole thing is assigned to "Groom, Shavor & Potter," as I examined the record yesterday; now I suppose Hagan bought out all of Groom's right in this case as well as in all others. I wish you would see to this and make some inquiries of Hagan about it. Hagan sent me a lot of papers yesterday, which relate to the proposed reissue of the Groom patent of 1862; the first or second one, I forgot which; but it is immaterial. Now, I find the very thing we want for the purpose mentioned to you personally. I think we better take two patents for certain reasons. I also saw the New York steel men, and they satisfied me that they would buy such invention at some respectable sum and pay the cash, so I shall put the things in the very best possible shape.

I enclose you a little instrument which I found on file in the case, and which had no sort of business there, which, if known, would prevent my further acting in the case as attorney; this was done by the office of Beach & Smith, as you will see on the second page; now, don't let any person, without it is Corse, see this paper, and at my request put it into the fire at once. This was filed July 9, 1863, and with friendly aid in a certain quarter, I have blocked their game, and now the case is free for me to act in. If this paper don't go to the fire I can't act in this case, and I have only sent it to you to show you the course pur-
2399 sued towards you, but I have take care of it, and now you are all right again. I shall write you more about the progress of this case in course of a week. I have the model, drawings, specification, &c., of the matter, now in my room, and shall make the necessary amendments to divide up the case and then report to you.

If you inquiries to make, of course you write them, and then I will answer. I may not, in the hurry, give you as full information as may wish, when your letter would call my attention to the particular matter, &c.

Yours, truly,

MARCUS P. NORTON.

Def't's Ex. No. 110 (*Corse*).—*I. B., ex'r, Jan.* 30, 1878.

NATIONAL HOTEL,
Washington, D. C., July 24, '66.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I wrote you that we were trying to get a communication from the P. M. General asking Congress to put through the Well bill. Mr. Ferry went to the department yesterday morning and got from the new Postmaster-General a most beautiful document, just exactly what he wanted on that point; also, an endorsement of the $50,000. So last evening, upon that letter from the P. M. G., he obtained the floor and introduced the bill for the $50,000, and the report of committee was being read when Morrill—the great "Tariff jackass" of the House—made a motion to lay the bill on the table; so Mr. Ferry did not at that time wish to risk the bill, as he was not in the regular time of committee, and he therefore withdrew the bill for that time, but will now try it again to-morrow, and so on until it passes. It would certainly
2400 have passed last evening but for this man Morrill, whom we had not the least notion that he was to do such a thing. I have my forces at work to-day and we will fix him all right by to-morrow, and then Ferry will move again. He can now keep at work on the thing until he gets it through. It won't take long to put it through the Senate if we can get it by the House. P. M. G. Randall will do all we may ask of him in the matter. I wish he had been in there in place of Dennison, and we would have had reported at least $150,000. I have this from an authenticated source. If I were in condition to wait until next session I would advise you and Corse to wait, because I know you could do so without injury to you; but I can't wait at all. I must have something from this or it will injure me, and for this reason I am sticking to this thing and doing green ink here and there; we certainly will get our pay. All say that it cannot be prevented. When Mr. Ferry can have the floor for an hour or so he will certainly carry the $50,000.

I hope you will return to me the Littlefield draft, as you cannot exchange for your acceptance.

Yours, truly,

MARCUS P. NORTON.

Def't's Ex. No. 110½ (*Corse*).—*I. B., ex'r, Jan.* 31, 1878.

JACOB SHAVOR, Esq.,

(Care CHAS. EDDY & CO.,)

Troy,

N. Y.

2401 *Def't's Ex. No.* 111 (*Corse*).—*I. B., ex'r, Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., July 25, 1866.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: Your letter containing the Littlefield draft has just reached me. In reply I have to say that when you think that I found

fault with you for not taking this draft, you are entirely mistaken. I only thought that it might be convenient for you to do it, and as it was as much for your benefit as mine, I thought you would as soon do it as not, as I could not use it here, and so I sent it to you, well knowing that you had had three drafts on him, and which were paid at presentation, and I did not think you would be offended because I did so. Those drafts you have on hand would have been paid by me before now, had it not been for illness upon illness, and that too of the most severe kind, and for this stamp which had kept me here for five months, and expending money of which you would not care to know. More than that, every party have in good faith promised to pay the drafts made on them by their authority, and one of them accepted at that. If driven to sell out at Troy, in order to pay you and some few small demands besides, on my return, of course I will do so, and then start anew in some new town at the West. There is no doubt but that I shall have to do so in case this stamp fails at this session, and then the whole thing being in your hands of course you can get it through without loss. I have done my very best here. I have sacrificed the comforts and pleasures of home in order to benefit you, Corse, and myself, and yet I hope for the best; and now that you find fault with me, I shall be
2402 driven from Troy. I have always meant to do well, and to do right in all things. I have stood up to my friends through evil report and through good report; but if they now think that I have been of no use to them and desert me because I can't make everybody do as I want because time enough has not yet been granted, why of course I can do but one thing, and that is as I have before stated.

I enclose you copy of the proceedings, taken from the Congressional Globe, in the matter of the stamp. The report was only withdrawn for the time, and is now printed, a copy of which I will send to you by next mail. It will be moved again to-morrow, probably, and those who opposed it will now go for it, if promises are good for anything, and I do hope it will go through. Mr. Ferry and I saw Mr. Eddy this morning, and had an hour and a half with him. We went to the boat with him from the cars. Mr. Ferry is entirely satisfied with the matter, and will take all the stock you will let him have. As to me, it is wholly impossible. Mr. Shavor, I can't begin to take any, and I am very sorry it is so, as I would like something which would bring an income each year; but you have my reasons for it, and which are beyond my power to change. King has gone away in the very time when I most needed him here, but I shall stick to it until this session closes, and beyond this session I cannot go, because my funds will have been exhausted, and certain it is I cannot spend any more time, as I must be attending to my profession and not let the business run away from me. I shall therefore do all that can be done, and, trusting to that Providence which doeth all things wisely and for the best, go forward and do the best I can.

Yours, truly,

MARCUS P. MORTON.

2403 *Def't's Ex. No.* 111 *A* (*Corse*), *I. B.*

NORTON'S CANCELING STAMP.

Mr. FERRY. I ask unanimous consent to make a report from the Committee on the Post Office and Post Roads which is recommended by the

Post-Office Department. I ask the Clerk to read the letter of the acting Postmaster-General.

Mr. ANCONA. I demand the regular order of business.

NORTON'S CANCELING STAMP—AGAIN.

Mr. FERRY. I ask leave to report from the Committee on the Post-Office and Post Roads a joint resolution to provide for the payment of the use and title to Norton's postmarking and postage-canceling stamp. I ask that the letter of the Post-Office Department be read.

The Clerk read as follows:

POST-OFFICE DEPARTMENT, APPOINTMENT OFFICE,
Washington, July 23, 1866.

SIR: Information has been received at this department that the application of Mr. Norton for remuneration for the use of his patent marking and canceling stamp has not been reported upon by your committee.

This matter is considered one of great public importance and especially to this department, and a report to the House and the prompt action of Congress on this subject would relieve the department from much embarrassment in the future essential use of this stamp.

I have the honor to be, very respectfully, your obedient servant,
ALEXANDER W. RANDALL,
Acting Postmaster-General.

Hon. JOHN B. ALLEY,
Chairman Committee on Post Offices.

2404 Mr. SHELLABARGER. I make the point of order that the joint resolution makes an appropriation.

The SPEAKER. The Chair overrules the point of order. An appropriation bill must itself take money out of the Treasury. This will require another bill.

Mr. KASSON. Is not this the same stamp which has been used in the Post-Office?

Mr. FERRY. Yes, sir; for three years.

Mr. MORRILL. I move that the joint resolution be laid upon the table.

Mr. FERRY. That motion is not debatable, but I trust it will not be agreed to.

The House divided; and there were—ayes 57, noes 17; no quorum voting.

The SPEAKER, under the rules, ordered tellers, and appointed Mr. Ferry and Mr. Spalding.

Mr. MORRILL. I withdraw the motion to lay upon the table.

Mr. FERRY. I withdraw the report.

Def't's Ex. No. 111½ (*Corse*), *I. B., ex'r, Jan.* 31, 1878.

JACOB SHAVOR, ESQ.,

(Care CHAS. EDDY & CO.,)

Troy,

N. Y.

2405 *Def't's Ex. No.* 112, *A & B (Corse).—I. B., ex'r.—Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., December 26th, 1866.

Hon. A. W. RANDALL,
Postmaster-General, Washington, D. C.:

SIR: Some days ago the Hon. John A. Griswold, member of the House of Representatives from the congressional district where I reside, presented to Congress a petition made by Sacob Shavor and Albert C. Corse, of Troy, N. Y., to whom I had assigned a certain patent granted to me upon improvements in "post-marking of letters and canceling postage stamps thereon," and which device has been in constant use by your department, to its great gain, profit, and advantage, for several years without ever having paid a single dollar or other sum for the use of the same, although for more than four years it has saved the employment of 254 clerks yearly in the various post-offices where it has so been used, thereby making in "dollars and cents" an annual and positive saving in and to your department of more than two hundred thousand dollars in clerk hire alone, and in the four years of more than eight hundred thousand dollars actual "bona fide" saving in cash. Upon inquiry as to what had been done with said petition, I learned that it had been sent to you by copy thereof, for a reply from you to the matters therein set forth. I beg of you a careful examination and consideration of the facts and merits of this case and petition in order that justice may be as near done as the state of the country will permit done to those concerned.

2406 A former Postmaster General denied the validity of my patent, but at same time put the invention into extensive use throughout the country not interrupted by the late civil war. This was four years ago next February or March when he let a contract for four years to make, vend, and put into use my said patented invention without my consent and without other compensation than denying the validity of my said patent which, under the law as it then was, compelled me to assign said patent in order that it might be tested in court so that my rights could be enforced, for then the inventor and patentee could not be a witness in any suit upon his patent brought by him. Now he can be a witness in his own suit as by law, &c. I suffered a great loss and hardship by such denial of the validity of said patent. It went into court, and after a very expensive suit resulted in favor of the patent. Having thus established the validity of said patent, my assignees most respectfully asked Congress for compensation after having, with me, spent at that time nearly thirteen thousand dollars about the invention patent and maintaining the same in court. In addition to that sum they and I have up to to-day expended something more than six thousand dollars in efforts to get compensation for that which so justly belongs to us, and by means of which your department have actually saved in cash more than $800,000 already, and now is receiving and saving more than $200,000 annually, while the patent aforesaid was granted for 17 years from the date thereof. We only ask, for the past and future use of this patented invention, some reasonable sum or amount as compensation, and while on this point I beg to call your attention to the fact that it is now in the power of the petitioners to stop by injunction the making and using of this invention, and yet at same time they hope and desire that justice may be had without resort to anything of the kind, and they will only use that as their last remedy to protect themselves from wrong, from injustice.

2407 They have therefore directed me, as their attorney, to communicate with you on this matter, and authorized and instructed me to say to you that they will accept of one hundred thousand dollars, together with said expenses added thereto, or they will accept of the actual savings of one year out of the 17 years, say 1865 or 1866, by the use and means of said invention, as computed by your Department, for the past, and for the seventeen years' use of said invention, that being the time for which the patent was granted, and for which the law protects the invention, and on these conditions they will duly assign and transfer the said patent and invention to the department or U. S. Government, upon the express condition that all needful legislation to enable you to close up the matter with them at once shall be had and granted at this present session of Congress. They are wholly and entirely unsatisfied with the sum of fifty thousand dollars, the amount recommended by the House committee at the last session of the present Congress, they having been nearly four years asking some pay for the benefits conferred by the invention.

They do fully believe that the whole people, especially the voting and tax-paying people of this country, will justify and uphold them in insisting upon compliance with these terms and amount which they have here stated in the most respectful and friendly manner towards you and your department of this government, as well as towards Congress and its committee, who recommended the said sum of fifty thousand dollars; and the petitioners fully and firmly believe that that committee would have recommended a much larger sum than the $50,000 but for the most illiberal views and grounds taken and sent to Congress by your immediate predecessor; and yet they do not wish, but they disclaim to reflect or to cast any censure upon him. They have only to regret that one Postmaster-General should assail the patent, while a second 2408 should attempt to gain possession of the invention and patent through the argument advanced by him, so that they could not, under the circumstances, obtain what to them and to almost everybody else seemed just, right, and equitable toward the petitioners. The course pursued by your predecessors concerning this very simple, and yet most valuable and important invention to the Government, and especially to the successful and economical management of the affairs of your department, will not, I think, invite, stimulate, or encourage inventors in the invention and improvements having in view the rapid transaction of business on the score just above named, and for the convenience, safety, and security of the country and the inhabitants or people thereof, not only in your department, but also in the War, Navy, and other departments of the government, if, after such immense expenditure of money and loss of time to make and maintain a valuable and meritorious invention, the reward to to be but a few dollars more than the actual or necessary expenses.

They now have great hope and confidence that you will be pleased to take more liberal views, and recommend Congress to pass an act which will now enable you to comply to this proposition, which is their lowest and only one now to be made, in view of the fact that originally they asked and expected and had fixed upon the sum of three hundred thousand dollars as their compensation.

I hope and trust that you will transmit this letter, or a copy of the same, to Congress, together with your reply to the letter and petition which I learn has been transmitted to you by the proper House committee, as I would very much that Congress should its attention called to these truths and facts herein stated, and from thence to lay

the whole case before the country at large, in order that all may know and judge of this just and most equitable claim for compensation for an invention which not only facilitates the rapid and successful
2409 transmission and delivery of letters, &c., to the people, but actually lessens their taxes and renders more easy the burdens of the Government.

I have the honor, sir, to be, and to remain, your ob't serv't,

MARCUS P. NORTON,
Attorney for Shavor & Corse.

Def't's Ex. No. 112½ (*Corse*).—*I. B. Ex'r., Jan.* 31, 1878.

JACOB SHAVOR, ESQ.

Care CHAS. EDDY & CO.,

Troy,

N. Y.

Def't's Ex. No. 113 (*Corse*).—*I. B., Ex'r., January* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., December 28, '66.

Hon. A. W. RANDALL,
Postmaster General, Washington, D. C.

SIR: Since I wrote you a day or two ago concerning the petition of Jacob Shavor and Albert C. Corse, presented to the Congress of the United States, by which compensation is respectfully asked for the past and future use of an invention made by me and patented to me, and for the postmarking of letters, and the rapid and permanent cancelation of the postage stamps thereon, I have obtained a book bearing the title of the United States Official Register for the year 1865, and known as the "Blue Book," by and from which I learn that the head stamp-
2410 ing clerk in the New York City post-office receives an annual salary of one thousand and two hundred dollars ($1,200), and his first assistant a salary of $1,080, and that the other clerks, known as the "stamping and cancelling clerks," receive $960 and $900. There were in all such clerks fourteen under the old plan or system for postmarking letters, and for the cancellation of postage stamps, while by the invention made and patented, as I have hereinbefore stated, only seven such clerks are required or employed.

It will be seen that such invention actually saves the time and payment of seven clerks in that office alone. The average salary of these clerks is not far from one thousand dollars each, in all the sum of about $7,000—seven thousand dollars for one year. That post-office has had this invention in exclusive use for the past five years, making thereby this annual saving to the department and government, so that in that office alone there has been an actual saving of nearly if not quite $35,000 up to this date in clerk hire alone.

Then the patent has about 13 years yet to run by the terms of the law, so that the saving for the next 13 years being in same proportion as above stated, there must be a saving of ($91,000) ninety-one thousand dollars, to which add the saving already made, and the sum will amount to ($126,000) one hundred and twenty-six thousand dollars for the lifetime of said patent; and it will be observed that this is but one

of the 29,000 post-offices in the United States. It is true that this is the larger one, but all the larger offices must of necessity be in the same proportion. I desire also at this point to call your attention to the fact that there are other and, I think, more important advantages gained by the use of this simple invention, two or three of which I beg leave to name: 1st, the permanent cancellation of the postage-stamps, thereby preventing frauds by cleansing and reusing such stamps; 2d, the great rapidity by which the mails are dispatched in all the larger offices; and 3d, the intelligible postmark upon the envelope.

2411 This saving in labor and the advantages last above named are fully proven by the depositions on oath of such persons who are or have been in the employ of the department, in some of the post-offices, and who have the means of knowing whereof they speak, as well as a large number of postmasters, all of which are printed in the proceedings of Congress on this subject, a copy of which I hand to you herewith. I beg to call your attention to these matters of fact. After you shall have examined them, I do not believe you will hesitate for a moment to recommend Congress to pass an act authorizing the payment of the sum named in my former letter to you as a just and equitable compensation for the invention and patent as therein proposed. Be pleased to transmit this letter, together with my former one to you, to Congress, with your answer to said petition, if you shall deem such advisable, because they will show the exact grounds on which you base your opinion or recommendations. The matter stated in these letters are the living truth, and cannot be contradicted or disproven.

I have the honor, sir, to be and remain, your ob't ser't,

MARCUS P. NORTON,
Attorney for Shavor & Corse, Petitioners and Assignees.

Please preserve this and the one I sent you the other day. Better return them to me after you and Corse have seen them.

NORTON.

Def't's Ex. No. 114 (*Corse*).—*I. B., Ex'r. Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., January 9, '67.

JACOB SHAVOR, Esq.:

2412 DEAR SIR: I have just come from the Post-Office Department, where all alone I saw Mr. Randall, the Postmaster-General, about our matters, and I find that he will write the communication to Congress to-morrow, certain, and then he will recommend more than yet has been done, and will take occasion to say to Congress that the matter must be definitely disposed of and settled up before the first of March next, certain, as they will have to advertise to let the stamp manufacturing contract between Feb'y 1st and the 10th of same month, and must let it to some one about the middle of March next, as the old contract will expire April 1, 1867. The only thing not yet fixed on is the sum in dollars and cents to be recommended, and on that point he requested me to ask Mr. Ferry to call on him to-morrow morning, and after that interview he would fix the sum to be recommended to Congress. He wanted learn from Ferry how large a sum the committee would pass upon, and he will either go that sum or else the one year's saving, &c. So it will be settled to-morrow, and by next day I will be able to report to you definitely as to the amount; and then, Shavor, I have our guns—no King's, but ours—ready to move on the works in Congress

and it shall go square through. You can see that you and Corse have the advantage of them, and that there cannot be any longer delay; and I know you and Corse, and I even will feel joyous and as fine as new born, &c., &c.

Now, as to King. He told me had written you, and expected "a paper" in reply, which would give him the ¼ part, deducting all expenses. Well, said to him, if you get that you will get what I could not for my rightful interest. Why, said I, I asked them for an absolute assignment, but I did not get it because they promised me, when I made the assignment to them, that the title should remain in them unincumbered, and of course I had no right to press it. "And now," said I "if they give it to you they will violate that contract and very likely lose all their rights, and of course they won't be trapped like that;" and then, said I, you prejudiced Shavor against me, and that made
2413 him not only careful but extremely cautious. This little plan took him all down, and I don't believe you will hear anything more from him on that point, nor do I think he will be very much in our way. You will understand me in this plan, and as you have written him nothing, of course there will be nothing to clash, and it must take; so, when you come here next week we will have a good time and first-rate understanding on the matter, and push, push it ahead. If you want a good room here I can get you one, and as cheap as elsewhere; but you may stay with your friends, and so I'll not engage one unless you write me to do so.

I send you a letter from New York which explains why the stock has not been sent to you before now. Please return me the letter, as I wish to put it on my files at home. You see that all things are right. I have to-day, or rather day before yesterday, written him that all the money must be paid to you, and you would receipt the same. $830 odd dollars was your due yesterday, and I hope was promptly paid, as they are able to do so.

I enclose you another letter, which will show you my pressing immediate want, or onto my personal property they will go after this week certainly as the world. By some accident I had omitted these taxes until called on a few days ago to pay them, and I sent for the am't, and it only came on the 5 or 6 inst.; and I had hoped that certain money which I brought here to use in our business, and for my own other expenses, but which had been used in another case because of certain circumstances, would be repaid me in time; but it has not, but is promised within five days from yesterday. I hold business paper as collateral for part of it, because requested by them to do so, and it will be all right soon. Now, I have to ask you to pay this amount, $360.80, and when you come here I will give you the same back, either in cash or collaterals, as the case may be. When I see you I will tell you all of the matter, but I don't like to write it, and only do so in confidence to you, but it is all right, as * * * * * *

2414 *Def't's Ex. No.* 115 *A* (*Corse*).—*I. B., Ex'r. Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., March, 25, '67.

JACOB SHAVOR,
Troy, N. Y.:

DEAR SIR: I send enclosed an envelope which shows that the gov't of Canada are now using our stamp invention. Did your friend get it patented there?

The argument which we are to have in the Court of Claims this week will virtually decide our case, and after that there will be only the amount to settle upon. I have no doubt at all about our success there.

At any rate the P. M. G. can settle for the use of the invention under decision of the Attorney-General, but of course cannot buy the patent. There is no doubt about this either, so in any event we shall get a good haul. I have had a hard month's work to get ready so far, and I have a hard week's work before me, but I can stand it. Hoole will be here on Wednesday of this week.

I wrote you a long letter last evening.

Yours truly,

MARCUS P. NORTON.

Def't's Ex. No. 115 *B.* (*Corse*).—*I. B.*

RECORDING CLERK,

PATENT OFFICE,

WASHINGTON.

2415 *Def't's Ex. No.* 115½ (*Corse*).—*I. B., Ex'r. Jan.* 31, 1878.

JACOB SHAVOR, ESQ.,

Care CHAS. EDDY & CO.,

Troy,

N. Y.

Def't's Ex. No. 116, *A* (*Corse*).—*I. B. Ex'r. Jan.* 31, 1878.

MARCH 26, '67.

DEAR SHAVOR: Our case will be heard in Court of Claims next Monday certain, as the court have set that day down for the argument. That day will decide the whole thing so far as that court is concerned.

Hoole comes here to-night, so you see that I shall get his testimony in time.

The brief and points made by Mr. Combs is now in the hands of the printer, and they are all O. K. Mine will go there to-morrow, or rather after we get through with Hoole, and thus all things are going on right. The Attorney-General will take up the matter which I wrote you about early next week, and we will use the one that suits us the best when both decisions shall have been made. I mean to have some money out of this stamp before I leave this town if there be any way in the world it can be done, and there is two ways certain in my best judgment, already endorsed by able lawyers here, so I feel better about it than I would perhaps were it my own opinion unsupported. I shall at any rate hang to the thing.

I shall also see that the contract to be made to make this stamp by P. M. G. and some manufacturer is so made for the four years as
2416 to cut off forever and entirely this mean and devilish spirit of "improvements" by others (all in your eye). Then we can sell the patent next winter for as much as we will get now, and perhaps more,

depending on decision rendered in Court of Claims next week for the past use; and the new bill now in the House will go for patent and past use from April 1st next up to the time Congress act upon that bill. So we will take all that Court of Claims or Attorney-General will give us now for past use up to the 1st of April, 1867. Do you see the point and understand my position for you and Corse and for myself? It is a good one, and so more especially in case we make it work, and why can't we? We can.

King don't know the 1st thing about the plan or what is going on. Is this all O. K.? This printing will have to be paid for soon. I will write you fully on that point to-morrow.

I am full of hope about this matter of stamp, and it may seem long and expensive to you, but you will see the day when you, Corse, and all will be glad you have had to do with it. Hagan ought to have gone to N. Y. before. Has Foot paid up? I must close (Def't's Ex. No. 116, B (Corse) I. B.) up here. How is your wife? I hope you will find her greatly improved by the coming spring.

How is everything at Troy? I have been gone almost 3½ months. I am homesick indeed, but I feel as though this business must be gone through with. So it must, and stay I must while there is hope for some money for us all out of it.

How is the gold mine in Carolina? I wish I had some stock there, but can't get it.

Shavor, that chair stock is and will be worth more than you think now.

Yours, truly,

NORTON.

2417 *Def't's Ex. No.* 116½ *(Corse).—I. B., Ex'r.—Jan.* 31, 1878.

JACOB SHAVOR, ESQ.,

Care CHAS. EDDY & CO.,

Troy,

N. Y.

Def't's Ex. No. 117 *A (Corse).—J. B., Ex'r.—Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., April 20, 1867.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I have received within a day or two past from you two letters, which are not very encouraging to me. They worry me much to tell you as it is.

Now, in the first place, I have been away from home—as dear to me as is your family to you at least—now for four months and ten days, engaged in what I had supposed was a common cause, until convinced otherwise by your letters. I have been hard at work all the time when well, and have devoted a very great deal of time to your stamp, as I am no longer permitted to call the production of my own brains "my stamp." I would not have been here for three of these four months and 10 days but for this stamp. I have children that I have not been permitted to see for all this time; shut up in a dirty hotel, with unwholesome food

to eat, deprived of the joys and comforts of one of the very best and lovely homes on the earth for all this while, and for nothing, only to
2418 be chided and upbraided by you because I have not performed to suit your notion of things, and brought into you and Corse a large sum of money before now. Mr. Shavor, I have done my very best, not only in this, but in all other matters. I have always endeavored to act honorably and uprightly with you and every other man. I may have failed to do so, and failed to meet my engagements, but it has been an error of the head and not of the heart. Your charging my wife—and no man ever had a better one in all respects than she is to me—truthful, noble, and worthy of the acquaintance of any respectable and high-toned person on this earth—with "reporting about Troy that I was to do big things in the court of appeals" has well nigh broken my heart in pieces, and it was this feeling which led me to send you the dispatch denying the whole thing. I sent her your letter, and she says that a bigger falsehood was never uttered, by some one she does not know, and has no means of knowing who it is that first uttered so base a slander. It has mortified her feelings much; and how do you think I feel about such things? How would you feel were you in my place, and it were your wife instead of mine? The idea of dragging my wife into such an undertaking is what I cannot understand, unless it is the design to ruin me and my family in order to get me out of somebody's way. When it comes to that, it will be a matter which I will attend to as I have other things, and who could be mean enough for that I cannot tell. Well, sir, we will let it go. I have done my best to hasten your interest to grand results, and you are not satisfied with it. Why you should require of me to write you a letter every day about stamp I can't say. I have always told you and written you that when you did not hear from me you might know that things were going on all right, and that I would give you results just as soon as I had any to give. This case here was in first-rate condition.

An objection to the case was taken by the gov't solicitors, and
2419 they backed down. I sent you the points in the case. When this took place the case was really ours, and there was nothing left for us to do but to take the proofs on the point of the amount to recover as * * *

Def't's Ex. No. 117 (*Corse*), *I. B.*,

and telegraphed to you at the time. I then went busy at work to get proofs taken, and worked myself beyond my strength to get them in, so as to get a judgment at this term of that court, but the Post-Office Department was behind, in consequence of so many office seekers and appointments to make, that the case was delayed on that point, and they are not yet completed. A report and certified copies of P. M. G. letters and other papers I wanted. You say come home. Well, I shall have to come, as it is quite evident from your letter that you will not be at another dollar's expense concerning matters here; and as I have a large bill for printing and commissioner's fees for services in testimony and other necessary things, as well as a large board bill to settle and pay, that I cannot remain here but a few days longer, just long enough to make some sort of a settlement of this indebtedness, so that I can get home. Had you co-operated with me in these matters here, we could have had money now. A P. O. D. mail-bag lock case just been decided by Court of Claims for some two or three years' use of it, and the man gets only $50,000. But I have no money to go on further, and of course am compelled to quit. I will not ask for any more, for if I do

it is of no use. By being here this long I have let go by two life policies of $5,000, because I had no money to pay them at present; but I will go home and try and get money to pay you all I owe you. I have began the effort, and am promised success. I will write to-morrow again to you.

Your friend,

NORTON.

2420 *Def't's Ex. No.* 117½ (*Corse*).—*I. B., Ex'r.—Jan.* 31, 1878.

JACOB SHAVOR, ESQ.,

(Care CHAS. EDDY & CO.,)

Troy,

N. Y.

Def't's Ex. No. 118 (*Corse*).—*I. B., Ex'r.—Jan.* 31, 1878.

APRIL 25, 1867.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

I had made arrangements to go to Troy to-night when I received your letter, which I answered at once. Mr. Shavor, I do not understand why it is that you pursue me as you do. You seem to think that there is no wrong anywhere but on my part; that I am only capable of doing wrong things at all times. I have done my best for you at all times and in all places. If you, Corse and I could agree on stamp matters, there is not a question of doubt but that we all could get rich out of it. The gov't solicitor told a person here in this city last evening that it was a very big case, and one entirely just, and that you ought to have a judgment for more than $200,000, and would get one for that at least. This has been told me by the person since I wrote in the forenoon. Your friend Gregory can tell you some things about it, as you may not believe what I say as to the case being a very large and just one. Gregory told me as much as this, part of it to-day, too, and friend of mine told me the rest in addition. The case in the Court of Claims is in the right direction for a large sum of money at some time. I know this, but
2421 may not be able to convince you of it. This court has adjourned until the 7th day of May next. I shall get home on Saturday. I have been very much grieved at your feelings towards me, but I can't help it. I will get along and do the best I can, and will do as well as in my power to do, and if then I must "go to the wall," of course I can't help it. I have recently thought that this line towards me was for the purpose of getting me out of the case entirely, and so rather than have any unkind feelings about the matter, I will go out of it, and trust to something else to get me out of debt, debts incurred by means of this very business, and all I want is some fair time from you to enable me to pay you what I owe you, together with the money you have paid on my drafts here this winter. I think that I can after a while raise the money to do it with, as I do not wish it said by you that I have wronged you.

Yours, truly,

M. P. NORTON.

Def't's Ex. No. 118½ (*Corse*).—*I. B., Ex'r, Jan.* 31, 1878.

JACOB SHAVOR, ESQ.,

(Care CHAS. EDDY & CO.,)

Troy,

N. Y.

2422 *Def't's Ex. No.* 119, *A, B, & C* (*Corse*).—*I. B., Ex'r, Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., April 25th, 1867.

JACOB SHAVOR, Esq.,
Troy, N. Y.

DEAR SIR: Your letter of the 23d inst. is at hand. As to retracting what I have written, will never be done until you have recalled some half dozen letters written by you to me. Your explanation in relation to Mrs. Norton is wholly and entirely satisfactory, and will perfectly satisfy her idea of the matter. You talk about letters being unworthy of your notice; would it be well for you to look at some of your letters to me on that point? I think so. Your "whisky meter" is sold; well, if it is, I have no knowledge on that point; you can investigate it, and I would be very glad to have you find that it is sold to gov't or any one else.

Now, as to your insinuations about the stamp, as though I was playing or to play some trick about it, I have only to say that I will submit to an examination to and by any committee you may appoint. You have an assignment of the whole patent, and I have simply nothing. You take advantage of me because I am in your debt, and now, when I propose a way of paying you up, interest and all, you laugh at me and say that I am playing you a trick, and that I have a great many enemies in Troy. Now, Mr. Shavor, I have as many as you may represent; I have many, many friends there and elsewhere. But have you considered how it was that I came to have so many enemies? Let me tell you frankly that it was your business connected with others—my faithfulness and fidelity to you and to your cause, and now you desert me. I could have sold you out bag and baggage, and these enemies of
2423 whom you speak would now and long since have been my friends.

Mr. Shavor, I am neither ashamed nor am I unwilling that the conduct of my whole life should be examined closely and carefully. I will return to Troy and try and make friends with all, but will never surrender a right of mine or of any client or of personal honor, and now as you suspect me of tricking you and inform me that others have advised you of my intentions to be tricky with you and to cheat you, after 11 years of confidence, trust, and hard services, I propose never again to have to do with the stamp, inasmuch as you are confident that you can carry it out without my aid. I would like that you should give me the opportunity of raising money to pay you up without distressing me, as you might do were you so inclined. I am firmly resolved not to meddle farther in the stamp matter, and then you cannot again charge me with broken contracts—with dishonest intentions and purposes—with broken promises. I have done my best for you and for the cause, and if you discover my drift you will find me firm. I will hereafter try and do right as I have in the past. I have struggled with the business

of the world and aimed to do well, to be honest, and to be just with all and to all. If you will show me one dishonorable thing since I have done business for you and for your house, I would be very much obliged to you. My success in the law with you and with others is the only crime that I stand charged with. Now, Mr. Shavor, when you say you see the drift of things and throw out such charges against , I have only to ask you to wait, you will find a greater mistake than you ever made in your life. I am perfectly willing to submit my whole transactions with you and Corse about the stamp to a committee of your own selection from the good people of Troy. I am your friend, faithful and true; it is now evident that you are not mine. You have been here one winter in stamp matters and got the way somewhat learnt, and
2424 you can next winter go ahead with it, and you will need no one to help you. The P. M. G. can pay you something now if you will press the matter with him, and if you want any advice from me I will give it, but as I have no recognized rights in the (Def't's Ex. No. 119 B (Corse), I. B.) matter it is not worth while for me to spend 4 and 6 months' time each year from my office and business to be called a "spendthrift" and dishonest; and then you can get along just as well without me and perhaps very much better. There is plenty of money in the matter and can be had. Inasmuch as I made the invention and labored to get the government to adopt it before ever had to do with it, and as I have stood by the thing through "good report and evil report" and got it where you can manage it yourself, and inasmuch as you and Corse have obtained ⅔ of the invention and patent by an agreement, and 3-3 by assignment, it would seem but fair that you should now release me from debt and take the whole thing as you now have it.

I made enemies in the Stowe family by my conduct in the Stanley case; I made enemies with Hagan and his friends by my conduct in the Groom's case assigned to you; I made enemies with J. R. Hyde and his friends by my conduct in getting him to settle and assign all patents to Chas. Eddy & Co. I made an enemy of Horatio King by my fidelity to you; I made enemies with P. Low, G. Wallace, his son-in-law and their friends, with Ransford and his friends, by my conduct in this very stamp case, and by my fidelity to you and Corse; I made enemies because of my fidelity to Chas. Eddy & Co. in the Curve Plate Stove case. I wish you and Corse would think on these things, and if in either or any of these cases or matters I acted dishonorably or unworthy a man, that you would point it out. God is my judge; and in my house, as ever there has been, there will be daily worship, though all the world become enemies. I had offered me once ½, half of the stamp if I would leave you and Corse and put the invention under the protection of the
2425 patent of August 9, 1859, but my God nor my conscience would allow that to be done, and I was threatened (Deft's Ex. No. 119, C (Corse), I. B.) at that time with such things as you say have overtaken me, and with which you seem somewhat pleased as you refer to them, with the view of compelling me to continue as you direct. I think, Mr. Shavor, that it would be quite well to look over these matters before you throw them before me as you do, and see how it is. As to a private boarding house, I have to say that I never heard of the thing until you mentioned it last fall, and I took occasion then to so inform you. As to my beginning the same game this year as I did last, I will leave that part of your letter to yourself, as I do not understand you, nor do I know to what you refer.

I leave here for N. Y. to-night, and shall get to Troy on Saturday. I shall have chair stock put in shape for you and Corse, and then when I

get home I will divide up with you and see how dishonest I am about it. You paid out in that case $35 only, and refused to pay Sherwood, but I made the thing pay all cash expenses and some little more, doing all the work myself. I have never done a dishonorable thing to you, Corse, or to your firm, and never will, though I may not been able to meet money engagements, and I shall certainly hope that you and he will get a large sum out of it. I shall do nothing to prevent it, nor shall I do any more for it under the circumstances of matters as presented in your recent letters, and I will be as friendly to you as you will permit me to be. I go from here to-day in debt for board; such a thing never before happened to me, but I cannot help it.

Your friend and ob't s't,

MARCUS P. NORTON.

2426 *Def't's Ex. No.* 119½ (*Corse*). *I. B., Ex'r. Jan.* 31, 1878.

JACOB SHAVOR, Esq.,

Troy,

N. Y.

Def't's Ex. No. 120 (*Corse*). *I. B., Ex'r. Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., April 22d, 1869.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I learn to-day that you are much improved in health, and almost restored to your former good health. I was glad to hear that, for now you can attend business without being troubled much in the consideration of the same. I have been trying to get Corse to come here and see what could be done in relation to the post-office stamp matter, but he has had so much on hand that he has not yet been here, but I hope he will come some time next week. There is but one course to pursue, and I think it will work to a success. We must not have any more to do with Washington "tinkers" or other "tinkers," for we get beaten every time. I think you and Corse will agree with me in this. It has been a long while, and it has cost considerable money. Still I am by no means discouraged, and if I can now be consulted and have my way about it, I can carry it through and make a good thing out of it for all concerned.

I was told that you were tired of the matter, and that you would
2427 do no more about it in any way, so I sent to see how or on what terms you would sell out your interest to me. You fixed on $11,000 cash, as expenses that you had paid out. This I thought rather hard upon me under the circumstances, as there had been no such sum paid out, as the case will fully show, and so thinking that you had made a mistake about it by getting expenses for other things, such as "whiskey meter," "way-bill envelopes," "railroad chair," and many other things which he went into together under our agreement, i. e., between you, Corse, and myself. I think you will concede this when you come to reflect upon the matter, and, being about to leave for here, and your being so unwell, I could not see you before I came here. Our way-bill envelope or bag is now in use by the department, and they want to use it still more. I think we can make a contract for the use of it. We

have new officers, entirely so, in the Post-Office Department. Zevely, who was the 3d Assistant Postmaster-General, has been put out of the office. He it was who caused us so much trouble in the Post-Office Department. Now we can have fair and full sailing, and if you are well enough I would like to have you come here some time next week, so that we can confer upon these matters here, and make some sort of an arrangement for an advance of money to us. I think it can be done. We must cut away from outside and meddling persons. Let them all alone, and let us then attend to our own business. I am anxious to carry out our agreement as to all our matters, and I propose to do so so far as I am concerned and am permitted to do by you and Corse. Mr. Corse feels in the same way, and is anxious to do just as was agreed between us. I was very sorry to hear of differences between you and Corse. You never had a more faithful or better friend on earth than Albert C. Corse, notwithstanding what meddling persons may say or may have said to you.

2428 I hear that the Hagan suit has succeeded fully and fairly on all points. I saw Mr. Treadwell, who was an expert in the case, and he told me about it. I was recently informed that you had said that I had no sort of interest in that matter, invention, or patent, and that I would never get a cent out of it in any way or form, no matter how much or how little was had out of it. Knowing what I do about the whole matter, that but for me you would never have had anything out of it, and suffering what I did and have because of faithfulness to you and to my profession, I did not believe you had said so. Write me whether you or Corse will come here, for I think it necessary one should come before I come home.

Yours, in haste,

MARCUS P. NORTON.

Def't's Ex. No. 121 *A & B* (*Corse.*) *I. B., Ex'r. Jan.* 31, 1878.

NATIONAL HOTEL,
Washington, D. C., May 13*th*, 1869.

A. C. CORSE, Esq.,
Troy, N. Y.:

DEAR SIR: Your letter of the 11th inst. is at hand, and I thank you for it. It has on its face the evidence of a desire to do right, and to treat me in fairness as to general matters.

Your patent on reservoirs has been granted upon three good claims. It will issue under date of Tuesday next, the 18th, 1869, and it will go to my office, and Charlie will see that you have it. Going from here on Tuesday, it will reach Troy on the next day. Call for it if he does not send it to you, and I hope you will be satisfied with it. There is no sort of use for me longer to do professional or other business
2429 where you or Mr. Eddy has a lawful interest, and hereafter I shall decline such if any should be offered me, which I hope may never be the case. There are many good and sufficient reasons for this decision.

Mr. Shavor has sent me a notice of which the following is a copy, to wit:

TROY, N. Y., *May* 3, '69.

MARCUS P. NORTON:

DEAR SIR: This will notify you that all powers of attorney given you

by Shavor & Corse to transact business for them has been revoked, and you will do no more business for them or for Jacob Shavor.

Yours, &c.,

JACOB SHAVOR.

This has its meaning, and I am sorry that I cannot agree with you that he means to do right by me in the stamp matter, without process to compel him to remember his contract and his good faith with me in that matter.

Mr. Eddy not only told Merriman what I wrote you, but he told me the same, and I declined to say anything to him about the stamp, but did ask him to have you come here, and with an oath he said you could not and should not come here on that business; that he had as much and more to do with it than you had. I think when I get home we better have settlement on all sides and upon all matters. I have been trying to have this done since last fall. I only want the agreement with me lived up to, and good faith kept towards me, and I suppose that this is no more than right. I have (Def't's Ex. No. 121 B (Corse) I. B.) all papers necessary to show my full rights in the case and premises. Mr. Shavor has sent to my office in my absence and obtained papers belonging to me and in the stamp case, and now refuses to return them. You do not think such conduct looks like as though he intended to do right by me, do you? Do you think a person means to do right,
2430 or intends to do right by me, who goes about the streets in Troy, and at every point and opportunity slanders me? One who leaves nothing unsaid or unmoved whereby to injure me while absent, without cause—void of truth in statements on such points—would such a one look for, or wish to do right by me? No, Mr. Corse, I wish it were otherwise. I have done your house good and valuable service, and others have blamed me for it. Ask J. R. Hyde what he thinks since I got him to sign all those papers he did some few years ago. I will not go into the matter of services, for it would take much time and labor, and now what am I getting from Eddy—from Shavor? There must come a day of settlement, and let it be soon after I get home to Troy, and in a fair, honorable, and frendly way.

The Stewart reservoir and warming closet matter has been squelched and permanently defeated, and no one will have trouble from that patent. They undertook to reissue and to get a bigger hold, and had to give up under an order from Commissioner of Patents. I found it out, and with others "sailed in," and I hope the stove men will at least say one good word, and yet it may all be considered as of no account. When I left them last winter, I did so after having conversation with you and Mr. Swett about certain matters. Well, Corse, I have kept my word, and I don't think there will be much more fuss about licenses from them. All have now one general license.

Yours, truly,

MARCUS P. NORTON.

Def't's Ex. No. 121½ (*Corse*). *I. B., Ex'r. Jan.* 31, 1878.

A. C. CORSE, Esq.,

In care of E. & C.,

Troy, N. Y.

2431 *Def't's Ex. No.* 122 (*Corse*). *I. B., Ex'r. Feb.* 4, 1878.

WASHINGTON, D. C., *June* 10, '68.

Hon. ALEX. W. RANDALL,
Postmaster-General:

SIR: The Government of the United States of America having failed to comply with the agreement and understanding made between a former Postmaster-General and the undersigned, through their attorney and agent, Marcus P. Norton, of Troy, N. Y., for compensation for the use of an invention and improvement for the postmarking of letters, packets, &c., and for the permanent cancellation of postage-stamps thereon, and patented to Marcus P. Norton, April 14th, 1863; reissued under date August 23d, 1864, and duly assigned and transferred to us by him, April 20th, 1863; and as said invention and improvements so patented and assigned have been extensively used for several years under the said agreement and understanding, we are, therefore, compelled, in justice to ourselves, to notify, and we do hereby notify, you as Postmaster-General, that, unless some definite arrangements shall be made prior thereto for the same, the said agreement and understanding will be terminated on the first day of July next, 1868, from and after which date you are forbidden and prohibited to use said invention and improvements so patented and assigned. You are also notified that after said first day of July, 1868, the present contractor, B. Chambers, jr., will be prohibited and forbidden to manufacture for your department, or for other purposes, the said invention and improvements, and should he thereafter make, or undertake to make or manufacture, the said invention and improvements, he will be restrained and enjoined by the injunction order of the court having jurisdiction thereof. Also,
2432 that postmasters, where said invention is now in use, will not be permitted to use the same on and after that date, to wit, July 1, 1868, and should they thereafter undertake any further use or use after that date, all such will be prohibited and enjoined by the injunction order of the court, the validity of said patent having been fully maintained and established by the decree of the circuit court of the United States, Judges Hall and Nelson presiding.

We are compelled to take this step for the reason that no rate of compensation has been fixed by the Post-Office Department, although the said invention has been in extensive use by said department for several years, under said agreement to pay a fair, just, and reasonable compensation therefor.

Very respectfully, your ob't serv'ts,

SHAVOR & CORSE.

Def't's Ex. No. 123 *A & B* (*Corse*). *I. B., Ex'r. Feb.* 4, 1878.

NATIONAL HOTEL,
Washington, D. C., October 23*d*, 1869.

A. C. CORSE, Esq.:

DEAR SIR: The stamp matter is now arranged to our mutual interest and satisfaction. The dispute between us has been of great use, because it has added to the real and substantial value of the stamp. It is proven of a very much larger value than you or I have been ever put upon it. Mr. Eddy now concedes this great value, and he is greatly encouraged. It is now in shape and condition, or will be on Monday next, when Mr. Eddy and I will get our papers complete, for valuable contracts, or for a large sum of money, either in Court of Claims or Con-

gress, as the case may be. The plan now is to close a contract
2433 for cash for four years' use from March 5th last, then have suits
brought in Court of Claims for the past use, commencing where the pending esse leaves off, which will give five years' time up to March 1, 1869; then ask Congress to purchase the several patents or not, as we may conclude. This is our plan of operation, and I do certainly believe we will close this four years' contract and get our money within the next ten days; of this we have the very strongest assurances and reliable propositions. On this we agree. I send you printed pamphlet for answer to the J. D. Green put in by you, which of course is now of no use, save on the two first questions, to wit, of utility and the right and duty to purchase on the part of the P. M. G., to which I especially ask your attention. Now, I do not think there is any doubt about our cash contract with the P. M. G'l. Mr. Eddy will explain it all to you when he sees you, as he will leave here on Monday or Tuesday night next for Troy. My main object in writing you is to see if Shavor cannot be bought out. I want him out of the case, claims, patents, &c., &c. It is now fixed so that he cannot give you or Mr. Eddy any trouble, still I do not wish to be associated with him in any way, manner, or form hereafter, and, if possible, I do not mean to be. I think he should be bought out in some way, and I am willing to join you and Eddy in that undertaking. We propose for four years to take the one-fourth saving (one year) in the item of clerk hire, at a uniform salary of $1,000 each, and that number you will find on page 16 of the book I send you, to be 676 clerks, which at $1,000 per year is $676,000, one year, or one-fourth of Mr. Creswell's time in the administration. This will establish a rule for us to go by as to the past and the future. You will see the extensive use being made of this stamp on postal card in addition. This is a brief statement, still there is no humbug about it. We may not get this one-fourth saving, but we will try hard for
it, and I candidly think we will come near it. We will on
2434 Tuesday such things at work as will carry a big price through,
and that right soon, too. It would have gone through on that very day when Weed filed his last paper which brought us together, and which I was certainly happy to have brought about, for we will all feel better about it, and it is the carrying out of original verbal promises on both parts. I will ever labor hereafter for our peace and mutual good interests. I mean you and Eddy.

There are good and sufficient reasons why I will have no more to do with Shavor. This stamp will bring money enough for us all. Now is a good time to get it in. The past nine years' use will have made it of permanent cash value to us. The new patent gives us seven additional years of the time the government will pay us, in all 24 years from April, 1863. Please do not see Green, Ransford, or Shavor until you will have seen Mr. Eddy. We can (Def't's Ex. No. 123 B (Corse), I. B.) work and live together for all time. I have my faults, Mr. Corse, like all men. I have learned some terrible lessons in the past two years, so hereafter you will see that my operations will be entirely different. All I now want is to get straightened up and into position again with all my cannon and field artillery, and then I can go ahead again. I shall now soon be at Troy again, and go to work in good order and press on and on with more care and caution. I am glad our differences happened, and that they have been so readily and happily settled. You or Eddy and I could at any time have settled, but Shavor never. We shall all of us make more money because of this estrangement. Now let us ever be good friends. When I have done wrong I am ready at all times to do

all I can to repair those wrongs. It would be indeed strange were I to live and have no faults. I would to God that I were without them, and will struggle to do right at all times.

Truly, &c.,

MARCUS P. NORTON.

2435 *Def't's Ex. No.* 125 (*Eddy*). *I. B., Ex. Jan.* 31, 1878.

Whereas differences and disagreements have arisen between the undersigned in regard to the ownership of, and the right to receive the compensation proposed to be made for the use of, a certain invention now in use in the Post-Office Department of the United States, known as Norton's "improvement in postmarking and cancelling hand stamps"; and whereas the parties involved in said differences and disagreements are desirous of making an amicable settlement and adjustment of the same, and for the purpose of accomplishing that end it is agreed between the parties hereto respect*fully* as follows, to wit:

1st. That in consideration of certain large sums of money heretofore paid out for and advanced to Marcus P. Norton by the firm of Charles Eddy & Co., and by Albert C. Corse and Jacob Shavor, in procuring patents for said inventions, in litigation in regard to said patents, and for its introduction into general use by the Post-Office Department, there shall be paid to and received by the said Charles Eddy, in trust for himself and Albert C. Corse and Jacob Shavor, the sum of twenty thousand dollars out of the first money or moneys paid by and received from the United States from any source or in any form for the past or future use of said inventions; and upon the execution of this agreement by the parties hereto, the said Charles Eddy, Albert C. Corse, and Jacob Shavor shall, and will, execute and deliver to the said Norton such good and sufficient receipts, acquittances, or other papers as may be necessary to release and discharge the said Norton from any and all indebtedness of every character and description, due from the said Norton to either the said Charles Eddy, Albert C. Corse, or Jacob Shavor, whether
2436 such indebtedness is due to them individually or as members of the firm of Charles Eddy & Co.; and the said Norton, upon the receipt by him of such receipts, acquittances, or other papers, shall and
[Stamp.] will execute and deliver to the said Charles Eddy, Albert C. Corse, and Jacob Shavor, such good and sufficient receipts, acquittances, or other papers, as may be necessary to release and discharge the said Charles Eddy, Albert C. Corse, and Jacob Shavor, or either of them, or the firm of Charles Eddy & Co., from all indebtedness of any kind and description, existing against them, or either of them, in favor of the said Norton.

2d. That after the payment of the said sum of twenty thousand dollars to the said Charles Eddy, trustee as aforesaid, any sum or sums of money received from the United States from any source, either for the use of said inventions by the United States, or for their purchase by the United States, shall be divided between the parties hereto as follows: The said Marcus P. Norton shall be entitled to receive, and shall receive, two-thirds of any and all moneys received from any source on account of the use or sale of said patents, or either of them; and the said Charles Eddy, trustee as aforesaid, shall be entitled to receive, and shall receive, one-third part of any and all moneys received as aforesaid; but the division of said moneys shall not be made until the said Charles Eddy, trustee as aforesaid, shall have received said sum of twenty thousand dollars.

3d. That there is hereby conveyed to the said Charles Eddy, in trust,

for himself and the said Albert C. Corse and Jacob Shavor, the undivided one-third part of the following-described patents, issued to said Norton as the original and first inventor, to wit, patents for "Improved post-marking and cancelling hand stamps," dated January 14th, 1862, December 16th, 1862, April 14th, 1863; the last of which was re-
2437 issued as follows, to wit: August 23d, 1864, and August 3d, 1869; also patent for revenue cancelling stamps issued August 15th, 1865; also improvement in post-marking and cancelling stamps issued July 13th, 1869, antedated June 10th, 1869; also patent for post-office way-bill envelope issued June 10th, 1862; and if there shall have been issued or granted any patent to said Norton relating to either of the above-named subjects, or if there shall hereafter be granted to said Norton any such patents, then they, and each of them, shall be deemed to be included in this agreement and conveyed by it; also, this agreement or conveyance shall include and embrace all reissues of said patents or either of them, and also any and all patents which may hereafter be granted for the purpose of perfecting or improving said inventions or either of them; and the said Norton will on the execution of this agreement, and bearing even date herewith, make, execute, and deliver to the said Charles Eddy, trustee as aforesaid, good and sufficient deeds of conveyance or assignments of the undivided one-third of said patents respectively; and if there shall hereafter be needed any instrument in writing necessary to more effectually convey said patents or either of them, or any part thereof to the said Charles Eddy, trustee as aforesaid, the said Norton agrees to make, execute, and deliver such instrument in writing, upon the demand of said Eddy, trustee as aforesaid.

4th. That it shall be provided in any contract hereafter made with the United States, or with any other person or persons, for the use or sale of said patents or either of them, or of any other patents for improvement of said inventions, that any money or moneys to be paid or received therefor from any source under such contract, shall be paid to and received by the said Charles Eddy, in trust for the said Norton, and for himself; and the said Albert C. Corse and Jacob Shavor, and the said Eddy, trustee as aforesaid, after the receipt by him of
2438 said sum of twenty thousand dollars, shall immediately distribute all moneys so received by him in trust to the parties entitled to receive the same as herein provided.

[Stamp.] 5th. And it is further herein agreed that if the parties hereto shall elect or determine to prosecute their claim for compensation for the past or future use of said inventions or either of them by the United States, before Congress or in the Court of Claims or before the proper executive department, that such claim shall be prosecuted in the names of said Norton and said Eddy, trustee as aforesaid; and all acts passed by Congress providing for compensation for the use by the United States of said inventions or either of them, or for the purchase thereof, shall provide for the payment of the amount appropriated by Congress for either of said purposes to the said Eddy, trustee as aforesaid, for the purposes provided in the fourth clause of this agreement; and if the act of Congress passed for the purposes aforesaid shall fail to provide for the payment of the sum appropriated to the said Eddy, trustee as aforesaid, then the said Norton shall and will execute and deliver to said Eddy, trustee as aforesaid, such papers or authority as will enable the said Eddy, trustee as aforesaid, to receive and receipt for the money or moneys so appropriated by Congress.

6th. That neither of the parties hereto shall, without the consent of the other, grant any license or permit to any person or persons to manufacture, use, or sell said inventions or either of them; nor shall either of

said parties without the consent of the other make any contract by which compensation shall be provided for the use by the United States of said inventions or either of them.

7th. That all contracts hereafter made by which provision shall be made for compensation for services, professional or otherwise,
2439 hereafter to be rendered, in prosecuting any claim for the use by the United States of said inventions or either of them, shall be made with the said Norton and the said Charles Eddy, trustee as aforesaid; and neither party hereto shall make any contract for the purpose aforesaid, without the consent of the other. It being the intent and meaning of this provision of this agreement that neither the said Norton nor the said Eddy, trustee as aforesaid, shall make any contract for services hereafter to be rendered in prosecuting any claim for the use of said invention by which the other shall be bound, unless the same shall be assented to by both the said Norton and said Eddy, trustee as aforesaid.

8th. It is hereby agreed that the third clause of this agreement shall only convey to the said Charles Eddey, trustee as aforesaid, the undivided one-third of the patents therein specified, and that when the conveyances and assignments therein required to be made shall have been made and executed by the said Norton, the said third clause of this agreement shall become inoperative and void.

9th. And it is hereby further agreed that neither of the parties hereto shall charge the other party or either of said patents for services hereafter personally rendered, professionally or otherwise, in and about the business appertaining to said patents, inventions, or either of them, whether in the courts or in the Patent Office, Post Office Department, or other Executive Departments of the government, but any and all sums of money expended in and about said inventions, patents, or either of them, as the personal and necessary expenses attending the same, after the receipt by said Eddy, trustee as aforesaid, of said sum of twenty thousand dollars, shall first be paid out of any money received on account of said patents, or either of them, when vouchers shall be produced for any such expenditures of money by either
2440 party hereto, or when the same shall be duly authorized in writing and said Eddy, trustee as aforesaid.

10th. That the said Charles Eddy, trustee as aforesaid, will make, execute, and deliver to the said Marcus P. Norton, Albert C. Corse, or Jacob Shavor, upon the demand of either of them, his bond in the sum of twenty thousand dollars for the faithful fulfillment of the trusts herein assumed by the said Eddy.

In testimony whereof the parties hereto have set their hands and seals this 23d day of October, A. D. 1869.

MARCUS P. NORTON. [L. S.]
CHARLES EDDY. [L. S.]
ALBERT C. CORSE, [L. S.]
By C. EDDY,
His Att'y in fact.
JACOB SHAVOR, [L. S.]
By C. EDDY,
His Att'y in fact.

Signed, sealed, and delivered in the presence of—
JOHN I. WEED,
W. PENN CLARKE.

[40 cents int-rev. stamps, canceled.]

Def't's Ex. No. 126 (*Campbell*).—*I. B., ex'r, Feb.* 1, 1878.

Affidavit and assignments.—Transfer of patents.

CITY OF TROY,
County of Rensselaer, and State of New York, ss:

Jacob Shavor and Albert C. Corse, of the city of Troy, being duly and severally sworn, each for himself, doeth depose and say: That
2441 they reside at the said city of Troy, in said county and State; that they have so resided there for about twenty years. We know Marcus P. Norton, who also resides at same place. He is a practicing lawyer by profession in the several courts of the State of New York, in the United States, as well as before the U. S. Patent Office. We have so known him for five or six years past. In the summer of the year 1860 he exhibited to us, at his office in said city of Troy, a double or combined stamp or instrument for postmarking of letters, and for the cancellation of the postage-stamps thereon in ink, at one blow or operation of the same. This device consisted of the device for giving the name of the post-office where used, together with the date of the same, and with a device of either cork, wood used endwise, rubber, or metal having any suitable configuration upon the lower surface of the same, for the cancellation of the postage-stamp, and used and arranged in combination with such postmarking device. At about that time the said Marcus P. Norton called upon us, we being then considered clients of his, and at that time he there made known unto us that he had a very valuable invention and improvements for use in the postal service, of the kind, character, and for the purposes hereinbefore stated, and that, because of having endorsed so large an amount of paper as to cause him very great embarrassment in the year 1856 and 1857, and from all of which he at that time was a great financial sufferer, and thus being much distressed, he desired each of us to aid him in money for the purpose of obtaining letters patent upon his said invention and improvements in this country and perhaps in Europe. Whereupon and after due consideration we agreed with him, the said Marcus P. Norton, to furnish him with such sums of money as he might require in order to get his said inventions into general use by the post-office or other departments of the government requiring such inventions or instruments. The money so furnished by us, or either of us, as in the
2442 judgment of the said Marcus P. Norton he might need or require from time to time in order to obtain such patents as he might deem best, in order to get his said improvements into general use by the government or Post-Office Department, at as early a date or time as possible, or within his power to do, he having the entire management of the same. We agreed with and promised to the said Marcus P. Norton to receive one-half interest or moiety part of the said inventions, improvements, and letters patent when obtained for the uses and purposes aforesaid, while the other and remaining half interest or moiety part of such inventions, improvements, and letters patent were to be, and the same were in any event or under any circumstances to remain, the property and rights of the said Marcus P. Norton, and of his lawful representatives. We were to make no charges whatever against him for any money thus furnished by us to him. His one-half interest and moiety part of the said inventions and patents were to be wholly and entirely free from any and every claim or charge for money, or other matter or thing on our part or by us. The said Norton was not to charge our said one-half part with any professional services rendered

by him in the premises. The said Norton was by the arrangement to assign all his said patents to us soon after or before the same were issued to him, in order that all his patents, inventions, and improvements, and every of them, might be in safe hands while said Norton was so embarrassed, because of his losses aforesaid, or for other cause, as well as to permit of his being a witness of and concerning his said inventions, improvements, and patents in court or elsewhere, concerning such matters as were within his personal knowledge, and could not be proven by any other person, such, for example, as matters appertaining to his caveat filed in the U. S. Patent Office in the year 1853, and containing, among other things, the several inventions herein named. It was also agreed that whenever the said Norton
2443 should be able in his own judgment to manage the affairs concerning and connected with his said inventions, improvements, and letters patent, and to us assigned and transferred in the manner as aforesaid, and upon being requested so to do, we were to reassign, reconvey, and retransfer unto him, the said Norton, his heirs and legal representatives, the invention, improvements, and letters patent, dated December 16, 1862, also dated April 14, 1863, including each and every reissue of either of said patents, if at the time of such request and demand of and by said Norton upon us, there were any reissue or reissues of the said letters patent, or of either of them. We were, also, to reassign, reconvey, and retransfer unto him, the said Marcus P. Norton, his heirs and legal representatives, each and every other letters patent than those hereinbefore named, which, at the time of his request and demand aforesaid, might be in our possession through and by means of any assignments and transfer thereof, from the said Norton to us, including the "post-office way-bill envelope," patented on or about the 10th day of June, 1862, including, also, all other patents upon post-marking of letters or packets, and for the cancellation of postage-stamps thereon, and including each and every reissue of any of the said patents; that whenever he, the said Norton, should for any cause desire, request, or demand of us the reassignment, retransfer, or reconveyance of any or of all of his said patents by him assigned to us under our said agreement with him, and for the purposes aforesaid, then the same should be so done without any trouble to him or unnecessary delay; and in consideration of such reassignments, retransfer, and reconveyances of the said inventions, improvements, and patents, by us to the said Marcus P. Norton, he was only to pay to us all sums of money and lawful interest thereon paid out by us at the request of the
said Norton, when we should present to him proper vouchers for
2444 the same; and that if at the time when said Norton should desire or demand of us the reassignment, re-transfer, or reconveyance of any or of each and every of the said patents, by us as aforesaid, he might not be able to cash at once such money and the lawful interest upon the same, then he, the said Norton, his heirs or lawful representatives, may, at his or their own election, pay such money out of the first money had or received by him or them out of any sale or sales made with the government of the United States by him or them, and which should, under such circumstances, be so paid as soon as possible after any such sale and payment of money in accordance therewith, we producing vouchers for all moneys so expended by us as aforesaid stated. It was also agreed that the said Norton was to have full and uninterrupted charge and control of, as well as the management and direction of all matters appertaining to each and every of said patents, both in the obtaining of the same, all legal matters

thereon, or in the sale of either of them, or in the introducing of any or all of them into public use by the "Post-Office Department" or other department of the government. The letters patent thus far obtained under our said understanding and agreement with him, the said Marcus P. Norton, are dated as follows, to wit: December 16, 1862, assigned to us December 20th, 1862; also, April 14th, 1863, assigned to us April 20th, 1863, and each for improvements in postmarking letters, packets, &c., and for the cancellation of postage-stamps, and each recorded in the U. S. Patent Office; also, June 10, 1862, assigned to us December 20, 1862, and recorded in the U. S. Patent Office December 31st, 1862, and for and upon an invention entitled "post-office way-bill envelope," made by said Norton.

And deponents further say for answer to the position taken by the committee of the House of Representatives of the Congress of the United States of America, as well as in full statement and
2445 vindication of the facts, and that such committee may know the whole truth, to wit: The position aforesaid being that deponents are mere speculators upon the invention and ingenuity of another, and that the purchase of said inventions and patents by Congress would not be a reward to or compensation to the said Norton or his family, nor would it be a reward by the government, through Congress, to the inventor for invention and valuable improvements made by him; that the real and true inventor should himself be the recipient of the attention of Congress, as well as of the compensation, whereby to encourage, to reward, and to stimulate invention for the benefit of the government and not persons who claim as mere assignees, for Congress cannot know how or in what manner they came by or into the possession of the same; that the payment of a very large sum of money by Congress to such assignees would not have the tendency to stimulate and encourage invention; that Congress should reward the inventor and patentee directly, and thereby encourage other inventors as well as to discourage speculation by assignees. The deponents say that they were only to be temporary assignees in order to aid said Norton in the manner hereinbefore stated, for deponents were by the arrangement to reassign, reconvey, and retransfer each and every of the said patents to them assigned by said inventor and patentee Norton, previous the time when he might or should request or require of and from us such assignments and transfers, no matter what may have been the name, or nature, or style of the same. Deponents further say that it was their purpose and intention to render unto the said Norton all the aid in their power whereby to enable him to complete his models, drawings, and specifications, in order to obtain the patents contemplated by him, and to enable him to get the Post-Office Department or government to consider, adopt, and put into use the several inventions made by
2446 him for the purposes and uses aforesaid, for the said Norton was at that time engaged for deponents in and about business and certain matters appertaining to said Norton's profession, to wit, that of a practicing lawyer.

And deponents further say that upon the said Norton's request so to do, deponents were to, and would duly, and faithfully, and freely, reconvey, reassign, and retransfer each and every of the aforesaid inventions and patents unto the said Marcus P. Norton, in legal form and condition the same as we had and received such inventions and patents and each of them in trust, as aforesaid, from him, whereby the title thereto should be full, free, and perfect, and clear from any, all, and every encumbrance whatsoever.

And deponents, in further answer to said position of the said committee of Congress, do hereby make, execute, and deliver the following absolute assignment and transfer of the aforesaid patents, inventions and improvements to the said Marcus P. Norton, his heirs, assigns, or legal representatives, to be by him or them used and put upon the record at the U. S. Patent Office, whenever he or they may desire so to do—that is to say: Whereas letters patent of the United States of America were duly granted, issued and delivered unto the said Marcus P. Norton, under and bearing date as follows, to wit, December 16th, 1862, also April 14th, 1863, for and upon improvements in instruments for postmarking of letters, and for the cancellation of the postage stamps thereon as and in the manner, form, and for the purposes substantially as hereinbefore stated and set forth; also, a certain letters patent dated June 10, 1862, for and upon an invention known and denominated a "post-office way bill envelope," as hereinbefore stated and set forth: Now, therefore, and by virtue, force, and power of our said agreement and contract with the said Marcus P. Norton, in the manner aforesaid, and in consideration of the premises hereinbefore set forth, and in the further consideration of the
2447 sum of three hundred dollars, the receipt of which is hereby duly acknowledged, we have sold, assigned, and transferred, and we do hereby sell, assign, and transfer, unto the said Marcus P. Norton, his heirs, assigns, and lawful representatives, the full, clear, entire, and the exclusive right and title to each, every, and all of the aforesaid named and described letters patent, inventions, and improvements, also each and every reissue of any or either of the same, including, together with those hereinbefore named and described, each and every invention and letters patents acquired by us of and from him, the said Norton, under our aforesaid agreement and contract with him, as aforesaid stated, to have and to hold the same forever, for his own use, benefit, and behoof, and for the use, benefit, and behoof of his heirs, assigns, and legal representatives, for and during the full length of the term for which the same were and are granted, as fully, freely, and entirely as the same would have been held and enjoyed by us had this grant and sale not been made by us. In testimony whereof we do hereby set our hands and seals, and make our solemn oaths, on this 23 day of February, A. D. 1864.

JACOB SHAVOR. [SEAL.]
ALBERT C. CORSE. [SEAL.]

Subscribed and sworn to before me this 23d day of February, 1864.

JOHN T. LAMPORT,
United States Commissioner for
Northern Dist. of New York, Troy, N. Y.

[$1 int. rev. stamps, canceled.]

2448 CITY OF TROY,
County of Rensselaer, and State of New York, ss:

On this 18th day of April, A. D. 1870, personally came before the undersigned, a notary public, John T. Lamport, to me personally known, and the person above named as a United States commissioner for the northern district of New York, and residing at the said city of Troy, N. Y., and who duly acknowledged on this day, before me and to me, that the foregoing affidavit, assignments, and paper signed Jacob Shavor, Albert C. Corse, was duly sworn to and executed or acknowledged by the said Jacob Shavor and Albert C. Corse, in the presence of and by

the said John T. Lamport as such United States commissioner, on the day, in the month and year above named, to wit, February 23d, 1864; that at the time when the said foregoing instrument was subscribed or acknowledged by the said Jacob Shavor & Albert C. Corse, to wit, the 23d day of February, A. D. 1864, they, and each of them, were duly and severally sworn as by law required, after having written each his name to such instrument, as appears by reference to the same, whereupon he, the said John T. Lamport, did in his own hand subscribe his name thereto as a United States commissioner, which he was at that time; that his aforesaid signature thereto is genuine, and that said Shavor & Corse each appeared at said time and place, in their proper person, and each for himself subscribed or acknowledged and swore to said instrument, or made oath thereto, as above stated, and as stated in the above jurat; that so far as he knows or believes the subscribing or acknowledging and making oath to the foregoing instrument were actual and bona fide transactions on the part of the said Shavor & Corse, as well as by the subscribing officer, to wit, U. S. commissioner.

JOHN T. LAMPORT.

2449 Subscribed to and acknowledged before me, on the above declared, &c., to wit, April 18th, 1870.

[L. S.] B. McGREGOR,
Notary Public at Troy, county of Rensselaer, State of New York.

U. S. PATENT OFFICE.

Received for record July 24, 1869, and recorded in liber U[11], page 319, of transfers of patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[L. S.] S. H. HODGES,
Acting Commissioner of Patents.

Ex'd. E. A.

CITY OF TROY,
County of Rensselaer, and State of New York, ss:

John T. Lamport, of said city, county, and State, being duly sworn, doeth depose and say: My name is John T. Lamport. I reside at said city of Troy, and have so resided there for about 45 years. I personally know Jacob Shavor and Albert C. Corse, of same place. In the year 1864 I was a duly and lawfully appointed United States commissioner residing at said city of Troy, and was so appointed in the fall of the year 1863. The foregoing certificate subscribed and acknowledged by me before a notary public, as will above appear, is correct and truthful as to all matters therein stated and set forth. That the above-named affidavit and assignments and papers was duly subscribed,
2450 or acknowledged and sworn to before me by the said Jacob Shavor & Albert C. Corse, on the day, month, and year set forth in the jurat thereof thereto.

JOHN T. LAMPORT.

Subscribed and sworn to before me, on this 18th day of April, A. D. 1870.

C. B. INGALLS,
Justice of the Supreme Court of the State of New York.

Def't's Ex. No. 127 (*Green*).—*I. B., Ex'r, Feb.* 7, 1878.

NATIONAL HOTEL, *May* 17*th*, 1864.

JACOB SHAVOR, Esq.:

DEAR SIR: I have to-day had a first-rate interview with House committee on stamp matter. I will bet my life that we get pay, and that too very near the same we have talked. The com. are unanimous in the opinion that your and Corse's title and right to the improvement in P. O. S. is clear, and beyond a doubt. They will report in your favor, but have suggested to me a certain matter which I cannot act upon until I have had an interview with you and Corse, and you have given your decision. Mr. Norton says that it is impossible to get the bill through both Houses this term, but that it will be among that business which will be acted on immediately on the reassembling of Congress, in December next; no doubt of it. I shall leave here for N. Y. to-morrow, and hurry up to see you and Corse. Ransford & Low can't fool you or me very much in this matter. We are right; Charles has been here since Saturday morning or Friday eve., and has roomed with
2451 me, my room being large, with two beds in; he feels first rate about the Atwood case; as to the stamp, he says that he never did believe that Ransford or Low had any interest in it, and by G—d they never shall have if he could prevent it. He knows just what he did when he went from Troy; I have told him nothing as to the title being in you and Corse.

I had to use more money to-day and drew another draft, which I will give you the items for on my return.

I have never felt better about the stamp than I do to-day. Hoole's affidavit, which caused my delay in New York, was a great point with us here.

Yours truly,

MARCUS P. NORTON.

Def't's Ex. No. 128 (*Green*), *A. & B.*—*I. B., Ex'r, Feb.* 7, 1878.

NATIONAL HOTEL,
Washington, D. C., June 11, 1866.

JACOB SHAVOR, Esq.:

DEAR SIR: In reply to you last letter, I do not wish you to get the idea that I am in anywise discouraged about any matter or thing, for such is not the case. If we can get this matter through so that I can put $5,000, or more, into the gold mine of N. Carolina in case it is all right, and if I don't get this matter of stamp in time why of course I must go without. But what I meant was that such opportunities should be presented and then pass for want of money. Now there will not be a single moment allowed to pass without pushing the stamp. The
2452 bill is drawn so as to pay to you & Corse the amount Congress may agree upon. So Peter is played out. Ferry and I did this; we drew up the bill, and he submitted it to the committee, and all agreed to it with the exception of Fink, a Democrat, who opposed it on political grounds, he being an old line Sesesh Democrat, but he can't hurt us, so Mr. Ferry and Mr. Alley both say. Ferry, Alley, and one other of their committee are to speak on the bill for you and Corse in the House, where Mr. Ferry will take it to-morrow, so he says. He is much better now, but has been quite ill. He wanted to use this morning $300, and not being known here, he came to me to borrow the

money, as it would take about six or eight days to collect his draft on Chicago. So I took his draft and went to the bank where I usually get money here, and it being so far away and he a perfect stranger that they did not like to do it, and I was bound to get him the money in some way and so I drew on your house and now enclose to you his draft. I had spent my $200 which I brought with me and must have to-day and to-morrow some grinding money, and I put $75 more it to and I have sent you note for the $500.00 for you to sign and hand over to Charlie and he will get you the money for it and hand it to you. For the $75, I will pay Dr. Baldwin's bills here and account to you for it. This draft of Ferry's is good as old gold, and it is the first time he has had to use money here beyond his Congressional salary, drawn only on the 1st day of each month. It is made in the name of the firm and endorsed by him. It will cost you about $1.00 to collect, which I enclose with the draft. You ought to get another letter about the time you do this. Ferry is pushing the stamp to a vote in the House, and the Senate having examined the case will report at once on the same. Dr. B. would hurry up the matter and cut short the time. I am so anxious about the matter. I want "some gold," and I think I can keep it too, although you may think otherwise. I make a good use of what money I have to spare. No gambling-room, drinking-room, or hoar house, or any
2453 other wicked contrivance, get any of it. I have sometimes to spend a pile of money for my clients, or some of them at least, and generally all of them who have any important business, in order to get all things right, and I sometimes blame myself for it, but then I can't help it; this is corrupt Washington, and the business comes all right. Had I supposed that I was to have had such a run of illness as that of two years ago and not get through with, of course I would have got along some way with a lesser office, although it is my capital in business. And as to my house, you ought to recollect that my wife had some money, and manages the house matters in the city and in the country, horse, &c., and all, and we live not extravagantly by any means when you consider our family. Sickness and endorsement made bad work for me, and but for you and your house years ago, I would have gone clear under and amounted to nothing in profession or anything else, and particularly you (Def't's Ex. No. 128, B (Green), I. B.) have been very kind to me, and in the end it will all come just as straight as a string, and you will get your reward in every way and shape.

Were I engaged in some manufacturing business or merchantile matter, then I would have an income more than sufficient for all my wants. Now, I have not the "blues;" I am encouraged in all good things, and will not give up any undertakings which is good and lawful.

I got Potters & Paris reissue, and so Bussey and all such will have to dance to their music. This is confidential, but I really got a big thing for them.

I shall expect the Dr. here soon. I am quite well; but my children are quite ill with the "hooping cough," and are in the country with Mrs. Norton and the rest of the family. I am for the gold, if I can get it, and I hope I may, as I have about 10 days' spare time before in must go the "soap." Mr. F. will take $5,000, cash up, if you can spare it to him.

Yours truly,

M. P. NORTON.

2454 *Def't's Ex. No.* 129 (*Green*).—*I. B., Ex'r, Feb.* 7, 1878.

NATIONAL HOTEL,
Washington, D. C., June 22, '66.

REV. DR. BALDWIN,
Troy, N. Y.:

MY DEAR SIR: Your letter of the 21st inst. is at hand. In reply I have to say I have always been and am now opposed to the taking of the $50,000, or any other sum less than what the department promised last year, together with expenses and interest. The sum so promised was $100,000 expenses and interest $25,000, in all $125,000. I have been and now am in favor of going to the Court of Claims on the question of the amount which the government should pay for this patent, which the P. M. G. says to Congress saves to the gov't in labor alone more than $200,000 annually.

I am overruled and can do no more than submit to the directions of Shavor & Corse, which of course I shall do as you have requested, and as they through you have directed. I can do no more, no less, if I would. Those gentlemen have been more than kind to me, and Mr. Shavor has always done by me as no other live man would do, and I am therefore the very last man on this earth who would oppose their wishes, or refuse to counsel them or take their advice. They are missing it in this course, as in the end it would certainly prove, for I know whereof I speak; but they are the masters and have the full right and liberty to say what shall be done, and I am willing to trust it all to them. I know that they will not do a dishonorable thing by me. Why, my dear sir, we have never for these long years had a scrap of writing between us in our contracts and various agreements. I have never asked
2455 any from them either. They are honorable and Christian gentlemen in the fullest sense of the term. That house of C. Eddy & Co., and more especially Shavor & Corse, made me in my profession, and you know that that is second to none in Troy and vicinity as to success and amount of business.

Had I not been ill as I was for those terrible long eight months in house, and thirteen months from my office, my business would have been now full as much as all the other law offices and business in Troy. But kind Heaven, for some good purpose, afflicted me thus, and it is all right. I am struggling to get over it, to regain my business, and, above all, my former health; and under our divine heavenly Father I hope to succeed, for it really seems to me as though my Lord and Master had a work for me here yet to do, and I fully recognize that great, holy, and divine power of God, Saviour of the world; and so morning and evening at my house we do gather around our family altar, and there seek the way, the truth, and mercy, and grace. Nothing but sickness will prevent our worship and prayers around that sacred family altar, where we delight to go, are made happy, and kept in the way which leads to life beyond this we now live. Governed by this principle and by the kindness of my friends Shavor & Corse, as also by your own counsel, the plan you propose shall have my aid and endorsement, as you propose and desire.

You may read them this letter, as I have no time to write them to-day and in God we will trust everything, our all, and it will in the end all come right.

Your obedient servant and faithful friend,

MARCUS P. NORTON.

2456 *Def't's Ex. No.* 130, *A & B (Green).—I. B., ex'r., Feb.* 7, 1878.

NATIONAL HOTEL,
Washington, D. C., January 2, '67.

DEAR SHAVOR: Your letter of the 29th ultimo, and mailed the 31st following, came to me this morning. In answer—in the first place, let me say that I wrote to the New York men about the money just exactly as I told you I had done at the time, but to save loss of time I enclose you a paper which will answer all purposes. I have just had an interview with the P. M. G., as well as a long conversation on our—your matters, and one thing is certain, the stamp not only looks well, but is well. It is in the very best condition it ever was, in view of Dennison's course. The necessary papers will be ready for committee on Friday, this week. On Thursday I shall know the sum recommended. Confidentially, he may recommend the saving of one year, which would be a little over the $300,000, and then take a hand in, but if he comes to dollars and cents he will certainly go much better than has heretofore been done. He is considering which plan will best carry in Congress. Having had up the case, of course, Congress must be looked to in some respect. He asked me particularly what the committee would do, and I told him this day. I shall go again to-morrow and I shall hammer and hammer on until we get the cash. It shall not pass by this session, so I say. So says the P. M. G. to me this morning, and he will write to that end. Now for answer to your letter in full. Had I gone to Troy for holidays, we should have lost a month's time. I have been at work in the P. O. Department on this matter every day, and by so doing brought it to a focus. This is why I did not go to Troy as I expected, and now
2457 I shall be ready for committee on its first meeting. Was not this right? There would have been more pleasure in going home. Your objections to that part of my letter where I say my patent is all wrong and entirely immaterial to you or Corse, but very material in statement of the case, because the patent was issued to me on the invention made by me, but assigned to you. It would have injured our case to have stated it otherwise. It was my patent, but assigned to you. Whenever the title is mentioned, that is another thing. The patent had not at that time been assigned. I was speaking of then, now now.

Now, I may as well tell you one thing which has *has* been a source of trouble as to amount of compensation, especially in committee. It is this: Dennison, and so did the committee look on the case and say that the government were not rewarding the inventor and patentee, but were paying assignees who were a set of speculators who had taken the matter to speculate upon out of government, and I have had to meet this proposition more than once, and to say that it was untrue; and hence, I undertook to explain it in my letter to which you take these objections. If you had confidence enough in me to know and believe that whatever I have done or may do is done purely for our mutual and joint interest you would not find these faults. I hope you will believe me when I say frankly that I am not trying to cheat or to defraud either you or Mr. Corse in this or any other matter, as I am aware of. I am as firm and valuable friend as you or he ever had or ever will have. I am a lawyer, you are a manufacturer. hence I may do or say things which you may not see and understand as I do, but face to face would convince you of the point gained. About the assignment, I gave my reasons for it. Now, let me ask, wa'n't I compelled to assign my patent to you and Corse in order to save it from Low & Ransford in the very beginning?
2458 Don't you remember the fact, and in consideration of the assign-

ment and of the risk you would run, and of the expenses attending it, were not you to have a third and Corse a third? And was not the assignment and my testimony which saved the case or rather the patent? Please remember this, my good friend, before you say, as you do, that I have stated that which is untrue, and it is just this hardship which I am trying to make out to the P. M. G. which is to increase your bank account, as well as that (Def't's Ex. No. 130, B. (Green), I. B.) of Mr. Corse, and I fondly hope my own. Under the old law a patentee could not bring suit on his patent and then be examined as a witness. Now, under the new law he can. Now, as to the $6,000, enormous as you think it is, you will see just how it came about if you will but look before you reflect upon me. Now, let us see: In 1865 you made an affidavit that you had up to then expended some over $7,000. Well, right where you left off, I begin with the $6,000, and you will see that I stated in my letter to P. M. G. that from that time, and through last year, and for this year, it had and would require from you and from me that sum, as near as I could figure it, and I was willing to make an affidavit to that effect, and you will see that it was put on this ground, that but for this stamp and the delay in trying to get pay none of that money would have been expended. This is the ground on which I put this $6,000, and now, since I have your statement to-day, I ought to have put it at a larger sum on the same ground, to wit, as money spent which would not have been spent but for this stamp, and the delay in promptly paying for it, and before my God I say it is right. I allow you the statement as expenses paid by you with one exception. The $300 Stanly, about one-half of that was used about the stamp, I think, but I am now under the impression that I wrote you to credit to stamp $200 out of that $300, but am not certain. Now, Shavor, I am struggling to get in and save to you and Corse, and for myself, too, these expenses in
2459 addition to any fixed sum, or if not added to operate as a reason why the sum should be fixed larger, and my sufferings and your troubles and all combined I put in to show why the sum should be made larger, and why it should go right through at once, and not to cheat you or Corse. Am I wrong in this? I think not, with the great respect I have for you. You will find that all this is not treason or treachery towards you and Corse, but for your mutual benefit and our best interest, and it is not false either; it is true, and you will say so when you see me and talk with me. I wrote you about the $300,000, and I have to-day written again. You will see that we will try and get it in shape which will take, if possible; if not, then fall back on the plan in the letters, i. e., $100,000 and expenses. If the $300,000 plan takes, it must be under, say, the idea of a year's saving. This must be so fixed as to catch no one, if we go into that. I think you will agree with me in this matter of caution, for but for Dennison's course last year, then we could go into it with freedom. We must not miscarry this time.

About the 15th of this month will be the time for you to come here, and I want you to come without fail; and these expenses I shall take into the account with the P. M. G., even if you bring your wife, which, by the way, I would do if she can ride this far. It would do her much good. At any rate it is the best thing you can do. Now the department acknowledge that these expenses are entirely just, and that the grounds on which I put them are just; then why on earth do you find fault?

King has again, for the first time—this time here—asked me about his being secured to him. Bah! Your position in your letter of to-day is exactly right, but you must not expose me to King, as we can take

care of him when you get the money. Five per cent. exclusive of expenses was just what in the beginning he told me he would be satisfied with; but you know where you'll find me on that question, as I
2460 have so often talked it over with you. He may write you; if so, look out; let me know it or see the letter. He can't hurt us any—not the least. We have only to understand ourselves and each other and all will be just right. I thought I explained to you the Senate matter, but this letter is now so long that I will write on that point this evening.

Your firm, lasting, and, I hope, trusted friend,

MARCUS P. NORTON.

Def't's Exhibit No. 131, *A, B, & C (Green.)—J. B., ex., Feb.* 7, 1878.

NATIONAL HOTEL,
Washington, D. C., April 21*st*, 1867.

JACOB SHAVOR, Esq.,
Troy, N. Y.:

DEAR SIR: I wrote you yesterday in part as to your business here and as to my business at home. While, as therein stated, I have been four months and ten days away from children, from home, and deprived of its comforts and of its joys, and some of the time quite sick in the midst of strangers—it will also be remembered that I have been away from my regular business, and not only prevented from earning anything so as to pay notes, debts, and the current expenses of living, and thus enable me to keep my promises to pay, I have subjected myself to considerable censure from my clients, and, to some extent, injured my business because of this absence and devotion to business here in order to get some money from the stamp. Had I obtained a large sum for you, you would have thought well of me, but as I have not yet done so, you censure me in the most severe way, and complain very much be-
2461 cause you are on some of my paper, and that, too, in every letter you write me. This does not encourage me much to work on here until I gain the end successfully, as I had set out to do. The very $1,200 which I obtained on my notes endorsed by you, as well as several hundred dollars more, was obtained by me to use in this very stamp matter, for when I set out for here in December last—the 9th day of that month—you had not provided a dollar, nor had you offered to do so, in order that the stamp matter could go ahead. That money—every dollar of it—was used for some other business for a firm which I supposed good as "old gold," and who would pay it on my sight drafts as I might want it; none of which, however, has yet been paid, and thus you wish to push me to the wall—compel me to pay all the expenses, save $700, paid by you under your protest at that; deprive me of my home for four months, ten days, cut me off from the society of my own young children, while my business in my law office is neglected by me, and then find fault with me, censure me, complain to me because I do not meet my notes and send you and Corse home a large sum of money. Mr. Shavor, have you forgotten that I have feelings as well as you? Do you think that I am so mean that I dare not to defend my most excellent and devoted wife at the time somebody accuses her of "reporting things which are not true?" No, my old friend, I will defend my wife, my children, and my home if I go to the poor-house on the following day. Please read the letter I enclose herewith on the subject of board, which, had not I been stopping at this house for the past ten years, would throw me out in disgrace. This I shall try and arrange in

some way before I leave for Troy. If, however, I had the money raised on my notes for this purpose I could pay cash, but that is gone for a time, at least, not through any willful fault of mine, but because a misfortune overtook a fellow-man, a friend, and a neighbor. I will not trouble you for any more funds and then you will have no cause
2462 to find new and fresh fault with me, and I will return to Troy as soon as I can and make arrangements to raise money to pay you what I have had of you in your hours of kindness, and I will try and get it all in so that you will not lose anything by it. It is quite evident that I shall never be able to fully satisfy you about the stamp case, although I did arrange with Mr. Van Winkle the case in such a way as to get the Senate committee to report and pass a bill for $100,000, backed by Senator friends of mine and of my family. Now, what I propose is this, that you produce an account of all moneys paid out by you up to now in and about your stamp, and then add to that the amount I owe you, and then fix a price or sum (Def'ts Ex. No. 131, B (Green), I. B.) which you will take for your and Corse interests cash down, and then let my own invention come back into my hands again so that I can manage it as I am advised is the better way. This will relieve you of a great deal of trouble and anxiety, as well as care, on account of this stamp matter, and then you will get your expenses paid out and the interest thereon paid back to you and to Mr. Corse as well as what I personally owe you, and I will make efforts to get the money at once for you; you then can assign the patent back to me. This will let you out from much unpleasantness and put you upon sailing ground, while I will have to wait until some one who has the right and the power to pay for the use of the invention. I hope you will now evince that same hope and confidence in me as I did in you and Corse when I assigned to you the whole things without the payment of a dollar for the purchase of the patent, save a certain agreement that you and Corse would be at the expense of putting the matter in that condition when the gov't would recognize the right and pay up, but which agreement you repudiated last year by reason of the heavy expenses, and which you refuse and repudiate this year for the same reason, and find much fault with me, that I do not make the P. M. G. do to suit me at once, or compel Congress to pay on a moment's notice.
2463 Now I propose to go at this whole matter in an entirely friendly manner and settle it up, so that I can have my invention and my patent back again, and you get your money and interest thereon and thus lose nothing, because it is now apparent that we do not, and will not hereafter, agree in the management of this case, and in the expenses attending it. We can do so, and have no unkindness towards either, but be just as friendly as ever we have been. We must do something, as I can never endure these feelings which your letters have brought over and upon me. I am now full of suffering to think that I have been the cause of so much trouble to you. I know that you have always been very kind to me, but you seem to think that I have forgotten it, as you take care to call my attention to it in every letter; I shall never forget your many acts of kindness to me. I understand that Foote has paid you the last $500. I am so glad, as now you cannot longer find fault with me because you did me an act of kindness in buying that demand, and you have now lost nothing by doing so. I wish you would tell me who it was that told you that my wife had "reported" in Troy that I would astonish the Trojans in the amount of recovery in the "court of appeals." I want to see that man, and I hope you will give me the opportunity. A more careful and prudent woman never lived than my wife, in all things of

business or otherwise. I would never doubt her or her word about anything. Shavor, this thing grieves me very much, and it seems as though my heart would break at the thought that such false accusations as to my wife's "reporting" even anything, a thing which she never did. She never has and never will meddle with your business or that of any one's else. She never has and never will "report" anything about any one or any one's business in Troy or elsewhere. This charge grieves her very much, and has so worried her that I must defend the thing to the fullest extent, as I will, too, if it costs me my life; I'll not submit to any
2464 such thing; you wouldn't in regard your own wife, and you would not advise me to sit by and see and hear such a mean thing said. There is no doubt but that there can be had some money out of the stamp. I have no doubt as to results in the Court of Claims or before the attorney, but I cannot now longer remain here in view of the position you take in your letters, of course I cannot; I shall return to Troy and protect my wife and family (Deft's Ex. No. 131, C. (Green), l. B.), and make efforts to honorably discharge myself from debt, and raise means to help you and Corse out of the troubles as regards money, which have been brought upon you through my acts, as you allege. I am sorry. I had supposed that we would get a good slice out of the stamp, and that no one of the three would ever be sorry that we made the arrangement and went into the matter; so now I think I can get some persons to buy you and Corse out, and then you will have no more trouble about the matter. We will be good friends about it and ever after it.

Had I spent time every day to have written you details as to the Court of Claims, I would have had little time to get the case ready, and I suposed you were satisfied to know of a point gained, as you know very well that I remained here since March 4th, last, for nothing else but this stamp, almost two months at $325+$25 per month expenses. I am sorry that I have been unable to better please you, but I have done the very best I knew how to do. I have been trying for some days to get the government's attorney, the solicitor of Court of Claims, to fix a day for the trial on the question of damages to be recovered by you, but your letters come to me and take all my energy from me, and what he will do I cannot say. I shall leave here for Troy as soon as I can arrange matters here to go home in a decent and honorable way, as I have always heretofore done.

Your friend and ob't ser't,

MARCUS P. NORTON.

2465 *Deft's Ex. No.* 132, *A B & C (Green).—I. B., Ex'r.—Feb* 7, 1878.

NATIONAL HOTEL, *June 27th*, 1868.

JACOB SHAVOR, Esq.
Troy, N. Y.:

DEAR SIR: Your letter of the 23d inst. came duly at hand. I never believed you capable of writing me such a letter. I do not now propose to answer it in detail, but I shall on my return to Troy take this letter to all the stove men in Troy, and if they say or undertake to say w' at you charge about the Pierce matter, I shall be heard through the Troy Times, for no man living shall charge me of having violated instructions. You say, "it is generally believed here that you did not act in accordance with instructions in the Pierce case, and confidence is lost in you." This is what you have written. Now, sir, please name the first thing wherein I did not obey instructions; just one thing. I have my in-

structions in writing, and certain interferences after the case was given to me caused me much trouble and great expense of money—money not paid me, and which I must lose. Well, Shavor, this we will let go. I understand the whole case and all its surroundings, and I shall be heard, too, if that is the charge.

Here is another thing. You charge me with bleeding you. Here is your language. Read it, to wit: "I have never had such a bleeding from any person before, and by whom I thought would be the last person in this world." Now, to cut this matter short. I have this to say. Most all of those notes were in an arrangement with you to go on with certain inventions and to share alike in them; and now, without waiting to get through with that part of the business, you turn around, back out, and charge me "with bleeding you." Now, let me ask you one or
2466 two questions, and then lay down the rule, and then I will close up this letter. Well, here is the first one. You and Mr. Corse claim to own my patent upon my invention in "post-office postmarking and postage canceling device" now in the Court of Claims. Now, how came you by it, and what did you pay for it? Not one cent; and yet you go about calling it your patent, and treating me as though I were an entire stranger in the matter and not one thing to do with it. You tell me there is nothing for me to do here in the stamp case, when I know that there is. Now in this matter I have only to say that it is my purpose to go to the Postmaster-General and then spread out the whole case just as it is, as to how you came by the title to the patent. Then I propose to go to the Court of Claims and there tell the same story. Then I shall, by petition to Congress, set out all these facts and ask compensation as an inventor, and then we can see where the bleeding is. But before doing this, or taking this course, I propose to have a settlement with you—with you and Mr. Corse, and with Charles Eddy & Co.; and for this purpose I shall return to Troy early next week, and then we will go about a settlement on all sides; although were we to continue as heretofore it would absolutely necessary for me to remain here so as to get the Court of Claims bill through the House. On Friday evening last the Senate voted to strike the $5,000 (Def't's Ex. No. 132, B (Green), I. B.) clause, limiting the payment of judgments in that court to that sum, and in that condition the bill passed the Senate. But I am told that Washburn, from Ill., is so mad about it that he threatens to move it as an amendment in the House and have it put back into the bill again. This I might prevent by seeing members in time to have it voted down; but where is the use when I am snubbed and called a sucker, going about cheating and defrauding people, as you have, without any cause whatever, seen fit to charge me in the language I have quoted from your
2467 letter? No charges of that sort will pass me unnoticed, for I am not ashamed or afraid to have the conduct of my whole life looked into and closely investigated at any time—no, sir, not in the least.

You try to convince me that I have no friends in Troy or elsewhere. Let us look at a part of it—here it is. "People begin to look at me, and as they say let such a man as Norton have my paper I ought to be creditless." "In fact one man said that Norton on the back of a paper was a curse to." Now, Shavor, I have been doing business at State Bank for three years, and that bank never required of me an endorse' upon any one's paper, even Stewart's. What if I should repeat things which I have heard against you, many a time, too? and at every time I walked up & defended you like a man, and never was bad enough to throw it into your face either, and don't now; but I can assure you that you have enemies as well as I or any one else. It is hardly becoming in you to

come up and throw such things into my face when all my enemies come from my fidelity and faithfulness to you and to Chas. Eddy & Co. Now, Mr. Shavor, you will find that I have warm personal friends in Troy, men of means and of standing, too. Had you reassigned my patent, as I proposed when you were finding so much fault with me, I could before now have paid you every dollar back. I now ask you to do so at once, and I will bring you men who will give you all the expenses you have been at, and pay you back all the money you put in other inventions to share with me, and will pay you interest at 14 per cent. at that, and who will also pay up any balance found due Chas. Eddy & Co. on settlement with same rate of interest. This business must be settled up. The stamp must come back into my hands, and if not done on my return I will commence a suit in equity compelling you to return to me the title which you took from me without paying me a single dollar or anything else. I am forced to this because you call me a leech, a sucker,
2468 a thief, and many other like names. If you have come to the conclusion that you can thus deal with me because I have been examined in the Court of Claims, you have made a mistake, for it is in my power to explain that deposition and to withdraw it from the case. You will learn that I, even I (Def't's Ex. No. 132 C (Green), I. B.), have a warm personal friend in the person of A. W. Randall, Postmaster-General; in Gen'l Skinner, 1st Assistant P. M. G.; in Mr. Chambers, gov't contractor on the stamps; in Mr. Davis, stamp agent in the P. O. Department; in the whole stamping force in the post-office here. So you will find that I have friends by the score in Congress, both in the Senate and in the House. So I have friends everywhere where I am known. Being engaged in patent suits, and standing up to my clients like a man, never betraying any client, has made some enemies, but I am enough for them. I am sorry that you have forced me to such a line of operations, but your letter has compelled me to pursue it, and I shall do so without any fear. People who have long wondered how it was that you got hold of the stamp will now find out how it was and how much has been paid. Had I been alone when Congress offered the $68,000, I could have taken it and been well off; but I saw the great value of the thing and advised hanging on, and now the result shows the correctness of my judgment and the wisdom of my course and advice in that matter. But we will let this go for now until I get home.

Now, let me ask you how it is that you came by the Groom's invention, out of which you have already had several thousand dollars, and of so much value that you could well afford to put more than $5,000 in a suit in New York and let that go on three and four years without a word of fault; but because you have undertaken to aid me some, and to run risks with me, turn about upon me and denominate me a leech and a sucker, and tell me that you never were bled so by any living thing as by me. Mr. Shavor, have you forgotten the days and the nights
2469 when I stood up for you, and fought your battle even to an assault upon my character of the most foul and wicked kind, when it cost me $3,450 to defend myself? Did you ever pay me a single dollar for all this? No, sir; not a dollar. Now, after having this valuable Groom and Hagan invention, and my post-office invention put in your hands, turn about and call me a sucker and all such names without any cause, only because I am here doing work absolutely necessary in order to move an inch with the case in the Court of Claims, and other matter in which you are interested, because compelled to be here to look after and take care of these matters, and thus not being able to pay any notes, but having endorsed blanks to renew them, I had supposed they were going

without any trouble. This is all the cause you have, and it is a shame to treat me as you are doing. Now, as to Mr. Stewart, it will be only a short time before he will ask no favors of you or any one else. He will pay every cent.

Respectfully, yours,

MARCUS P. NORTON.

Def't's Ex. No. 133 (*Green*).—*I. B., Ex'r.—Feb.* 7, 1878.

WASHINGTON, D. C., *March* 15*th*, 1869.

A. C. CORSE, Esq.:

DEAR SIR: I have been anxiously awaiting a letter from you. Merriman and Gregory have both had conversation with me about the Weed notes, and say that he must have known at the time he made them that he could not pay them. He owes between eight and nine thousand dollars here for borrowed money, so I have been informed. The $250
2470 note I can save to you as endorser—you being the first—Shavor would get rid of paying it. The $200 is under protest, and I send you your notice of it. I was advised all about it, but not until the second check had been mailed to Weed. It now appears that the reason why he did not acknowledge the receipt of the $250 check the same as he did the $200 one—it was this: He had transferred it to a man by the name of Mitchell here, so as to have him an innocent and also third party holder, and by getting both checks he would have you and I in for twice the whole sum, to wit, $450, in all $900, by not paying the notes and getting the cash on better checks. So he did not give 2d check to Mitchell to pay one returned because not receipted, but went to Gregory's bank without Gregory's knowledge, and there got the money on the 2d $250 check, and then had Mitchell sue me on the first $250 check; so you see, Corse, that Weed was making a big thing out of both of us. Now I will fight the checks and pay the $250 note at State Bank, as it afterwards was found credited on my bank-book. We looked one evening and not finding it I thought it not discounted. You will have to lose the $200, and I will have to lose my $250 check and pay you the $250 note, but the note will not be any loss to me. So I have managed to save you the $250. Gregory says he would have told us better than to have touched the notes. So much for the notes.

What do you propose to do about the stamp matter here? I can't act, as I have no authority from you or Shavor, that having long ago been taken from me. I think that you and Shavor ought to assign to me my full one-third part—it would be only justice towards me at least. Now I have nothing to show, and you know how Shavor is. You remember our rights in the Hagan patent, where neither of us can get what was solemnly promised to me and to you. I hear that a decision has been made in favor of the Hagan patent. If so where are you and I under Shavor's feelings? I carried the cases through and put Shavor
2471 & Potter where they are, and they have paid me simply nothing as yet. Yes; they have, too; they have given me many promises. What shall be done about all these patent matters? If you and Swett will see that the Ford matter is fixed up, I will send you and Swett the box of documents which will fix out all the Stewart reservoirs, warming closets, &c., &c., as well as that handsome liar—Keep. Now say the word and it will go to you, but at any rate don't pay him any patent fees or make any royalty contracts with him, for I shall never change the line lately taken in that matter. There have been too many lies told

come up and throw such things into my face when all my enemies come from my fidelity and faithfulness to you and to Chas. Eddy & Co. Now, Mr. Shavor, you will find that I have warm personal friends in Troy, men of means and of standing, too. Had you reassigned my patent, as I proposed when you were finding so much fault with me, I could before now have paid you every dollar back. I now ask you to do so at once, and I will bring you men who will give you all the expenses you have been at, and pay you back all the money you put in other inventions to share with me, and will pay you interest at 14 per cent. at that, and who will also pay up any balance found due Chas. Eddy & Co. on settlement with same rate of interest. This business must be settled up. The stamp must come back into my hands, and if not done on my return I will commence a suit in equity compelling you to return to me the title which you took from me without paying me a single dollar or anything else. I am forced to this because you call me a leech, a sucker,
2468 a thief, and many other like names. If you have come to the conclusion that you can thus deal with me because I have been examined in the Court of Claims, you have made a mistake, for it is in my power to explain that deposition and to withdraw it from the case. You will learn that I, even I (Def't's Ex. No. 132 C (Green), I. B.), have a warm personal friend in the person of A. W. Randall, Postmaster-General; in Gen'l Skinner, 1st Assistant P. M. G.; in Mr. Chambers, gov't contractor on the stamps; in Mr. Davis, stamp agent in the P. O. Department; in the whole stamping force in the post-office here. So you will find that I have friends by the score in Congress, both in the Senate and in the House. So I have friends everywhere where I am known. Being engaged in patent suits, and standing up to my clients like a man, never betraying any client, has made some enemies, but I am enough for them. I am sorry that you have forced me to such a line of operations, but your letter has compelled me to pursue it, and I shall do so without any fear. People who have long wondered how it was that you got hold of the stamp will now find out how it was and how much has been paid. Had I been alone when Congress offered the $68,000, I could have taken it and been well off; but I saw the great value of the thing and advised hanging on, and now the result shows the correctness of my judgment and the wisdom of my course and advice in that matter. But we will let this go for now until I get home.

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2469 when I stood up for you, and fought your battle even to an assault upon my character of the most foul and wicked kind, when it cost me $3,450 to defend myself? Did you ever pay me a single dollar for all this? No, sir; not a dollar. Now, after having this valuable Groom and Hagan invention, and my post-office invention put in your hands, turn about and call me a sucker and all such names without any cause, only because I am here doing work absolutely necessary in order to move an inch with the case in the Court of Claims, and other matter in which you are interested, because compelled to be here to look after and take care of these matters, and thus not being able to pay any notes, but having endorsed blanks to renew them, I had supposed they were going

without any trouble. This is all the cause you have, and it is a shame to treat me as you are doing. Now, as to Mr. Stewart, it will be only a short time before he will ask no favors of you or any one else. He will pay every cent.

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DEAR SIR: I have been anxiously awaiting a letter from you. Merriman and Gregory have both had conversation with me about the Weed notes, and say that he must have known at the time he made them that he could not pay them. He owes between eight and nine thousand dollars here for borrowed money, so I have been informed. The $250
2470 note I can save to you as endorser—you being the first—Shavor would get rid of paying it. The $200 is under protest, and I send you your notice of it. I was advised all about it, but not until the second check had been mailed to Weed. It now appears that the reason why he did not acknowledge the receipt of the $250 check the same as he did the $200 one—it was this: He had transferred it to a man by the name of Mitchell here, so as to have him an innocent and also third party holder, and by getting both checks he would have you and I in for twice the whole sum, to wit, $450, in all $900, by not paying the notes and getting the cash on better checks. So he did not give 2d check to Mitchell to pay one returned because not receipted, but went to Gregory's bank without Gregory's knowledge, and there got the money on the 2d $250 check, and then had Mitchell sue me on the first $250 check; so you see, Corse, that Weed was making a big thing out of both of us. Now I will fight the checks and pay the $250 note at State Bank, as it afterwards was found credited on my bank-book. We looked one evening and not finding it I thought it not discounted. You will have to lose the $200, and I will have to lose my $250 check and pay you the $250 note, but the note will not be any loss to me. So I have managed to save you the $250. Gregory says he would have told us better than to have touched the notes. So much for the notes.

What do you propose to do about the stamp matter here? I can't act, as I have no authority from you or Shavor, that having long ago been taken from me. I think that you and Shavor ought to assign to me my full one-third part—it would be only justice towards me at least. Now I have nothing to show, and you know how Shavor is. You remember our rights in the Hagan patent, where neither of us can get what was solemnly promised to me and to you. I hear that a decision has been made in favor of the Hagan patent. If so where are you and I under Shavor's feelings? I carried the cases through and put Shavor
2471 & Potter where they are, and they have paid me simply nothing as yet. Yes; they have, too; they have given me many promises. What shall be done about all these patent matters? If you and Swett will see that the Ford matter is fixed up, I will send you and Swett the box of documents which will fix out all the Stewart reservoirs, warming closets, &c., &c., as well as that handsome liar—Keep. Now say the word and it will go to you, but at any rate don't pay him any patent fees or make any royalty contracts with him, for I shall never change the line lately taken in that matter. There have been too many lies told

for me to do otherwise, yet the stove men ought to settle the expense matter. Write me at once.

Yours truly,

MARCUS P. NORTON.

2472 *Def't's Ex. No.* 134 (*Bolton*).—*I. B., Ex'r.—Feb.* 9, 1878.

Number of words on each line and page of defendant's Exhibit No. 126 (*Campbell*).

Line.	Page—												
	1	2	3	4	5	6	7	8	9	10	11	12	13
1	3	8	9	9	8	11	9	11	8	9	5	11	6
2	3	9	10	12	7	10	10	8	10	10	8	9	6
3	6	10	8	8	8	9	9	7	7	10	1	7	7
4	6	8	8	7	6	9	10	8	9	10	.....	9	6
5	7	9	9	8	9	8	10	8	9	7	3	9	8
6	9	7	7	9	9	8	10	8	10	9	3	9	8
7	9	8	8	8	8	10	9	10	8	9	6	7	8
8	11	10	7	10	9	9	9	9	10	8	3	8	6
9	9	8	8	9	7	9	9	8	10	8	6	9	9
10	9	11	5	8	8	7	10	9	7	8	6	9	8
11	9	8	10	8	8	9	10	9	8	7	6	7	4
12	10	10	8	10	8	9	11	10	9	9	9	8	10
13	11	8	9	7	6	5	10	9	8	10	8	10	9
14	11	7	8	5	9	9	9	6	8	6	8	7	5
15	12	8	8	9	8	9	7	9	9	11	7	6	8
16	12	6	10	10	8	7	9	9	10	6	9	9	7
17	8	9	8	7	7	8	10	8	11	8	9	9	8
18	9	10	9	9	9	6	9	10	9	10	10	6	6
19	9	9	10	6	8	10	10	7	12	7	5	7	6
20	7	10	11	9	5	8	8	8	9	9	12	7	6
21	11	6	9	8	6	12	9	9	11	11	8	7	9
22	9	7	7	11	12	9	9	8	10	11	9	2	8
23	9	11	8	10	10	8	10	9	8	7	11	5	5
24	7	9	8	11	9	6	8	8	9	12	8	5	6
25	7	9	10	10	10	8	9	9	9	11	8	.....	7
26	8	8	9	8	10	5	8	8	7	11	10	.....	5
27	7	8	8	7	8	9	10	7	10	11	6	.....	3
28	7	8	10	8	7	9	9	8	9	10	11	.....	5
29	.....	.....	.....	.....	.....	.....	.....	.....	.....	10	.....	.....	6
	235	239	239	241	235	236	260	237	254	265	198	182	195

(Here follow 3 diagrams marked pp. 2473–4 & 5.)

2476 *Defendant's Exhibit* 145, *April* 1, 1878.—*J. A. S., Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Frederick G. Ransford and Peter Low, dated August 9, 1859, No. 25036, for improvement in postmarking stamps.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.]

W. H. DOOLITTLE,
Acting Commissioner.

The United States of America to all to whom these letters patent shall come:

Whereas Marcus P. Norton, of Troy, New York, has alleged that he has invented a new and useful improvement in postmarking stamps (he having assigned his right, title and interest in said improvement to Frederick G. Ransford & Peter Low, of Troy, aforesaid), which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improve-
2477 ment, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Frederick G. Ransford & Peter Low, their heirs, administrators, or assigns, for the term of fourteen years from the ninth day of August, one thousand eight hundred and fifty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Marcus P. Norton in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this ninth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States of America the eighty-fourth.

[L. S.] JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
S. T. SHUGERT,
Acting Commissioner of Patents.

2478 The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, have invented new and useful improvements in "post office postmarking stamp," and I do hereby declare that the following is a full and exact description of the nature, construction, and operation thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, and making a part of this specification.

Fig. 1 is a perspective view. Fig. 2 shows a division of the entire stamp vertically through the centre. Fig. 3 shows the face of the stationary form of type (*c c*) and each of the cylinder type as in a condition ready to give an impression in print upon an envelope, letter, or anything else desired. Fig. 4 shows a gauge for the purpose of adjusting each and every of the aforesaid type cylinders. This gauge is made as shown at (L), same figure. This is placed upon the said stationary form of type (*c c*) and over the said cylinders as shown at said Fig. 4. Then by means of ribs or projections upon the under side of said gauge

(L), which fit between the rows of type upon aforesaid cylinders, and then by sliding it from the cylinder of months over and towards each of the other of said cylinders until each are gathered up therein, and are then and there held upon a level and even surface to and with the aforesaid stationary form of (*c c*) until made for use by the nut (E), or by the use of the blotter J, as aforesaid. Fig. 5 shows the channel or grooved form of the cast type as shown at Fig. 7. Fig. 6 is a section of Fig. 5, divided vertically through the centre thereof, and showing the said channel or groove. Like figures represent and refer to like parts.

2479 The nature of my invention consists in constructing, combining, and arranging a hand stamp hereinafter described, so as to contain a cylinder with the initials of each and every month in a year, and two other cylinders with figures for the respective days of each and every month, also a cylinder with figures to represent ten years, more or less as the case may be, which cylinders shall revolve upon the same shaft with each, and within a stationary form of type, and thereby print the month, the day of the month, and the year in connection with each, and each in connection with and at the same time of the printing of the subject matter upon the aforesaid stationary form of type. It also consists in attaching a blotter, hereinafter described, to the hand stamp aforesaid, upon one or two sides thereof, for the purpose of cutting, blotting, canceling, or effacing "the frank" or postage stamp, so as to prevent a second use of the same, while at the same time the name of the "post-office," the year, the month, and the day of the month is printed upon the envelope and one side of the said frank or postage-stamp, thereby giving a good impression of the same, and prevent undue wear of the said postmarking-stamp in consequence of being used upon the uneven surface made by the said frank or postage-stamp. It is now almost impossible to get a good impression upon envelopes containing letters, &c., of the name of post-office and the date, &c., by reason of using the hand stamp upon the said frank or postage-stamp in order to cancel or efface the same. It further consists in constructing a ring or stationary type-holder with a dovetail channel or groove, so that the name of any town required may be set therein, together with the initials of any State required, and when thus arranged are then and there firmly secured ready for use. It also further consists in firmly securing and fastening each and every of the aforesaid cylinders in their respective places, as and when adjusted by the means hereinafter described. The respective parts are so arranged as to render them easily cleaned and readily

2480 adjusted to their proper and required places, also easily repaired or replaced when worn out. By arranging and combining each and every part required to postmark any letter or envelope, and to cancel the frank or postage stamp thereupon as aforesaid, in the manner and form hereinafter described and set forth, there will be no liability or possibility of any part thereof being lost while being transmitted in the mails, or being lost at the post-office, or elsewhere, when the same may be required, unless the entire stamp is lost. This stamp is more convenient for postmasters and others using it, on account of being easily and readily adjusted to the year, the month, and the day of the month, and requiring not as much care to look after the various parts as now required. It occupies much less room in the mail bags while being transmitted to its place of destination. It takes less time, trouble, and expense to prepare it for such transmission. It cuts the frank or postage-stamp in as many places as there are sharp-edged projections upon the face of the said blotter, while, at the same operation, the

places thus cut through the said frank or postage-stamp and inked by the same means whereby the cutting was done, thus preventing a second use of such frank or postage-stamp, for although the ink thus put on be washed therefrom, by any process, the places thus cut will show the first use, and detect and expose the second or fraudulent use of such frank or postage-stamp. All the difficulties attending the efficient and successful postmarking of letters, and the blotting and cancelling of franks or postage-stamps by the use of any kind of stamps now used by the government are fully and completely overcome by the use of this stamp.

Each and every part containing letters or figures are cast in a mould made expressly for such purpose, which parts, when in their respective places, are ready for use without any engraving thereon. The letters and figures are cast, chilled, or case hardened, thereby making
2481 them cheaper and better than if made of wrought iron or steel, altho' they may be made of such if desired. This stamp may be used by railroad companies for the purpose of dating tickets, &c., &c., and may be used by banks for any purpose there required. It may also be used, whenever desired, when and where it can be.

To enable others skilled in the art to make and to use my invention, I will now proceed to describe its construction and operation. I construct my "post office post-marking stamp" as follows, to wit: (A) fig. 1 and 2 is the handle, and is made of wood; (B) is the frame to receive and hold the type-wheels or cylinders (*f g h i*); also the stationary form *c—c*); also the blotter (J). This frame is made of malleable cast-iron, and is cast in a mould to give the desired form or shape; (*f*) is the type-cylinder containing initials for each and every month in the year, and is cast in a mould made expressly for the purpose, making such cylinder and letters thereon ready for use. This mould is made in six or twelve parts, so that it may be drawn from the said cylinder when cast; (*g*) is a cylinder of the same diameter as (*f*), and contains the numerals 1, 2, 3, which are the only ones required upon the cylinder to give in connection with the cylinder (*h*) the respective days of each month as may be required. This cylinder is made in the same way and manner as the cylinder (*f*); (*h*) is another type-cylinder of the same diameter as (*f*) and (*g*), and contains the numerals 1, 2, 3, 4, 5, 6, 7, 8, 9, and a cipher (0). This cylinder in connection with (*g*) will give any day in any month desired and is made in the same way and manner as the cylinders (*f* and *g*), and is placed in close proximity with the cylinder (*g*); (*i*) is another type cylinder of the same diameter as (*f*, *g*, *h*), and contains figures and abridgement for ten successive years, and is made in the same way and manner as each of the aforesaid cylinders. These cylinders are each and all arranged upon the shaft (D) and are made fast in the required place of each by the nut (E) upon one end
2482 of the shaft (D), or it may thus be secured by making the blotter (J) to serve as a nut in the place of (E), in which case the shaft (D) would receive the blotter (J) as the nut and be moved therein for the aforesaid purpose by means of a thumb piece at the opposite end of the said shaft. The said shaft (D) has a shoulder or stop upon the opposite end from the nut or screw end, which shoulder bears directly against the cylinder (*f*) and the said cylinder against the cylinder (*g*), and the cylinder (*g*) against the cylinder (*h*), and the cylinder (*h*) against the cylinder (*i*), and the cylinder (*i*) against one part of the frame (B), between the said last-named cylinder and the said blotter (J) or nut (E). By moving the said nut (E) or by turning the said shaft (D), when the blotter (J) is used as a nut as aforesaid, each cylinder is drawn

against each other as aforesaid, thereby holding each cylinder by the friction of the cylinder or cylinders next thereto. The shaft (D) has a bearing of greater diameter at one end thereof than at the other end. This is for the purpose as hereinbefore described. The blotter (J) is fastened to the frame (B) upon one side thereof by the use of the shaft (D), one end of which passes through the upper part of the said blotter, and which is firmly secured to the said frame by means of the nut (E), or by using it for the nut in place of the said nut (E) as aforesaid. This blotter is then and thereby retained in a fixed and strong position by means of the screw (S) in connection with the said shaft (D), the blotter (J) or nut E, and is for the purpose of cutting, inking, blotting, effacing and effectually cancelling the frank or postage-stamp, while, at the same time and operation, the name of the post-office, the year, the month, and the day thereof are given upon the envelope or letter at one side of the said frank or postage stamp, and not upon it, as now practiced, in order to efface and to cancel it under the operation of stamping, which unduly wears out the marking-stamp, gives a bad and unintelligible impression, and is in direct violation of the rules
2483 or statute of the Post-Office Department. This stamp may have another blotter like (J), which shall be upon the opposite side thereof, by the use of which the frank or postage-stamp would be cut, inked, blotted, effaced, and canceled upon any part of the letter or envelope where it may be placed. One blotter like (J), however, is believed to answer the required purpose This blotter (J) may be made of any size or shape, and of any material to answer the end or purpose sought to be obtained. The face, which receives the ink, and which comes directly upon the frank or postage-stamp, is grooved or cut, thereby leaving various projections, which have a sharp or knife edge sufficient for each to cut entirely through the frank or postage-stamp, but not through the envelope immediately under the same, while at the same time the places thus cut are inked by the same sharp-edged projections or cutters on the face of the said blotter as aforesaid. The said blotter (J) should be made of the best kind of cast-steel, and in such shape as not to break any part thereof. The projections upon the face of the said blotter may be kept sharp and in cutting order by filing and sharpening them when dull.

The said stationary form (*c*—*c*) may be made in a circle or any other shape desired, which shall contain the name of the post-office where used, and the initials of the State where such post-office may be located, or any other matter may be therein contained as the case may require. It is made of any required thickness, and has an inside and an outside ring or circle around the said type, representing the name of the town or post-office where used, &c., &c. It may be cast, chilled, or case-hardened in the same manner as the aforesaid type-cylinders, but the cheapest, best, and most convenient way or manner to construct it is as shown at fig. 5, where (*c'*) represents or shows a channel or groove down and in the said ring (*c*—*c*). This channel or groove is cut from one fourth to three-eighths of an inch in depth, or more or less as may be found necessary. It is cut square down with the inner ring, while the side
2484 to the outer ring is cut "dove-tailing," thus making the said channel or groove wider at the bottom than at the top thereof. This is to hold any type set therein in the proper place of each, and in condition for printing, &c., as aforesaid. At (q) is an opening so as to receive the type as shown at fig. 7. When the type as required for any name of any town or post office are placed in the said channel or groove through the said opening (q), then the remaining channel or

groove is filled up with blocks or spaces of the same or other material than the said type, which prevent any type from coming out of the said channel or groove. When the said form, as shown at fig. 5, is placed within the frame (B), fig. 2 (q), is closed up by means thereof. When the type, as shown at fig. 7, are placed in the channel or groove (c'), fig. 5, the face, the said form, and the face of the said type are upon a line with each, and thereby give an impression in print even and at the same time and operation. The said type are cast in moulds as required to fit the said channel or groove. By this arrangement there will be no engraving required, nor any setting up of form for the purpose of casting from for the respective post offices, towns, States, &c., for such can be set from a font of type made on purpose and kept at the "Post Office Department," and set up in the said groove or channel as aforesaid.

The form (c—c), fig's 1, 2, and 5, is fitted into the lower part of the frame (B), and there firmly fastened by means of the screws (s and t), fig. 2. There is a mortice in and through the aforesaid form (c—c) for the purpose of receiving the aforesaid cylinders (f, g, h, i,), whereby the printing surface of the same are upon a direct and even line of, and with the aforesaid stationary form of type (c—c) and that of the aforesaid blotter (J), so as to give an equal impression in print each with each. The aforesaid type cylinders (f, g, h, i,) re-revolve within
2485 the said stationary form of type (c—c), and the printing surface of each are then and always upon a line with each other, also with the face of the blotter (J), whereby the desired impression in print and ink is given, and the frank or postage-stamp cut as aforesaid at the same time and operation. The frame (B) may be secured to the handle (A) in any manner deemed best. (k), Figs. 1 and 2, is a ferrule upon the handle (A), and rests directly down and upon the upper part of the frame (B). This ferrule may be of any required size or thickness. A stem extends upward into the handle (A). This arrangement makes a strong joining of the said handle (A) and the said frame (B), or there may be a socket cast upon and with the said frame (B), and the handle (A) driven downward therein.

This stamp can be made at much less expense than any other kind of stamp or stamps for the same use and purpose, and is much more convenient, and not as liable to get out of repair. No part of it can well be lost, unless the entire stamp is lost, which is to be considered in the transmission of postmarking, rating, blotting, or cancelling stamps through the mails, for now there are so many separate and disconnected members or pieces that they are liable to, and in very many instances are lost in such transmission, and at post-offices when used. It is more easily adjusted for use, and can be kept in repair at much less expense than any other stamp for the same use and purpose. Any other matter required to be printed upon envelopes, letters, &c., at any post office may be done in the same way and manner by preparing type expressly therefor upon one cylinder to revolve in said stationary form (c—c).

Having thus set out the nature and the construction of my stamp aforesaid, I will now proceed to describe its operation, which is simple and easy to be understood. The cylinder (f) for the months revolves upon the shaft (D), and is brought into any required position on a line with the printing surface of the stationary type or form (c—c), and
2486 there remains for and during the month for which it is set or fixed, which, when the month is ended, is then moved forward for the next month in succession, and so the operation continues until the year is completed, when the same operation is again repeated. The

cylinder (*g*) is moved forward one figure every ten days during any month or year. The cylinder (*h*) is moved forward one figure every day of the week, month, and year. The cylinder (*i*) is moved forward one figure every year during the term of ten years, when a new cylinder is put in its place to answer to the next ten successive years, and so on the operation continues without limitation. By the use of these cylinders, as herein described, any year, month, and day of the month of any year may be given and printed, while at the same time and operation the frank or postage-stamp is cut and inked, thereby cancelling the same as aforesaid. When each cylinder is adjusted to its proper and desired place, it is there firmly held by turning the nut (E), or by use of the blotter (J), as aforesaid, which will then bring each cylinder against each, and the side of one cylinder against the frame (B), in the manner and form as hereinbefore described. The impression is then made upon the envelope, letter, &c., &c., by giving a downward and striking motion thereon. And so the operation continues for the post-marking letters, or for anything else desired by use of this stamp. This stamp may be made of any size and strength desired. Any part thereof can easily be replaced whenever for any cause it may be required.

Having thus set forth and described my invention, what I claim and desire to secure by letters patent of the United States, is—

The blotter (J), connected or attached to the main part of any "post-office postmarking stamp" for the purpose of cutting and inking, blotting, and effacing so as to successfully cancel the frank or postage-
2487 stamp of any letter or any package at the same time and operation of marking or printing upon such letter or package the name of any post office, the year, the month, and the day of the month, substantially as and for the purpose herein set forth.

In testimony whereof I have hereunto subscribed my name on the 3d day of May, 1859.

MARCUS P. NORTON.

Witness:
JNO. H. JOHNSON.
T. T. EVERETT.
Ex'd—H. M. H., C. K.

(Here follows diagram marked page 2488.)

2489 *Def't's Ex.* 147. *April* 1, 1878.—*J. A. S., ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Marcus P. Norton, dated December 16, 1862, No. 37175, for "Post-mark and Cancelling Stamp."

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

The United States of America to all to whom these letters patent shall come:

Whereas Marcus P. Norton, of Troy, New York, has alleged that he has invented a new and useful post-mark and cancelling stamp, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a
2490 petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Marcus P. Norton, his heirs, administrators, or assigns for the term of seventeen years from the sixteenth day of December, one thousand eight hundred and sixty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said Marcus P. Norton in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this sixteenth day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States of America the eighty-seventh.

[L. S.] CALEB B. SMITH,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, county of Rensselaer and State of New York, have invented a new and "improved post-marking and cancelling stamp," and I do hereby declare the
2491 following to be a full and exact description of the construction and operation thereof, reference being hereby had to the accompanying drawings and to the letters of reference marked thereon, which make a part of this specification.

Like letters represent and refer to like or corresponding parts.

Fig. 1 is a side elevation of the stamp and letter frank canceling device.

Fig. 2 is a vertical section lengthwise through the center of the various parts of the post-marking and canceling stamp.

Fig. 3 is a face view, showing the post-marking stamp ready for use, and the construction of the canceling stamp or device more fully described hereinafter.

The nature of my improvements consists in so constructing canceling stamps that the same shall cut the postage stamp or any stamp similar thereto without injury to the contents of the envelope or packet inclosed

therein, and at the same time cause a heavy circular mark upon the inside, and one upon the outside of that part of the stamp or letter frank canceled by the cutting device, so that said postage stamp or letter frank shall r·adily show cancellation in ink, and when removed from the letter or packet on which the same may have been canceled it shall be reduced to parts or pieces whereby a second use of the said stamp or frank is thus prevented although it may have been previously cleaned by a chemical or other process.

It also consists in the employment and combination of a canceling stamp with a cutting and inking device thereon, with a post-marking or rating stamp, so that the canceling of the letter frank and the post-marking on the envelope or packet shall be effectually done by the means fully described hereinafter.

To enable others skilled in the art to which my invention relates to make and use the same, I will here proceed to describe the construc-
2492 tion and operation thereof, which is as follows, to wit: I construct the post-marking stamp (D) of steel or any material which will answer the purpose. (G) is the mortice or opening to receive the type for the month, the day of the month, and the year, around which is the name of the place where used. (E) is a screw for the purpose of holding the type in the said openings (G). This stamp is secured or firmly fastened to the block or cross-piece (B), Figs. 1, 2, and 3, by means of the screw (K), which is held in its place by means of the small screw (*a*), Figs. 1 and 2, which is placed near one side of the said screw (K) so as to prevent the same from becoming loose by reason of turning backwards.

I construct the canceling stamp of steel of any size required in diameter and in length to correspond to and with the post-marking or rating stamp (D). On the face of this canceling stamp I construct circular knives or cutters (*i*. *i*, *i*), Figs. 2 and 3, which project somewhat below the face of the marking or rating stamp (D), Fig. 2, so as to give a somewhat harder impression and in advance of that given by the said stamp (D) whereby the postage stamp or frank upon which the same is used is cut through, and at the same time make the broad dark lines (*o*, *o*) on the inside, and the broad dark circular lines (*e*, *e*) on the outside thereof, and which said circular lines are seen at Fig. 3. That part of this canceling stamp which makes the said circular lines (*o* and *e*), Figs. 2 and 3, is made somewhat below the surface or the immediate edge of the said knives or cutters (*i*), and serve as guides to prevent the said knives or cutters from cutting through the postage stamp or frank and the envelope containing the same whereby injury to the letter or contents within the envelope or packet is prevented, and at the same time make the aforesaid heavy or dark lines (*o* and *e*), Fig. 3, so as to show cancellation more readily. (*b*, *b*), Fig. 3, are grooves or channels cut across the face of the said canceling stamp (*c*) so as to leave a
2493 corresponding part of the letter stamp or frank in condition without being cut or inked.

The said knives or cutters may be made on a straight line across the face of the cancelling stamp (*c*) instead of a circular form, in which event heavy guards or guides will be constructed upon each side thereof so as to prevent the said knives or cutters from cutting too deep and thereby injure the letter or contents thereof enclosed within the envelope containing the postage-stamp, while at the same time a heavy line or mark in ink may be given upon the said postage-stamp, thereby showing the cancellation readily. Any number required of the said knives or cutters may be used for cutting the said postage-stamp. The can-

celling stamp (*c*) may be of any size or diameter desired. The guards thereon to prevent the said knives or cutters from cutting too much and from injuring any letter or any contents therein, may be of any form or shape deemed best so long as the object and result desired by this cancelling stamp is attained. The inner guard or guides may be omitted if desirable so to do, and the entire face or lower surface of the said cancelling stamp may be level instead of convex or oval, which will in no wise change the character of the invention or device, to wit, the knives or cutters and a guard or guards in combination with each other for the purposes aforesaid.

The cross-piece (B) is made of iron or steel and in width the same as the diameter of the said rating and canceling stamp, and of any thickness required. The said canceling-stamp (*c*) is securely fastened to the said cross-piece (B) and at any desired distance from the said rating stamp (D) as seen at Figs. 1, 2, and 3, and in the same manner as that of the said stamp (D). (H) is a screw bolt or stem, the lower end of which is screwed into the centre of the said cross piece (B). The handle (A) is then screwed upon the said bolt or stem (H) and firmly upon the said cross-piece (B), thereby making a strong and reliable joining
2494 of the handle to the whole stamp. This stamp thus constructed or combined is designed to cancel permanently and successfully postage-stamps on letters or packets in post-offices without injury to the letter or contents thereof, and thereby prevent the possibility of a second or re-use of such postage-stamp. It may also be used by banks for the purpose of canceling revenue stamps upon checks, notes, &c., and it may be used for canceling stamps of any kind, whether postage, revenue, or otherwise. It saves a great amount of labor in the making up of mails at any post-office, and is a cheap and durable postmarking or rating and canceling-stamp.

Having thus described my invention and improvements in postmarking and canceling stamps, what I claim therein and desire to secure by letters patent of the United States, is—

The canceling device (*c*) having on the face or lower surface thereof knives or cutters, and a guard or guards in combination with each other, by means of which the postage stamp is canceled by the said cutters, and at the same time prevent any injury to the letter or any contents therein from the said knives or cutters by means of the said guard or guards, substantially as herein described and set forth.

I also claim the combination of the canceling-stamp (*c*), and the postmarking or rating stamp (D) with the cross-piece (B), substantially as and for the purposes herein described and set forth.

In testimony whereof, I have, on this 7th day of October, 1862, hereunto set my hand.

MARCUS P. NORTON.

Witness:
FRANKLIN SCOTT.
JNO. H. MCCHESNEY.

Ex'd.—E. A. M., E. H. K.

(Here follows two diagrams marked pages 2495 and 2496.)

2497 *Deft's Ex.* 150. *April* 1, 1878.—*J. A. S., ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of

this office of the letters patent granted Emery N. Moore, dated January 16, 1849, No. 6036, for "improvement in machinery for postmarking letters, &c."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

United States of America to all to whom these letters patent shall come:

Whereas Emery N. Moore, of Boston, Massachusetts, has alleged that he has invented a new and useful improvement in machinery for postmarking letters, &c., which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously
2498 known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Emery N. Moore, his heirs, administrators, or assigns, for the term of fourteen years from the sixteenth day of January, one thousand eight hundred and forty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Emery N. Moore, in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, in the city of Washington, this sixteenth day of January, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States of America the seventy-third.

[SEAL.] JAMES BUCHANAN,
Secretary of State.

Countersigned, and sealed with the seal of the Patent Office.
EDMUND BURKE,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all persons to whom these presents shall come:

Be it known that I, Emery N. Moore, of Boston, in the county of Suffolk, and State of Massachusetts, have invented a new and
2499 useful machine for stamping letters or packages with post-office marks; and I do hereby declare that the same is fully described and represented in the following specification and accompanying drawings, letters, figures, and references thereof.

Of the said drawings, Figure 1 denotes a top view or plan of my said machine. Figure 2 is a side elevation thereof. Figure 3 is a vertical

and longitudinal section of the same, taken through the middle of one of the endless aprons. Figure 4 is a side view of the upper or bed cylinder, and shows the beds, depressing cams, and upper set of fingers or grips applied to the external surface of the said cylinder. Figure 5 is a side view of the lower or type-holding cylinder, and shows not only the recesses for receiving and holding the types, but the lower sets of grips or fingers, which act in concert with the upper sets of grips or fingers, as will be hereinafter described.

The peculiar object of my machine is to imprint on letters or parcels, or mailable matter usually deposited in post-offices, for the purpose of being transported or sent in the mails, the usual post-marks, such as the name of the place, date of reception of the letter, and price to be paid for transmitting it, together with the word "paid," or any other word, letter or letters, figure or figures, device or devices, that it may be deemed advisable to stamp thereon. All this has been heretofore been effected by stamps used in the hand of some officer of the post-office; and where much business is done in an office, this duty consumes much valuable time, and in consequence thereof creates a consequent expense. By the use of my machine, many thousand letters may be stamped in a very short period of time, in comparison to what would be consumed were the usual process of accomplishing the same resorted to.

In the said drawings, A denotes the frame work of the machine, which should be constructed in a manner suitable to sustain the operative parts directly applied to it. B and C are two cylinders, the
2500 former or the larger or lower of which is what may be termed the type-holding cylinder, because its main purpose is to hold and revolve the types or printing block or blocks used to produce the required impressions or post-marks upon the letters. The said blocks or types are shown at D D. The cylinder B is mounted on a shaft, E, which is properly sustained in bearings which admit of its being revolved so as to revolve the cylinder; on one end of the said shaft there is a fly-wheel, F.

The shaft also has a geer-wheel, G, fixed upon it, which engages with another geer-wheel, H, fixed upon another shaft, I, which is supported by and turns in boxes, K K. The upper or bed cylinder C is placed on the shaft I, and is revolved with it. The said cylinder supports two or any other suitable number of beds, L L′, which are portions of the curved surface of a cylinder, and serve to sustain the letter when it is made to pass between them and the inking or printing surfaces of the types or printing blocks. The lower or type cylinder may be made of a diameter equal to or any number of times greater than that of the other cylinder, according to the number of printing blocks it may be desirable to place in one range around its periphery. In the drawings it is exhibited having a diameter double, or about double, that of the upper cylinder, and as having two ranges of printing blocks, D D and D′ D′.

Each printing block of each range on the lower cylinder has a spring grip, M or M′, applied to the cylinder, and with respect to the block as seen in the drawings. There is another and somewhat similar spring grip, N or N′, applied to the upper cylinder adjacent to each bed, L L′, as seen in the drawings. The spring-grip N or N′ operates in connection with one of the two spring grips immediately below it on the lower cylinder, and in such manner as to seize each letter when it is sufficiently advanced or presented to be printed, and hold it firmly in place
2501 on one of the beds while it is carried between the two cylinders

in order to be printed and receive an impression from one of the printing blocks or forms of type.

Having thus described that part of the apparatus which produces impressions of types on a letter, or on several letters in succession, it next becomes my province to explain that by which the letters are successively presented to the spring-grips of the cylinders in order to be printed.

For this reason I make use of an endless apron for each range of printing blocks around the lower cylinder. In the drawings two of said aprons, O O′, are seen, each being supported upon two rollers, P Q, and arranged as seen in the figures. The roller P of each apron is fixed upon a horizontal shaft, R (see Figure 6, which represents a rear end elevation of the machine), which revolves in bearings S S screwed to the under side of the table T, within which the endless aprons are arranged. On the outer end of the shaft R is a pulley, U, about which and a large grooved wheel or pulley, V, fixed on the shaft of the lower cylinder, a band, W, passes so as to communicate motion to both the endless aprons when the lower cylinder is put in revolution. Each endless apron has an inclined spout, X or X′, disposed at right angles to it and over the table T, as represented in the drawings. The letters to be printed are laid in the spouts, and by the attendant are successively pressed down upon the endless aprons as fast as it may be necessary to supply them to the printing machinery.

By the revolutions of the endless apron on which the letters may be placed, they are successively moved forward against spring-stops Y Y′, which are seen at Y in Figure 3, and also at Y Y Y′ Y′, in Figure 7, which denotes a top view of the inner end of the table T, or that part of it which projects under the upper cylinder, and is not seen in Figure 1.

Each one of the said spring-stops is nothing more than a
2502 small bent spring so applied to the front end of the table as to project above the same and arrest the forward movement of a letter when it is moved in contact with them by one of the endless belts. At a proper time, and just before two of the spring-grips of the cylinders are brought around and together, so as to size the letter, the said spring-stops Y Y of each endless apron are depressed by cams Z Z Z suitably placed upon the surface of the upper cylinder; as soon as the depression of the stops is effected the endless apron upon which the letter should still rest a short distance will immediately cause the letter to advance, and far enough so as to be seized between and by the two spring-grips which may be in the act of approaching towards one another for the purpose of receiving or seizing the letter.

The next portion of the machine is that by which the types or printing surfaces are inked. It does not differ materially from such as is in common use on cylinder printing machines.

In such of the drawings as the same are shown, *a* denotes an ink fountain, and *b* a large distributing cylinder; *c* is a small conveyor or roller for conveying ink from the surface of the fountain roller *d* to that of the distributing drum or cylinder. It is applied to arms *f f* extending from a rocker shaft, *e*, which has a long bent arm, *g*, projecting forwards from it, and over a cam or wiper, *h*, fixed on the shaft E, the said cam being so made and arranged as to cause, by its action on the said arm, the conveyors to move towards and against either the fountain roller or the distributing cylinder, as occasion may require. The distributing cylinder is revolved by an endless band, *i*, which operates around two grooved pullies, *k l*, one of which is placed on the shaft E and the other on the shaft *n* of the distributing cylinder. A reciprocating lateral motion is

given to the distributing cylinder by means of a vibratory fork, *m*, made to operate in crossed helical grooves formed in a cylinder, *n'*, fixed on the shaft *n*. Or, instead of such a contrivance to obtain a lateral
2503 movement of the said cylinder, any other well known and proper contrivance may be substituted.

From the distributing cylinder the ink is transferred to the types or imprinting surfaces by a roller, *o*, which is suspended by arms from a rocker shaft, *p*, the said shaft having an arm, *q*, extending from it and resting upon a cam or wiper, *r*, fixed on the shaft E, and made to revolve with said shaft and to so operate the transferring roller *o* by means of the arm *q* as to cause said transferring roller, at the proper time or times, to move away from contact with the distributing cylinder and come into, or rest in contact with the inking types, blocks, or surfaces, which produce the postmarks.

On one end of the shaft of the ink fountain roller is a ratchet wheel, *s*, which has an impelling pawl, *t*, resting upon its teeth, the said pawl being jointed to an arm, *u*, projecting from the shaft *e*. The movements of the said shaft cause the pawl to so act on the teeth of the ratchet wheel as to produce a gradual rotation of it and the fountain roller, in order to always present to the conveyer *c* a fresh surface of ink.

The machine above described, in many respects, resembles various machines in use for cylinder prinitng. I have, however, produced a combination of elements different from any such, and adapted to a peculiar purpose, viz, that of postmarking letters and packages. As such letters and packages vary in thickness, either the beds will support the said letters during the operation of postmarking them, or the types or printing blocks should be sustained upon springs which will admit of their recession a little so as to allow of the passage of a letter of any ordinary thickness between either of the said beds and its printing block or types. In Figure 3 the printing block is shown as resting upon a spring, *v*, which is so disposed as to allow of the proper recession of the block, as occasion may require.

What I claim in my invention for postmarking letters is the
2504 spring-grips as applied in combination with the cylinders B and C and letter conveyer, and to each printing block and bed, substantially as described.

Second. I claim spring-stops Y and apparatus for working them, as applied in connection with each endless belt or apron, and the spring-grips, and made to operate substantially as specified.

And, lastly, I claim to make the beds, or printing surfaces or blocks, so as to be capable of receding and adapting themselves to letters or parcels of various thicknesses, as specified.

In testimony whereof, I have hereto set my signature this the eleventh day of February, A. D. 1848.

EMERY N. MOORE.

Witness:
R. H. EDDY,
CALEB EDDY.
Ex'd.—C. C. W., F. F.

(Here follows diagram marked page 2505.)

Sept 23. 1851.

pulleys, *k l*, one of which is placed on the shaft *l* and the other on the shaft *n* of the distributing cylinder. A reciprocating lateral motion is

given to the distributing cylinder by means of a vibratory fork, *m*, made to operate in crossed helical grooves formed in a cylinder, *n'*, fixed on the shaft *n*. Or, instead of such a contrivance to obtain a lateral
2503 movement of the said cylinder, any other well known and proper contrivance may be substituted.

From the distributing cylinder the ink is transferred to the types or imprinting surfaces by a roller, *o*, which is suspended by arms from a rocker shaft, *p*, the said shaft having an arm, *q*, extending from it and resting upon a cam or wiper, *r*, fixed on the shaft E, and made to revolve with said shaft and to so operate the transferring roller *o* by means of the arm *q* as to cause said transferring roller, at the proper time or times, to move away from contact with the distributing cylinder and come into, or rest in contact with the inking types, blocks, or surfaces, which produce the postmarks.

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2504 spring-grips as applied in combination with the cylinders B and C and letter conveyer, and to each printing block and bed, substantially as described.

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And, lastly, I claim to make the beds, or printing surfaces or blocks, so as to be capable of receding and adapting themselves to letters or parcels of various thicknesses, as specified.

In testimony whereof, I have hereto set my signature this the eleventh day of February, A. D. 1848.

EMERY N. MOORE.

Witness:
R. H. EDDY,
CALEB EDDY.
Ex'd.—C. C. W., F. F.

(Here follows diagram marked page 2505.)

2506 *Deft's Ex.* 151.—*April* 1, 1878.—*J. A. S., ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these present shall come, greeting:

This to certify that the annexed is a true copy from the records of this office of the letters patent granted Benjamin Chambers, dated September 23, 1851, No. 8384, for "Improvement in letter stamps."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE.
Acting Commissioner.

No. 8384.

United States of America to all to whom these letters patent shall come:

Whereas Benjamin Chambers of Washington, D. C., has alleged that he has invented a new and useful improvement in letter-stamps, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the
2507 Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to said Benjamin Chambers, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-third day of September, one thousand eight hundred and fifty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Chambers, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-third day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States of America the seventy-sixth.

[SEAL.] N. K. HALL,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
THOS. EWBANK,
Commissioner of Patents.

2508 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Benjamin Chambers, of the city and county of Washington and District of Columbia, have invented a new and improved letter stamp, and that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings which make part of this specification.

The purpose of my invention is to furnish a stamp having a simple and ready mode of discharging the movable letters and figures containing the date of the stamp, while preserving the integrity of the cylindrical metallic or other block containing the fixed letters, and avoiding the cutting away and weakening of the handle.

I form my stamp of a block of metal, generally of a cylindrical form but it may be oval, elliptical, or prismatic in the cross-section. From the upper end of this block projects a shank to enter the bore of the handle. This shank may be either of a piece with the block itself, or may be inserted or firmly fixed into it by screwing or other well-known means.

The block has, as usual, at its lower end, a square opening to receive the name of the month and the figure representing the day of the month on separate types, which types, when inserted, are held in place by a set screw or other equivalent fastening. These two types rest, when used, against the solid top of the square cavity; but when it becomes necessary to push either of the types out for the purpose of replacing it by another, a separate punching rod or follower comes down through a small hole and urges out one type without disturbing the other. The necessity of some means of pushing out the types is caused by the stickiness of the ink, which, getting between the types and the sides of the cavity in which they are set, creates an adhesion and causes delay.

2509 Besides this, any other mode of getting out the types of the stamp is more or less liable to injure the letters.

In the drawings, Fig. 1 is a longitudinal section, Fig. 2 is a cross-section through the part of the stamp represented by the dotted line *x x*, Fig. 1. Fig. 3 is a face view of the stamp, and Fig. 4 is a separate view, showing the detached follower or punching-rod R, with its cross-wing N, and sliding thumb-piece O. Corresponding letters represent the same parts in all the figures

A is the body of the stamp, on the end of which is seen in Fig. 3 the permanent device or name of the place where the stamp is to be used (which in the present figure is Baltimore, Md.). In the lower end of the block is represented in the same figure, and also in Fig. 1, the square hole H to receive the movable types T and T′, on the latter of which are the letters Feb., and on the former the figure 5. The types being inserted in the proper position, the thumb-screw S retains them in place. As the type T (Figs. 1 and 3) are required to be changed about thirty times as often as T′, the removal is made by the rod R′, pushed down by the thumb-slide O′, which is connected by the wing N′ moving up and down in the slot M′, which slot is formed in the body of the stamp and does not extend into the handle. The punching rod, wing, and thumb-slide are made in a single piece, and act one on each side of the centre or shaft of the block.

When at the end of the month it becomes necessary to displace the movable type T, it is effected by means of the second follower R. Fig. 2 shows in section the rods R and R′, the slots M and M′, and the two

2506 *Deft's Ex.* 151.—*April* 1, 1878.—*J. A. S., ex.*

DEPARTMENT OF THE INTERIOR.

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[SEAL.] W. H. DOOLITTLE.
Acting Commissioner.

No. 8384.

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In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-third day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the United States of America the seventy-sixth.

[SEAL.] N. K. HALL,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
THOS. EWBANK,
Commissioner of Patents.

2508 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

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I form my stamp of a block of metal, generally of a cylindrical form but it may be oval, elliptical, or prismatic in the cross-section. From the upper end of this block projects a shank to enter the bore of the handle. This shank may be either of a piece with the block itself, or may be inserted or firmly fixed into it by screwing or other well-known means.

The block has, as usual, at its lower end, a square opening to receive the name of the month and the figure representing the day of the month on separate types, which types, when inserted, are held in place by a set screw or other equivalent fastening. These two types rest, when used, against the solid top of the square cavity; but when it becomes necessary to push either of the types out for the purpose of replacing it by another, a separate punching rod or follower comes down through a small hole and urges out one type without disturbing the other. The necessity of some means of pushing out the types is caused by the stickiness of the ink, which, getting between the types and the sides of the cavity in which they are set, creates an adhesion and causes delay.

2509 Besides this, any other mode of getting out the types of the stamp is more or less liable to injure the letters.

In the drawings, Fig. 1 is a longitudinal section, Fig. 2 is a cross-section through the part of the stamp represented by the dotted line *x x*, Fig. 1. Fig. 3 is a face view of the stamp, and Fig. 4 is a separate view, showing the detached follower or punching-rod R, with its cross-wing N, and sliding thumb-piece O. Corresponding letters represent the same parts in all the figures

A is the body of the stamp, on the end of which is seen in Fig. 3 the permanent device or name of the place where the stamp is to be used (which in the present figure is Baltimore, Md.). In the lower end of the block is represented in the same figure, and also in Fig. 1, the square hole H to receive the movable types T and T′, on the latter of which are the letters Feb., and on the former the figure 5. The types being inserted in the proper position, the thumb-screw S retains them in place. As the type T (Figs. 1 and 3) are required to be changed about thirty times as often as T′, the removal is made by the rod R′, pushed down by the thumb-slide O′, which is connected by the wing N′ moving up and down in the slot M′, which slot is formed in the body of the stamp and does not extend into the handle. The punching rod, wing, and thumb-slide are made in a single piece, and act one on each side of the centre or shaft of the block.

When at the end of the month it becomes necessary to displace the movable type T, it is effected by means of the second follower R. Fig. 2 shows in section the rods R and R′, the slots M and M′, and the two

thumb-slides O and O′. A shank, L, Fig. 1, projects from the upper end of the block A, and upon this the handle K.

I do not claim punching out types from a cavity by a follower; but what I do claim as my invention and desire to secure by letters patent is, so making and operating the detruding rods or followers of a
2510 letter stamp as to act wholly within the body of the stamp block, whereby I avoid cutting away the handle and the weakening which would be caused thereby.

I also claim making the detruding-rod R, wing N, and thumb-slide O in a single piece, whereby I greatly economize the labor of making this part of the stamp, as herein set forth.

B. CHAMBERS.

Witnesses:
JAMES OWNER,
WATER JOHNSON.
Ex.—J. A. W., M. McK.

2511 *Defendant's Exhibit* 152.—*April* 1, 1878.—*J. A. S., Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Stephen P. Ruggles, dated August 21, 1855, No. 13470, for "hand-stamp."

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

No. 13470.

United States of America to all to whom these letters patent shall come:

Whereas Stephen P. Ruggles, of Boston, Mass., has alleged that he has invented a new and useful hand-stamp, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said hand-stamp, and that the same hath not, to the best of his knowledge and belief, been pre-
2513 viously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said hand stamp and praying that a patent may be granted for that purpose:

These are therefore to grant according to law to the said Stephen P. Ruggles, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-first day of August, one thousand eight hundred and fifty-five, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said hand stamp, a description whereof is given in the words of the said Ruggles, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-first day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States of America the eightieth.

ROBERT McCLELLAND,
Secretary of the Interior.

Countersigned, and sealed with the seal of the Patent Office.
[SEAL.] S. T. SHUGERT,
Commissioner of Patents.

(Here follows diagram marked page 2512.)

2514 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known, that I, Stephen P. Ruggles, of Boston, in the county of Suffolk, and State of Massachusetts, have invented certain new and useful improvements in hand stamps for post-office and other purposes, and I do hereby declare the following to be a full, clear and exact description of the same, reference being had to the accompanying drawings making a part thereof, in which

Fig. 1 represents a perspective view, and

Fig. 2 represents a vertical central section through the same.

Similar letters where they occur in the two figures denote like parts.

The nature of my invention relates, first, to the manner of connecting a plate to the handle by means of a screw cap to facilitate a change of plates; also, in holding the ball to the socket by a pin and its accompanying parts to prevent the spring from coming out.

A represents the handle of the hand stamp, which may be made of wood or any other suitable material, and into this handle is inserted a shank piece, B, having a collar, C, thereon, to keep the shank from being driven into the wood by the blows in using the stamp.

The shank piece extends down below the wood, and terminates in a semi-spherical end, D, which fits into a similar concavity in the upper part of the bed plate E; *a* is a flange rising around the concavity in the bed plate, and through a hole in this flange, and a large hole, *c*, in the shank piece passes a pin, *e*, which holds the bed plate to the shank, though by a kind of ball and socket joint, on which it may turn. *f*, are other flanges on the upper side of the bed plate, outside of that, *a*,
2515 through which holes 1 1 are made, capable of allowing the pin *e* to pass through and be inserted in its place as seen in Fig. 2.

A coiled spring, 2, has its upper end encased by the ring *i*, which bands the lower end of the handle, and its lower end rests between the flanges *a f*, on the top of the bed plate, so that said spring is prevented from jumping out of its place, whilst it holds the bed plate always at right angles with the shank, until a blow is struck to give an impression, when the spring yields and allows the plate to conform to the surface upon which it is brought down, whether that surface be parallel to the line of motion of the descending stamp or not. The distance that the shank is let into the handle is optional with the maker, as its object is only to give the whole thing stability enough to withstand the service to which the stamp is to be applied.

eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.]

Acting Commissoner.

No. 23307.

United States of America to all to whom these letters patents shall come:

Whereas Ezra Miller, of Zanesville, Wisconsin, has alleged that he has invented a new and useful post-office hammer stamp which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said stamp, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States
2519 the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said stamp and praying that a patent may be granted for that purpose:

These are therefore to grant according to law to the said Ezra Miller, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-second day of March, one thousand eight hundred and fifty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said stamp, a description whereof is given in the words of the said Ezra Miller in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States of America the eighty-third.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

[SEAL.] S. T. SHUGERT,
Act'g Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Ezra Miller, of Zanesville, in the county of
2520 Rock and State of Wisconsin, have invented a new and useful post-office "hammer stamp," and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings forming a part of this specification, in which

Fig. 1 is a side view of my invention.

Fig. 2 is a longitudinal vertical section, and

Fig. 3 is an inverted view of the marking face of the stamp.

Similar letters of reference in each of the several figs. indicate corresponding parts.

The object of my invention is to provide a "hand stamp" which per-

eight-hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.]

Acting Commissoner.

No. 23307.

United States of America to all to whom these letters patents shall come:

Whereas Ezra Miller, of Zanesville, Wisconsin, has alleged that he has invented a new and useful post-office hammer stamp which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said stamp, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States
2519 the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said stamp and praying that a patent may be granted for that purpose:

These are therefore to grant according to law to the said Ezra Miller, his heirs, administrators, or assigns, for the term of fourteen years from the twenty-second day of March, one thousand eight hundred and fifty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said stamp, a description whereof is given in the words of the said Ezra Miller in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States of America the eighty-third.

JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

[SEAL.] S. T. SHUGERT,
Act'g Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Ezra Miller, of Zanesville, in the county of
2520 Rock and State of Wisconsin, have invented a new and useful post-office "hammer stamp," and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings forming a part of this specification, in which

Fig. 1 is a side view of my invention.

Fig. 2 is a longitudinal vertical section, and

Fig. 3 is an inverted view of the marking face of the stamp.

Similar letters of reference in each of the several figs. indicate corresponding parts.

The object of my invention is to provide a "hand stamp" which per-

forms all the functions of a power-press, and will enable the post-office to mark letters, etc., with an impression so deep that the postage-stamp will be placed beyond a second or surreptitious use, and the post-office locality clearly and distinctly seen, two objects which it has heretofore been found very difficult to accomplish with stamps which have their handles running at right angles to their marking faces.

By the use of the hammer stamp any desired force of blow may be obtained with very little effort on the part of the operators and a most distinct and positive impression made. The marking can be accomplished with great facility and neatness and without the hands of the operators being blistered, as in the case with ordinary stamps with which the force is derived by direct concussion of the hand with the handle of the stamp, instead of through a lever which has the joint of the hand its fulcrum.

The nature of my invention consists in a post office marking stamp which has its handle running parallel, or nearly so, with its marking face or faces as hereinafter specified, whereby a long handle is provided and the stamp can be operated in the same manner as an ordinary hammer, and, if desirable, two marking faces may be employed, one above and the other below the handle, but both to be used below the handle alternately by inverting the same.

2521 To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation.

A is a cross-head secured to a handle B; the upper end of cross-head is provided with a socket C to receive the types D to mark the words "paid," "free," &c., &c. The type is secured by the thumb-screw *a* for convenience of changing the type. E is a screw tenon at the lower end of the cross-head to which is secured the marker F, now in use in the P. O. Department.

G G G are movable types and figures in the center of marker F for marking dates, &c., as practiced commonly in post-offices. These types and figures are secured to their place in the marker F by the thumb-screw *b*.

In attaching the marking-stamp and type to the cross-head the face of the marking-stamps and type are at right angles or nearly so to the line of the cross-head A and parallel with the handle B, the handle being of sufficient length to enable the operator to give a sufficient blow to make the necessary impression. By the same blow that the printed impression is made the postage-stamp is effectually cancelled by the indentation or breaking of the stamp, rendering the surreptitious or second use of the postage-stamp impossible. The printing is very clear, and the gumming of the type prevented by the concussion caused by the blow in using the instrument, and the ease and rapidity of affixing postmarks greatly augmented. In practice I may find it advantageous to cast or make the stamp and cross-head in one piece, and in some cases the handle, cross-head, and stamp may be cast together.

To make more evident the utility of my invention I will state in general the disadvantages of the old stamp and the advantages of my hammer stamp:

1st. The old markers do not stamp or mark with sufficient power.

2nd. They do not cancel the postage-stamp. The printer's ink
2522 laid on by the old markers is so faintly pressed on the stamp that it can be readily washed off and the stamps used again.

3rd. The print is imperfect, because the marker is liable to fill up with ink.

4th. It blisters the hand of the operator.

5th. It daubs the hand with ink.

The advantages of my stamp are:

1st. It does its work with great power.

2nd. It works much more easily and rapidly; and

3rd. Perfectly and permanently cancels all the stamps by the power of the blows given with this handle; the marker is driven into the stamp, making a perfect impression of the letters of the marker without, as well as with ink.

4th. The marking or printing is more beautifully and perfectly done.

5th. The marker does not fill up with ink. The concussion keeps it clean.

6th. It will not blister the most delicate hand or fatigue the weakest arm.

7th. The hands of the operator are not so liable to be daubed with the ink, consequently the letters and papers are kept clean.

What I claim as my invention and desire to secure by letters patent, is—

A post-office marking stamp which has its handle running parallel, or nearly so, with its marking face or faces, substantially as and for the purposes set forth.

EZRA MILLER.

Witnesses:
G. YORKE AT. LEE,
R. W. FENWICK.
Ex'd.—E. A. M., H. M. H.

2523 *Def't's Exhibit* 154.—*April* 1, 1878.—*J. A. S., Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the bound volumes of the library of this office, of the specification and drawing in the matter of English letters patent granted Pearson Hill, dated March 25, 1857, No. 832, for, "Imp'ts in machinery for stamping, marking or printing and arranging papers, &c."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy eight, and of the Independence of the United States the one hundred and second.

[L. S.] W. H. DOOLITTLE,
Acting Commissioner.

Specification in pursuance of the conditions of the letters patent filed by the said Pearson Hill, in the great seal Patent Office, on the 25th September, 1857.

To all to whom these presents shall come, I, Pearson Hill, of Hampstead, in the county of Middlesex, send greeting:

Whereas, Her most Excellent Majesty, Queen Victoria, by her letters patent, bearing date the twenty-fifth day of March, in the year of
2524 our Lord one thousand, eight hundred and fifty-seven, in the twentieth year of her reign, did, for herself, her heirs and successors, give and grant unto me, the said Pearson Hill, her special license that

I, the said Pearson Hill, my executors, administrators and assigns, or such others as I, the said Pearson Hill, my executors, administrators and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should, and lawfully might make, use, exercise and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "improvements in machinery for stamping, marking or printing and arranging papers, letters and other articles," upon the condition (amongst others) that I, the said Pearson Hill, my executors or administrators, by an instrument in writing, under my, or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the great seal Patent Office within six calendar months next and immediately after the date of the said letters patent.

Now, know ye, that I, the said Pearson Hill, do hereby declare the nature of the said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement thereof, reference being had to the accompanying drawings, and to the figures and letters marked thereon, that is to say:

The machinery is particularly adapted for applying the date stamps and obliterating stamps to letters and other articles sent through the Post Office, but it may also be employed for other purposes. The letter is introduced into the machine by hand, or by tapes, or other means, its position being regulated by a fixed or movable stop or gauge. The stamp or marker supplied with ink or colour by an inking appa-
2525 ratus, or similar means, is pressed or driven against or upon the letter, so as to produce the required stamp or mark. The letter is carried by fingers or nippers, or other means, to a trough or case, into which it is forced by a presser or plunger, or by fingers, which propel forward the column of letters, as they accumulate either upwards or downwards, or in any other required direction, when the column of letters is propelled in an inclined or curved open trough; a movable plate or board serves to press them into the trough and prevent any danger of their shuffling out; a ratchet may be also employed to prevent any accidental recoil or receding of the letters as they advance to the trough. The letters are counted by a self-acting counting apparatus, which is so arranged that it only acts when a letter is placed in the machine, and ceases to act when no letter is introduced, notwithstanding that the motion of the machine may be continued. The stamp, or the surface which supports the letter when it is being stamped, or both, are made to accommodate themselves to the varying thickness or irregularities of the letters. Envelopes and cards and tickets and others articles may be stamped, printed, or marked and arranged in the same manner as above described in reference to letters. The various motions are produced by cams and eccentrics, or cranks, or other well known mechanical means, and the machine may be driven by hand or by the foot, or by power, as may be most convenient.

Figure 1, sheet I, of the accompanying drawings, is an elevation or front view of a machine constructed according to my invention. Figure 2, sheet II, is a side view of the same. Figure 3, sheet III, is a plan of the same. The same letters refer to similar parts in each figure. These drawings represent the machine of half the full size; A is the framing, and A^1, the table or flat top of the machine; B is the main shaft which may be driven by a treadle, *a*, with a connecting rod, *b*, connected
2526 to a crank on the shaft B; *c* is a crank on the shaft B, which is

connected by a rod, C, with the lever D, which turns on the bearings *dd* and carries the stamp or die E. A pad or cushion is fixed in the table A^1 to support the letter while it is being stamped by the die E. The die is supplied with ink by means of a sliding frame which carries inking rollers, and which slides backwards and forwards under the lever D.

Figure 4, sheet IV, is a full size plan of the under part of the lever D, with the inking rollers; figure 5 is a longitudinal section of the same. Two rails or guides, *ff*, are fixed to the lever, and serve to support and guide a rectangular roller frame, F, whose edges are dovetailed to fit the guides. The roller frame F, carries three rollers, g, g^1, g^2, covered with the ordinary composition of glue and treacle employed for inking rollers, or with other suitable material. The spindle of the roller g^1 is capable of sliding through its bearings, and it is pushed or caused to traverse from side to side by the undulating cams or templates *h h* fixed on the lever D as the roller frame F moves backwards and forwards in the guides *f f* G is a flat plate or inking table, fixed to the lever D and adjusted so that the rollers g, g^1, g^2 run in contact with it. H, in figures 1, 2 and 3, is the doctor roller with its ink trough, H^1. The spindle of the doctor roller H carries a ratchet wheel, h^1, which is advanced by a pawl, h^2, jointed to the lever h^1, which is driven by a rod, h^4, from a pin on the lever D. Another pawl is employed to prevent the wheel h^1 from moving in the wrong direction. The rod h^4 can be adjusted to different positions on the lever h^3 so as to vary the motion of the doctor roller. The trough H^1 can also be set nearer to or farther from the doctor roller in the ordinary manner. The doctor roller and trough are mounted on a plate, H^2, which can be raised and lowered by screws, so as to cause the doctor roller to press with more or less force on the roller g when it runs under the doctor roller. The lever D carries an arm or lever, d^1, which gives motion by a connecting rod, d^2,
2527 to a lever, d^3, turning on a pin or fulcrum, d^4, on the frame A. f^1 is a connecting rod, which connects the top of the lever d^3 to the roller frame F. Thus, when the die E rises, the roller frame F slides forwards and carries the rollers g^2 g^1 under it, and thus inks the die. As the die descends, the roller frame runs back and carries the roller g in contact with the doctor roller H which supplies it with a small quantity of ink. As the frame repeats its backward and forward motion, the ink is transferred from the roller g to the inking table G where it is spread about or distributed by the rollers g g^2 and the traversing roller g^1; at the same time the rollers g^1 g^2 become uniformly charged with ink, which they apply to the die E. The die then descends upon the corner of the letter, which is introduced by hand and placed against a stop or stops. These stops may be fixed, or they may be made to descend through or into the table as the lever D descends with the die. A letter is thus stamped or printed at each stroke of the machine. As each letter is stamped it is removed to make way for the next letter in the following manner: I is a lever, turning on a fulcrum or pin, i, on the frame A. The top i^1 of this lever is bent into horizontal position. The lever I carries a roller, which enters a groove in the face of the cam I^1 fixed on the shaft B.

Figure 6, sheet IV is a diagram shewing the form of the groove in the cam I^1. J is a lever turning on a fulcrum, j, and carrying a roller which enters a groove in the cam J^1 fixed on the shaft B. The form of the groove in this cam is shown in figure 7. Sheet V, j^1 is a rod, jointed to the lever J and to a rod, j^2, sliding through guides i^2 fixed to the lever I; j^3 is a fork or prongs, mounted on the rod j^1 but capable of yielding

a little, being pressed up by a spiral spring, j^4. As the die E rises after stamping the letter, the fork j^3 is raised by the cam J^1 and the letter is thus nipped between the fork j^3 and the horizontal part i^1; the lever I is then driven forward by the cam I^1 and it carries with it the rod j^2 and

(Here follow 7 diagrams marked pp. 2528, 2529, 2530, 2531, 2532, 2533 & 2534.)

2535 the fork j^3 and the letter held between j^3 and i^1. The letter is thus carried forward until it arrives over the fingers K K on which it is deposited by the descent of the fork j^3 which then turns with the lever I to its first position. These motions are affected by the cams I^1 J^1. The fingers K K are fixed to a bar or spindle, K^1, carrying a lever, K^2, having a pin which enters a fork or slot in the end of a lever, K^3, which turns on the fulcrum k and carries a roller which enters the groove of the cam K^4. The form of the groove of this cam is shewn in figure 8, sheet V. The motion of this cam causes the fingers K K to turn up into an angular position and to carry the letter up to the bottom of the inclined trough L. M M are a series of sliding fingers, moving at right angles to the trough L and worked by a lever, M^1, turning on a fulcrum, m, and carrying a roller which enters the groove of the cam M^2. The form of the groove of this cam is shown in figure 9, sheet V. As the letter is raised by the fingers K the fingers M slide out, and as the letter passes them they slide in again under the letter. The fingers K then descend to their first horizontal position and receive another letter, while the first letter remains supported by the fingers M. As the second letter reaches the bottom of the trough L the fingers M retire, leaving the first letter or the whole of the letters in the trough resting upon the letter which is just being pushed in by the fingers K. As these fingers reach the top of their stroke, the fingers M again slide in under the last letter, and they support the letters in the trough while the fingers K again descend to fetch another letter, and so on. The fingers K carry curved or segmental pieces at their extremities, which prevent any letter from being accidentally pushed under them.

When a number of letters with thick seals enter the trough, there is sometimes a tendency for some of the letters to rise and work out of the column and fall down. This is prevented by a plate or 2536 presser board, N, mounted on a lever, N^1, which turns on the fulcrum n. n^1 is a forked lever which is driven by a pin on another lever, n^2, on the bar K^1 so that as the fingers K descend, the board N is pressed against or towards the column of letters, and thus any projecting letters are pushed back into their places. To prevent any accidental recoil of the letters as they arrive on the fingers K a series of horizontal ratchet bars, or bars with teeth like a saw, may be fixed between the fingers K and projecting a little above them when they are in their horizontal position. These teeth prevent the return of the articles which are being stamped.

I have not, however, found these rachet bars to be required when operating upon letters. The number of letters stamped is registered by a counter, P, of any ordinary construction. p is the lever which works the counter, and which is connected by a rod, p^1, to a lever, p^2, on a spindle, p^3, mounted on the lever D; p^4 is another lever on the same spindle, p^3, and which is connected to a small pin or rod, q, which passes through the lever D near the die. The pin or rod q enters a small hole in the table, so that as long as no letter is placed in the machine the lever D may work up and down without the pin q coming into action.

which may be driven by a treadle, a, with a connecting rod, b, connected to a crank on the shaft B. c is a crank on the shaft B, which is connected by a rod C to the lever D, which turns on bearings d and carries the stamp or die E; H is a band of cloth, prepared with ink or colouring material, which is wound upon a roller, h, mounted on the lever D. On the axis of the roller is a ratchet wheel, h^1, which is advanced a little as the lever D rises, by coming in contact with the pawl h^2. The other end of the band is attached to a roller h^3 carrying a ratchet wheel h^4, which is advanced by a pawl h^5. The spindle of the roller h turns rather stiffly in its bearings, so that the band may not run off of itself. The roller h^3 or the ratchet wheel h^4 turns rather stiffly on its spindle, so that it may yield a little and not endanger the breaking of the band. The letters being placed under the die by hand receive the mark or impression from the band, which is pressed upon them by the die, and at each impression the band is advanced a little by the ratchets, so as to
2539 bring forward a fresh supply of colouring material. Each letter as it is stamped is removed by a set of fingers j^3, of which only the end one is seen in the drawing. These fingers work through slots in the table A^1, like the fingers or fork j^3 in the machine first hereinbefore described, but instead of moving to and fro, the' revolve in a circle, being fixed on the main shaft B. As the die rises these fingers pass up through the table and push the letter T along the table until it arrives on the incline plane U, where it assumes the position T^1 with the last edge inclined upwards a little, so as to admit of the next letter passing under it. The fingers descend through the table and again come round to remove the next letter, which is pushed under T^1, and at the same time pushes it forward a little. The letters thus pass down the inclined plane U and along the inclined trough L. This trough is capable of moving to and fro a short distance, and it carries an arm L^1 which is pushed forward by a cam B^1 on a fly-wheel B^2, which is mounted on the main shaft B. As the cam B^1 leaves the arm L^1 the trough is suddenly drawn back by a spring. A jogging or vibratory motion is thus communicated to the trough L, which facilitates the passage of the letters down it; or a vibratory motion may be communicated to the trough by other means or in a different direction. N is a board or plate, which turns on a pivot at n, and rests upon the letters, so as to cause them to pack rather closer together than would otherwise be the case on first starting the machine. A small arm n^1 with an adjustable weight may be connected to the board N to increase or decrease the pressure on the letters at pleasure. The connecting rod b, from the treadle a, may be connected to a crank on the shaft B, or it may be connected to an eye on the connecting rod C, as shewn in the drawing, so as to drive the shaft B by the crank c.

Figure 11, Sheet VII, is a front view, shewing a somewhat different arrangement of the fingers j^3, whose motion more nearly resem-
2540 bles that of the fingers or fork j^3 in the machine first hereinbefore described. The rod j^1, which carries the fork or fingers j^3, is jointed to a lever J, turning on a fulcrum at j. The rod j^1 is also jointed to the crank c, or to another crank on the main shaft B. The points of the fingers or fork j^3 are thus made to move in a sort of oval path, as shewn by the red line. The other parts of the machine are similar to those of the machine shewn in Figure 10.

Another arrangement of the fingers j^3 consists of a star-wheel, having two, or three, or more sets of fingers, arranged at equal distances apart. This star-wheel or finger-wheel is mounted on a separate shaft, or it may turn loosely on the shaft B, and it is driven at a less velocity, so that

one set of fingers may act at each stroke of the lever D. Thus, if the wheel has four sets of fingers, it will be driven by toothed wheels, or otherwise, at one-quarter of the speed of the shaft B; or, instead of driving this wheel at a uniform velocity, it may be driven by a pawl or catch connected with the lever D, acting upon a ratchet wheel or a series of catches on the finger-wheel. By this last arrangement, the fingers strike the letter with a small velocity, which is gradually accelerated, instead of striking it with a uniform velocity. All the machines may be constructed either with the inking rollers or with the aforesaid band. A counter may be attached to any or all of the machines, and the hereinbefore mentioned contrivances for renewing the surface of the pad or cushion may also be applied to all the machines. In lieu of a printing stamp an embossing stamp may be employed, or if desired, an embossing stamp may be employed in conjunction with an inking apparatus, so as to produce a coloured embossed impression on the paper or other material placed under it. The machines are applicable for stamping and arranging note-paper, envelopes, cards, and other articles, as well as letters passing through the post.

Having now described the nature of the said invention, and in
2541 what manner the same is to be performed, I wish it to be understood that what I claim is, constructing machinery for stamping, marking, or printing and arranging papers, letters and other articles by the combination of stamping, marking, or printing apparatus, with fingers or instruments for removing and arranging in order, the said articles, in manner hereinbefore described.

In witness whereof, I, the said Pearson Hill, have hereunto set my hand and seal this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

PEARSON HILL. [L. S.]

Witness,
CHARLES COWPER,
20 *Southampton Buildings, Chancery Lane, London.*

Ex'd—H. M. H., J. A. M.

2541 *Defendant's Ex.* 155. *April* 1, 1878.—*J. A. S., J. Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these present shall come, greeting:

This is to certify that the annexed is a true copy, from the bound volumes of the library of this office, of the specification and drawing in the matter of the English Letters Patent granted George Thomas Robinson, dated October 6, 1857, No. 2563, for "a machine for obliterating postage stamps on letters," &c.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

W. H. DOOLITTLE,
Acting Commissioner.

(Here follows diagram marked page 2543.)

Specification in pursuance of the conditions of the letters patent, filed by the said George Thomas Robinson in the Great Seal Patent Office on the 6th April, 1868.

To all to whom these presents shall come:

I, George Thomas Robinson, of the Leamington Priors, in the county of Warwick, architect, send greeting:

Whereas, Her most Excellent Majesty, Queen Victoria, by her letters patent, bearing date the sixth day of October, in the year of our
2544 Lord one thousand eight hundred and fifty-seven, in the twenty-first year of her reign, did, for herself, her heirs, and successors, give and grant unto me, the said George Thomas Robinson, her special license that I, the said George Thomas Robinson, my executors, administrators, and assigns, or such others as I, the said George Thomas Robinson, my executors, administrators, and assigns, should at any time agree with, and no others, from time and at all times thereafter during the term therein expressed, should, and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "A machine for obliterating postage stamps on letters, at the same time stamping the postmarks and registering the number of letters so stamped," upon the condition (amongst others) that I, the said George Thomas Robinson, my executors or administrators, by an instrument in writing, under my, or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of the said letters patent:

Now, know ye, that I, the said George Thomas Robinson, do hereby declare the nature of the said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement thereof, that is to say, my invention is intended to afford a more perfect and expeditious mode of obliterating stamps on letters, and also stamping the postmarks, and at the same time registering the number of letters that have been stamped; or for obliterating and stamping or printing checks, cards, envelopes, and such other like articles.

The machine which I propose to use for the above purpose is constructed as follows, that is to say, enclosed in a suitable frame
2545 or casing, I arrange a compartment, in which the letters or other articles to be operated upon are stacked by the "facer" or "sorter," and held down by a weight. From the aforesaid compartment the letters are carried forward (when motion is imparted to the machine through the shaft on which the stamping cylinder is placed) by means of india rubber or other elastic fingers, under a flexible fringe of whalebone, or other suitable flexible material, to prevent more than one letter passing at a time. The letters next pass between a stamping cylinder (having the name and number of the post-office or mark to be printed engraved on its circumference, and also the date supplied by movable type) and a plain pressure roller, by which the obliterating of the postage-stamp and the stamping of the postmark is performed, and the letter discharged from the machine. The inking of the stamping cylinder is effected by a distributing wheel revolving in contact with an inking roller, said roller being supplied from a reservoir of ink placed above it. The pressure rollers are mounted upon and also depressed by a spring,

and revolve either by means of toothed wheels or by means of a band passing round the said rollers, at the same speed as the type cylinder.

For the purpose of registering the number of letters or other articles operated upon, I employ a jointed lever, attached to which is a pawl acting upon a ratchet wheel in connection with a train of four wheels placed above it, record by units, tens, hundreds, thousand, and tens of thousands on a series of dials, outside of the machine, the number of letters that have been stamped. The mode of operation is as follows: At each swing of the lever (caused by the passing of a letter) the pawl pushes the ratchet wheel one-tenth of a revolution, and one entire revolution of the ratchet wheel causes the toothed wheel placed immediately above it to revolve one tenth of its circumference, and so on through the entire train of wheels, and thence to the dials on the outside of the machine.

2546 In order to explain my said invention as completely as possible, I now proceed to describe the best means I am acquainted with for carrying the same into practical effect, reference being had to the illustrative drawing hereunto annexed, and to the numeral figures and letters of reference marked thereon respectively as follows:

Description of the drawing.

Figure 1 exhibits a sectional elevation of my improved machine, and Figure 2 an exterior elevation of the same.

A is the compartment in which the letters A* or other articles to be operated upon are placed; B is an opening in the same to admit the elastic fingers C C C C; D is the flexible fringe of whalebone to prevent the passage of more than one letter at a time; E is the stamping and obliterating cylinder; F F are the pressure rollers driven by the belt G and depressed by the spring H; J is the ink distributor; K the inking roller; and L the reservoir for ink; M is the jointed lever, attached to which is the pawl N; O is the ratchet wheel which communicates the motion imparted by the pendulum to the toothed wheel P Q R and S placed above it; and T U V W X are the dials placed on the outside of the machine.

Having now fully described and set forth the nature and object of my said invention, together with the best means I am acquainted with for carrying the same into practical effect, I hereby declare that what I claim as my invention is the combined apparatus, hereinbefore described, for the purpose of obliterating postage-stamps on letters, stamping the postmark, and registering the number of letters so stamped, and also for the purpose of obliterating, stamping, printing, and registering checks, cards, and other articles.

2547 In witness whereof, I, the said George Thomas Robinson, have hereunto set my hand and seal this third day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

[SEAL.] GEORGE THOMAS ROBINSON.

Witness:

AGNES BEDFORD SPARROW,

Of Wombourne, in the county of Stafford.

Ex'd, F. F., C. C. W.

2548 *Def't's Ex.* 156. *April* 1, 1878.—*J. A. S., Ex.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this

office of the file wrapper and contents in the matter of the letters Patent granted Marcus P. Norton, dated April 14th, 1863, No. 38175, for "Improvement in post-office stamps."

In testimony whereof, I, W. H. Doolittle, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this thirteenth day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

TROY, N. Y., *December 30th*, 1862.

Hon. Commissioner of Patents.

SIR: Herewith enclosed *for* will please find $15 fee on my application for letters patent herewith presented, for "improvements in post-marking & canceling stamps for revenue & postage stamps." The petition, oath, specification, model & drawings are herewith enclosed. I ask for an early examination of this application.

Your ob't s'v't

MARCUS P. NORTON,
Att'y per se.

2549 To the Hon. Commissioner of Patents:

The petition of Marcus P. Norton of the city of Troy, in the county of Rensselaer, and State of New York, respectfully represents: That your petitioner has invented "new and useful improvements in postmarking and canceling revenue and postage stamps, &c., &c.," which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress, and all amendments thereof, in that case made and provided; he having paid ($15) fifteen dollars into the Treasury of the United States, and complied with the other provisions of the said act and the several amendments thereof.

And your petitioner does hereby constitute and appoint Marcus P. Norton of Troy, county of Rensselaer, State of New York, attorney, and fully authorize and empower him to alter or modify the within specification and claim as he may deem proper, expedient, and in conformity to law, and the decision or decisions of the Hon. Commissioner of Patents, hereby recognizing and confirming all that said attorney may lawfully do or perform in relation thereto; and also to receive letters patent, when granted.

MARCUS P. NORTON.

Witness:
D. LAW.

CITY OF TROY,
County of Rensselaer, State of New York, ss:

On this thirtieth day of December, A. D. 1862, before me, the subscriber, a commissioner of deeds, personally appeared the within named Marcus P. Norton, and, being sworn according to law, says
2550 that he verily believes himself to be the original and first inventor of the within described "new and useful improvements in postmarking & canceling revenue & postage stamps, &c., &c."; that he does

not know or believe the same was ever before known or used; that he is a citizen of the United States & loyal thereto.

MARCUS P. NORTON.

Subscribed and sworn to before me on the day, month, and year first above written.

D. LAW,
Commissioner of Deed, Troy, N. Y.

To all whom it may concern:

Be it known that I, Marcus P. Norton, of the city of Troy, county of Rensselaer and State of New York, have invented "new and useful improvements in postmarking and canceling revenue and postage-stamps, &c., &c.," and I do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being hereby had to the accompanying drawings and to the letters of reference marked thereon, which drawings make a part of this specification.

Like letters refer to and represent like or corresponding parts.

Fig. 1 is a side elevation of the stamp and letter frank canceling device hereinafter described for canceling stamps issued by the post-office, revenue, or other departments, with indelible or other ink by the means hereinafter set forth.

Fig. 2 is a face view showing the postmarking stamp ready for use, and the canceling stamp or device made of wood, cork, rubber, or other and similar material, and therein inserted and more fully described hereinafter.

2551 Fig 3 is a vertical section taken through the center of the various parts of the post-marking and canceling stamp.

Fig. 4 shows a marking, rating or dating and canceling device more fully described hereinafter, and is more especially designed for rating, dating, and canceling revenue stamps.

Fig. 5 shows a device to cancel stamps or franks with indelible ink by means of wood, cork, rubber or similar material for type or blotter in combination with the postmarking device and more fully hereinafter described. The nature of my improvements herein described consists in the employment and combination of a device for canceling postage or other stamps by means of wood, cork or similar material inserted in a tube or recess therein, for the purpose of effacing or blotting such stamps with indelible ink, [at the same time and operation of postmarking of letters, packet, &c., &c.

It also consists in the employment of cutters or knives between the type for the month, day of the month, and the year, and outside of the same, in combination with the same and with the printing surface of the stamp or marking device.]

Am'd A.
Erase & Insert A.

To make other' skilled in the art to which my invention relates to make and use the same, I will here proceed to describe the construction and operation thereof, which as follows, to wit: I construct the postmarking stamp (D) of any suitable material (E). Fig. 3 is the mortice or recess of suitable dimensions to receive the type for the month, the day of the month, and the year, around which is the name of the place where used and is the same as the postmarking device described in my letters patent bearing date the 16th day of December, 1862, and which is secured to the cross-piece (B) in the same manner and by the same means as described and set forth in the said patent, which is also the case with the canceling device (*b*).

I construct the canceling stamps or device (*c*) of any suitable material,

of any size required in diameter and in length to correspond to
2552 the postmarking device (D). (F) Fig. 3 is the tube or recess in the device (*c*) for the purpose of receiving the blotting or canceling device (G) Figs. 2 & 5, which device is made of wood, cork, rubber or similar material so as to closely fit the said tube or recess (F) Fig. 3. The face of this device may contain a plan or form for canceling with indelible ink like that shown at Fig. 2, or it may have any plan or form for that purpose thought best to devise or use. This device (G) may project somewhat below the lower end of the said tube (F) as seen at Fig. 5, and may also project below the face of the postmarking or rating device (D) Figs. 2 and 3, and it may be driven out of the said tube or recess by means of a pin or bolt operating through the hole (*a*) Figs. 3 and 5 for the purpose of repairs or to replace it by a new one. The said tube or recess (G) may be of any size in diameter required or any depth desired.

B. Erase & Insert B.

[(H) Fig. 4 shows a "revenue stamp" for marking the name of any bank, corporation, company or person, and the month, the day of the month, and the year upon any note, check, draft, or other paper or packet requiring revenue stamps in payment of government tax, and at the same time and operation cancel such stamp and the check, note, draft or other packet on which said stamp may be required or used by cutting through both such stamp and the paper or packet on which the same may be used, by means of one or more of the knives or cutters (*b*, *b*, *b*, *b*,) Fig. 4. These knives or cutters are made of steel of any length, width or thickness required, and are placed between the type for the month, the day of the month, and the year, and on the outside of the same substantially as shown at said Fig. 4, and are properly adjusted to the face or printing surface of the marking stamp in which they are placed, and are firmly held therein by means of the screw bolt (*c*) same fig., (*d*) same fig. is the type for the month, (*e*) is the type for the day of the month, and (*f*) the type for the year. This marking and canceling stamp may also be used for
2553 post-offices—in which case the name of the post-office when used would be upon the postage-stamp or letter frank in part or in whole, while thus at the same time the said stamp or frank would be canceled by the said cutters or knives in a permanent and successful manner, whereby there could be no second or reuse of the same, which would also be the case with revenue stamps used in payment of government tax or other purpose.]

C used twice see canceling device.

B. Erase

In no case could any fraud be committed by a second or reuse of the government stamp or frank.

Having thus described my invention and improvements in making and canceling stamps, what I claim and desire to secure by letters patent of the United States of America therein, is,

1. The canceling device (C) with wood, cork, or rubber type or blotter (G) therein or any device substantially the same, so as to cancel the postage-stamp with indelible ink substantially as herein described and set forth.

C. Erase.

[2. I also claim the knives or cutters (*b*, *b*,) in combination with the type for the month, day of month and year, and with the face or printing surface of the stamp D or any equivalent therefor, substantially as and for the purposes herein described and set forth.]

3. I also claim the canceling device (*c*) with wood, cork, or similar material forming the type or blotter (G) therein, in combination with the cross-piece (B), and with the postmarking device (D), substantially as herein described and set forth.

In testimony whereof I have on this 29th day of December, 1862, hereunto set my hand.

MARCUS P. NORTON.

Witnesses:
CHAS. D. KELLUM.
URIEL DECTER.

(Endorsed:) Specification improvements in marking & canceling stamps, etc. Marcus P. Norton, Troy, N. Y. 1862. Rec'd & filed January 5, '63. E. E.

2554 FEB'Y 21, '63.

M. P. NORTON,
Troy, N. Y.

Your application for postmarking & canceling stamp appears to consist of two devices; the one being substantially a common ink cancelling stamp, such as has been used for years in our post offices for blotting and thus cancelling post-office stamps, and the other being an ordinary lettered post-office stamp, with the addition of cutters *b*, *b*.

Long public use defeats the novelty of the first device, and for the second see rej'd app'n of I. C. Bryant, withdrawn Jan'y 2, '61, & patents to James Spear, Feb. 14, '60; W. W. Harding (for perforating rule) May 1, '60, and J. F. Tapley (for printing & cutting device) March 4, '62.

As your devices (both being for cancelling purposes) appear to be alternative in their nature and not adapted for nor capable of a proper joint use, no patentable combination is perceived to exist between them, if, indeed, they may not be regarded as two entirely distinct inventions or contrivances.

The application is therefore rejected.

D. S. S.,
No. 5.

(Endorsed): Office, Feb. 21, '63. D. S. S.

NATIONAL HOTEL,
Washington, D. C., March 21*st*, 1863.

Hon. Commissioner of Patents:

SIR: In the matter of my application for a patent upon "improvements in postmarking and cancelling stamps," filed in the Patent Office Jan. 5th, 1863, and rejected Feb. 21st, 1863, I have to request a second or re examination of the same.

I do not understand that the device referred to in your letter of the 21st of February last is "a common ink cancelling stamp, such as has been used for years in our post offices for blotting, and thus can-
2555 celling post-office stamps." The devices to which you undoubtedly refer have always been made of metal entirely or of wood entirely. Wood was found to answer no purpose, because not at all durable, so metal ones were used. Now this device consists of a barrel or tube into which wood, cork, rubber, or some such material is inserted for the purpose of holding an indelible ink in quantities sufficient to blot the postage stamp so thoroughly as to prevent the same being washed or cleansed by a chemical mixture and again being used in pay-

ment of postage. This tube or barrel holds firmly the elastic substance therein and prevents the same from undue wear and exposure. The elastic substance therein being worn out, can again be replaced at the office where used, thus saving the trouble and expense of returning the same to the gov't contractors for such repairs. This, therefore, constitutes a new device, composed of two distinct parts in combination, producing new results, besides blotting the postage stamp.

This device being new, its combination with the postmarking device for the purposes set forth in the specification is of course new. Upon these two claims I therefore most respectfully ask a patent.

As to the claim for the cutters in combination with the postmarking device, I am inclined to the opinion—after reflection upon the same—that the office is right in the intimation that this device should be embraced in a new and separate application, and will therefore amend the same.

Your ob't s'v't,

MARCUS P. NORTON,
Att'y per se.

(Endorsed:) From applicant. Filed M'ch 21, '63. D. S. S.

2556 MARCH 21, '63.

M. P. NORTON,
Present.

Your spec'n is herewith returned for amendment in accordance with your letter of this date.

D. S. S.,
No. 5.

(Endorsed:) Office, M'ch 21, '63. D. S. S.

AMENDMENT A.

Hon. Commissioner of Patents:

SIR: In the matter of my application for a patent upon improvements in "postmarking & canceling stamps," filed in the U. S. Patent Office Jan. 5, 1863, and rejected on the 21st day of February, 1863, I hereby amend by striking therefrom each and every word of the 10th line of page 2 after the words "indelible ink" and commencing with the word "at" in said line, retaining in said line only the first three words thereof. And I hereby further amend the said specification by striking therefrom the 11th, 12th, 13th, 14th, 15th, and 16th lines of the said 2d page thereof, and insert in place and stead thereof the following, to wit:

A. Insert.

"[It also consists in the combination of a canceling device having wood, cork, rubber, or any similar material for the type or blotter therein, with any postmarking device so as to blot, cancel, or efface postage stamps with indelible ink at the same time and operation of postmarking of letters, packets, &c., &c."]

I hereby further amend the said specification by striking therefrom and reserving the same for a new and separate application for a patent, the 23, 24, 25, 26, 27, and 28th lines of page 3, also each and every line of page 4 down to and including the 25th line of the same page, and insert in place and stead thereof the following, to wit:

B. Erase.

"The said canceling stamp or device (c) being thus constructed with cork, rubber, or other elastic substance for type or blotter, will receive and hold on the face thereof ink in quantities sufficient to blot or cancel the postage-stamp in such a manner as to prevent the possibility of the said postage-stamp being cleansed of the canceling ink by any chemical or other process; for the said ink would be so effectually put thereon that any attempts to remove it therefrom would entirely destroy the said postage-stamp, and thereby render the same incapable of a second or reuse. 2557

The said cork, rubber, or other elastic substance as aforesaid, will render the said stamp capable of an easy and rapid use, for there being a yielding of the same when the blow is given, the operator will not tire as soon by a constant or continuous use of the same as though it were solid metal. And the same will greatly aid in raising the entire stamp from the paper and postage-stamp when the impression shall have been given by the operator. The said blotter or type can be more easily repaired or replaced by a new one at less expense than if made of solid metal. B. Insert.

"The said cork, rubber, or other elastic material may extend upward to the said cross-bar (B), and there be connected to the same by a screw or pin bolt if desired, which will be the same in effect and in operation."

I also hereby further amend the said specification by striking therefrom the entire second claim thereof. C. Erase.

MARCUS P. NORT
Att'y per se.

WASHINGTON, D. C., *March 23d*, 1863.

(Endorsed:) Amendment A. Post-office canceling stamp. M. P. Norton. 1863. Patent April 11, '63. (Also, in red ink:) Amendments A, B, & C. Filed M'ch 24, '63. D. S. S.

2558 Rec'd, ans'd, & filed Apr. 10, '63. H. McC.

THE AMERICAN TELEGRAPH CO.

5. Dated Troy, N. Y., 10 1863.
Rec'd, Washington, Apr. 10, 1863, o'clock, min. m.

To Hon. D. P. HOLLOWAY,
Com'r Patents:

When will my stamp patent issue—when Stewart's on stoves—when Morrisons on stoves. Answer by telegraph.

MARCUS P. NORTON.

17-85.

(Endorsed:) Rec'd, ans'd, & filed April 10, '63. H. McC. Your patent & Morrisons will issue this 14th inst. Stewart's not yet passed for issue.

THE AMERICAN TELEGRAPH COMPANY.

4. Dated Troy, N. Y., 16 1863.
Rec'd, Washington, Ap'l 16, 1863 o'clock, min. m.

To Hon. Com. of Patents:

Why does not my patent issue upon post-office cancelling stamps? Answer by teleg'h.

M. P. NORTON.

13, '65.

(Endorsed:) Ans'd & filed April 16, '65. H. C. L. Patent will be mailed to-morrow.

2559 No. 19

210

No. 38175.

Marcus P Norton,

Of Troy,
County of Rensselaer,
State of New York.

Post-marking and cancelling gov't stamps.

	Rec'd	January 5, 1863.
	Petition	" " "
	Affidavit	" " "
	Specification	" " "
2	Drawings	" " "
	Model	" " "
	Cert. deps	" " "
1	Cash $15	January 5, 1863.
	Add'l fee cert	" " "

1 " " cash $20, March 25th, 1863.
Examined March 26, '63. T. R. Peale.
2 Issue—Hayes, April 1, 1863.
3 Patented April 14, 1863 &
Recorded vol. 148, page 481.
Circular.
Miscl Jr.
S Ants.
Rej'd Feb'y 21, '63.
Spec'n ret'd Mch 21, '63.
Improvement in post-office stamps.
Ex'd. H. M. H.
C. K.

2560 *Def't's Exhibit* 157. *April* 1, 1878.—*J. A. S., Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the reissue letters patent granted Marcus P. Norton, dated August 3, 1869, No. 3586, for "imp't in post-office hand stamps and post-marking and cancelling."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Pat-

ents, have caused the seal of the Patent Office to be hereunto affixed this nineteenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[L. S.] W. H. DOOLITTLE,
Acting Commissioner.

To the Hon. Commissioner of Patents:

The petition of Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, respectfully represents:

That he did obtain letters patent of the United States of America for and upon improvements in post-office post-marking and postage cancelling stamp or instrument, which said letters patent were dated on or about the 14th day of April, A. D. 1863, and which letters patent were by your petitioner assigned and transfered to Jacob Shavor and
2561 Albert C. Corse, of the said city of Troy, county and State, on or about the 20th day of April, 1863, and such deed of an assignment was recorded in the U. S. Patent Office on the 8th day of March, 1864, in Liber C, 7, page 458 of transfers of patents. And your petitioner would further show that the said Jacob Shavor and Albert C. Corse, some time in and during the year 1864, surrendered the said letters patent bearing date April 14, 1863, and thereupon and thereafter the said letters patent were reissued, bearing date the 23d day of August, 1864, upon a corrected and amended specification and description.

And your petitioner hereby further shows unto said Commissioner of Patents that he, your said petitioner, and original and first inventor of said invention and improvements, has, by reason, force, power, and virtue of a certain instrument in writing, among other things containing a deed of an assignment and transfer from said Jacob Shavor and Albert C. Corse to the said Marcus P. Norton, become fully repossessed of the said invention, improvements, and letters patent so granted and reissued. And your petitioner further shows herein and hereby that he, your petitioner, is now the true and lawful owner of the said letters patent, invention and improvements therein contained; that the legal and also the equitable title in, to, or for the said invention, improvements, and letters patent so granted bearing date April 14, 1863, and reissued bearing date the 23d day of August, 1864, is now fully vested in your petitioner, Marcus P. Norton, as by the law made and provided, which said deed of an assignment and transfer from Jacob Shavor and Albert C. Corse to said Marcus P. Norton, bears date on or about the 23d day of February, 1864, and which was duly recorded in the said U. S. Patent Office on the 24th day of July, 1869, in Liber U 11, page 319 of transfers of patents, and to which reference is now and hereby had for a more full understanding or knowledge of or concerning the
2562 title and ownership of the said invention, improvements and letters patent.

And your said petitioner further shows that he now believes that the said letters patent reissued so as aforesaid are inoperative and not fully available to him, your petitioner, by reason of a defective specification and description, as well as defective title, which defects have arisen from inadvertence, accident and mistake; he therefore and hereby prays that he may now be allowed to surrender the said letters patent so granted and reissued, and he requests that new letters patent may issue to him, as by the law made and provided for, and upon the same invention and improvements, for the residue of the period for which the

original letters patent were granted and issued, under amended, corrected and reformed specifications herewith presented, he having paid ($30) thirty dollars into the Treasury of the United States, agreeably to the requirements of the act of Congress, and all amendments thereof in that case made and provided.

MARCUS P. NORTON.

In testimony whereof I have on this 12th day of July, A. D. 1869, hereunto set my hand in presence of—

J. C. LATHROP.
F. W. DOW.

DISTRICT OF COLUMBIA,
City and County of Washington, ss :

On this 15th day of July, 1869, before the subscriber, a notary public, personally appeared the above-named Marcus P. Norton, and made solemn oath, as by law provided, that he verily believes that, by reason of insufficient or defective specifications, as well as of the title of or to the same, his aforesaid invention, improvements and letters pat-
2563 ent so granted and reissued are not fully available to him, and that said errors have arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

And deponent further says that he is, according to his own judgment, information, and belief, the original and first inventor of each and every of the improvements described and set forth in the within specification, and also contained in the several claims to the invention named, described and set forth in the said original letters patent; also, in the said reissued letters patent of August 23d, 1864; also, in the within specifications, description and claims; that he is the true and lawful owner of the same, as well as of the said letters patent; that the legal and equitable title is vested in and belongs to this deponent, as will more fully appear by reference to each and every of the said several deeds of assignment and transfer of the said invention, improvements and letters patent, dated, executed and recorded as therein stated and will appear.

MARCUS P. NORTON.

Subscribed and sworn to before me on this 15th day of July, A. D. 1869.

[L. S.] J. McKENNEY,
Notary Public, City of Washington, D. C.

To all whom it may concern :

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer, and State of New York, have invented new and useful improvements in "postmarking letters," "packets," etc., and "in the 'cancelling' of the 'postage-stamps' thereon" in the manner and by the means substantially as hereinafter described and set forth;
2564 that letters patent of the United States were duly issued thereon, under and bearing date April 14th, 1863, which were assigned and transferred under a certain agreement, and by virtue of a certain instrument in writing bearing date the 20th day of April, 1863, and recorded in the U. S. Patent Office on the 8th day of March, 1864, in Liber C, 7, page 458, of transfers of patents, to Jacob Shavor and Albert C. Corse, of said city of Troy, county and State, and who, on or

about the 23d day of February, A. D. 1864, duly reassigned and retransferred the said invention, improvements and letters patent to the said Marcus P. Norton, inventor and assignee aforesaid, by a certain instrument in writing, duly executed, and bearing date on the said 23d day of February, 1864, and which assignment and transfer from said Jacob Shavor and Albert C. Corse was duly recorded in the said U. S. Patent Office on the 24th day of July, 1869, in Liber U, 11, page 319 of transfers of patents. Now, therefore, I, the said Marcus P. Norton, do hereby declare the following to be a full, clear and exact description of the construction and operation thereof, reference being had hereinafter to the accompanying drawings and to the letters of reference marked thereon, which drawings so marked and lettered hereby make a part of these my specifications of and concerning my said invention and improvements herein contained and set forth.

Like letters refer to [and represent] like [and corresponding] parts of my [said] invention.

The letters do not both represent and refer to—the drgs. does the, representing.

Fig. 1 represents a side elevation of the postage stamp cancelling and postmarking device [hereinafter described and set forth, for cancelling postage stamps, with any suitable ink contained upon such instrument, at the same time, blow and operation of the making of the postmark on the letter, envelope, or packet, one side of and from such postage stamp or frank so cancelled].

Fig. 2 represents a vertical section taken on a line through the centre of the [various parts of the postmarking and postage-cancelling device or instrument herein contained, described and set forth]. 2565

Fig. 3 represents a face view of the device, showing the postmarking stamp ready for use [and the postage-cancelling die or device, made of wood, used endwise, or of cork, rubber, or other suitable material therein, inserted in the manner substantially as shown and more at large described hereinafter.]

"Franks" are never cancelled.

Fig. 4 shows a device for the purpose of cancelling postage-stamps [or letter franks used to represent value], by the use [and power] of any suitable ink, by the means of wood, cork, or any elastic material for the type or die which may be used for that purpose, separate and alone, or in combination with any suitably-constructed postmarking stamp or device, substantially as shown at fig. 3 of the said drawings.

[Fig. 5 represents a vertical section of a postmarking and postage-stamp cancelling device or die combined, and constructed entirely of iron, steel, or other metal, and more fully described hereinafter.

Fig. 6 is a plan or face view of fig. 5, showing the postage-stamp cancelling device or die made of iron, steel, or other suitable metal or material.

Fig. 7 represents the wrench used for securing the dating type in a proper place within the postmarking device, having the name of the town or post-office used engraved thereon in relief letters.

New matter not in original application.

Fig. 8 represents the tool or instrument used for removing the cork, wood or rubber die or type used for cancelling postage-stamps, from the tube or surrounding case where

held or contained, so as to repair or replace the same with a new one when worn out or unfit for use.]

The nature of my said invention [and improvements herein contained and described] consists in the employment and combination of a device or die used for [the more complete and perfect] cancellation of postage-stamps [or letter franks], by means of soft wood used endwise, or of cork, rubber, or other suitable material, whereby such stamp
2566 [or frank] is effaced and cancelled, in and by indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of such a postage-stamp cancelling device or die [constructed of wood, cork, rubber, or any suitable material], with [any suitably arranged and constructed] postmarking stamp [or device], so as to cancel [efface or destroy] the postage stamp [or letter frank with indelible or any suitable ink], at the same time, blow or operation of the stamp [or instrument] by which the post-mark is given or made upon the letter, envelope, or packet [substantially as herein described and set forth.

It also consists of the postmarking of letters, envelopes, or packets, and in the cancellation of the postage stamp or stamps thereon with, in, or by any suitable ink or similar
New matter. material, by means of some soft wood used endwise against the postage stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material so combined with the postmarking stamp or instrument as to cancel, efface, or destroy the postage stamp or stamps at one and the same blow or operation of the entire instrument thus constructed for that purpose, whereby to prevent a second or reuse of such postage stamps.]

To enable others skilled in the art to which my said invention [and improvements] relate, to make and use the same, I will here proceed to describe the construction and operation thereof, which are substantially as follows: [That is to say], I construct the postmarking device or stamp, D, of any suitable material, and of any size in diameter required, while in length it must correspond to the cancelling
No. E, in Fig. 3. device and die or type. E, Fig. [3], is the mortice or recess of suitable dimensions to receive the type for the month, day of the month, and for the year [and called or known as the dating type], around which is the name of the town or post-office where used in [relief letters, and upon
2567 the lower face of such postmarking stamp or device]

I construct the postage-cancelling stamp [or device, G (for the purpose of cancelling in a more perfect and thorough manner the postage stamps on letters, envelopes, or packets),] of wood used endwise upon the postage stamps, or of cork, rubber, or of any suitable or elastic material, and insert the same in the tube or recess, F, which is that part of the cancelling device marked C, of the accompanying [drawings, and which is connected to [and combined with] the said cross piece, B, as herein described. I prefer to have the diameter of the cancelling device and die or type, F, Figs. 2, 3, and 4, about the same as the width of the post-

age stamp to be cancelled [or destroyed by means of the same. The said cancelling die or type, G, may be of any length required, and so made as to correspond with the tube or recess, E, and closely to fit the same, and it may be made of wood, cork, rubber, or of any elastic material, as aforesaid. The face of this device may contain a plan or form for cancelling the postage stamp in, with, or by ink, like unto that shown at Fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.] The said [device, die, or] type, G, will project somewhat below the face of the postmarking device D, if deemed best so to do,* and it may be removed out of the said tube or recess, E, by means of a pin or bolt [substantially like that shown at Fig. 8], the lower end of which operates in and through the aperture (*a*) Figs. 2 and 4, for the purpose of repairs, or to replace it by a new one when desired. A is the operating handle, firmly secured to the cross bar, B, by any suitable mechanical means, and it will be made of wood, &c. [The said postage-stamp cancelling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and combined with the said device, C, with recess or tube, F, therein as aforesaid, will receive and contain on the face or configuration thereof the ink aforesaid named in quantities sufficient to permanently cancel, efface, or destroy the postage-stamp whereon the same is used while post-marking letters, packets, &c., in such manner as to prevent the said postage-stamp being cleansed of the said cancelling ink by any chemical or other process; for the said cancelling ink so put upon the postage-stamp by means of said cork, die, or type would be so effectual, that any attempt or effort to remove it therefrom would entirely destroy, or nearly so, the aforesaid postage-stamp, and thus and thereby render the same incapable for or of a second or other use without immediate detection.] The said [cork, rubber, or other suitable] elastic material used as aforesaid will render the said [postmarking and postage] stamp cancelling die or type of a more easy, and consequently rapid use, because of there being a yelding of the said [cancelling die or] type, G, when the blow is given [upon the letter, envelope, or packet and postage-stamp] as aforesaid, the operator will not tire as much by [means of a constant, continuous, and rapid] use of the same; and it will also somewhat aid the operator in raising the entire instrument [or apparatus] from the paper [or packet and postage-stamp] when the impression [thereon and the cancellation of such postage-stamp] shall have been given [by the operator in the manner substantially as aforesaid.] The said cancelling type or die can be easily repaired or replaced by a new one whenever desired, and also at very little expense; and such cancelling die or type, G, may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt. In such case there would not be any tube or pipe surrounding said cancelling die or type G. The operation and effect produced would, in such case of construction, be the same. [The said postage-stamp cancelling device, die, or type G may be of any

2568

Mere assertion or conjecture not admissible in the specification.

desired distance from the aforesaid postmarking or rating device or stamp D, or it may be securely fastened to the immediate side of the said postmarking and dating part
M. P. N. or stamp or device D, by any convenient and suitable mechanical means.] The said cancelling die, type, or device G I prefer to use made of cork, as it will hold a
2569 much greater quantity of cancelling ink upon and in the lower face thereof; and when it comes into contact with the printed surface of the postage-stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with the said cancelling ink, whereby such postage-stamp so operated upon and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be re-used [or used a second time in fraud upon the postal revenue, without immediate detection of the same. Soft wood used endwise will answer nearly the same purpose; still, long and continued use after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the cancelling die or type used upon postage-stamps as aforesaid. The said tube or cylinder C, Figs. 2, 3, and 4, may be constructed in any suitable manner or by any convenient means, and thereafter fastened to the under side of the said cross bar B, in or by any mechanical means which will answer the required purpose. It may also be of any form or shape deemed best. I construct my said postage stamp cancelling device, die, or type, also, of cast iron, steel, or suitable metal, substantially as shown at G^1, Figs. 5 and 6, and which may then be secured to the said cross-bar or piece B in like manner as the said tube or cylinder C, Figs. 2 and 4, and which is done either by screw and nut where the same unites with the said cross-bar, or it may there be firmly fastened by means of suitably-constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece B. The said postmarking and dating device, D, is also secured to the under side of said cross-bar or piece B, and at or near the end thereof, opposite that where said tube or cylinder C, or cancelling die, type, or device G is securely fastened, as aforesaid, in like manner, and by substantially
2570 the same means as used for such fastening of said cancelling device to said cross bar upon the under side of the same as aforesaid. The aforesaid metal cancelling device, die or type G^1, Figs. 5 and 6, may also be fastened or secured to the immediate side of the said postmarking device by any good and sufficient means, substantially as hereinbefore described and set forth in reference to the said device C, or tube, or cylinder constructed to receive and to contain the said type or die G, Figs. 2, 3, and 4. Such metallic device, die, or type may also have upon its lower face or lower surface any suitable configuration deemed best to use for the purpose of cancelling the postage-stamp in, with, or by any suitable ink at the same time, blow, and operation of the instrument or apparatus as hereinbefore stated and set forth. In any and every case the postmarking of the letter, envelope, or packet, and the effacing or can-

cellation of the postage-stamp or letter frank thereon representing value, are done at the same time, blow, or operation of the said several devices and parts constructed and combined in the manner and by the means substantially as herein described and set forth. Both the postmarking and the cancellation of the said postage-stamp are done with indelible, or other and suitable, ink used for such cancellation or effacing of the postage-stamp, and that, too, without any injury to the said letter, envelope, or packet, or to the contents thereof, as would be the case were the said postage-stamp cancelled by being cut in several parts and places by means of cutters or knives constructed for that express use and purpose, as is the case by the cutters or knives contained and set forth in letters patent granted to me on the 9th day of August, A. D. 1859, also on the 16th day of December, A. D. 1862, the first of which contains no guard or guards to said knives or cutters, while the second contains such guard or guards for the purpose of preventing such cutters or knives from cutting too much or too deep in and upon said postage-stamps. The said instrument and devices herein set forth and described will not, under any circumstances, cut either the letter, envelope, or postage-stamp thereon in any way or manner, but perform the cancellation required to be done in, with, and by ink only, as aforesaid, no cutting device whatever being used. But the said cork device, die, or type will, when it comes in contact with the printed or enamelled like surface of the postage-stamp, somewhat mar, bruise, or break the same by means of the blow given by the instrument whereby to prepare the same to be filled by, or impregnated with, any suitable ink used for such cancellation, substantially as aforesaid.

ink.

cutters

M. P. S.

2571

Reiteration.

In no case could a fraud be committed by a second or reuse of the government postage-stamp or letter-frank, representing value, without being discovered. This arrangement and combination of devices will greatly hasten or facilitate the making up of the mails for transportation. It will also economize in labor, and reduce the labor in postmarking letters and in the cancelling of the postage stamps thereon to about, if not entirely, one-half of the number of workmen, or laborers, or clerks necessary when and where this combined instrument is not used in the manner aforesaid. It therefore saves at least one-half of the labor required in the postmarking of letters, envelopes, or packets, and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the postage-stamps more effectual or permanent, so as to prevent a second or reuse of such postage-stamps by any means whatever, which is very important in the successful management of the post-offices in this country, whereby and by means of which large sums of money are annually saved this government, and frauds upon the postal revenue by the second and reuse of postage stamps are also prevented by the use of my invention and improvements herein contained, described, and set forth. By the use of said invention the letters to be mailed and prepared for transportation by means of postmarking the same, and in cancelling the postage-stamps thereon

2572 as aforesaid, need not be handled over but once, thus and thereby economizing in time and in labor.

The cross-bar or piece B, Figs. 1, 2, and 3, may be of any suitable width or thickness, or of any metal which will answer the required purpose. It may also be of any length deemed best to use in order to get the said postmarking device and the said postage-cancelling device, die, or type suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened in the manner substantially as aforesaid. The type whereby to give the date are arranged in the said mortice, E, as shown at Figs. 3 and 6, and are then held in their proper place by means of a set-screw, substantially as shown at Figs. 2, 3, and 6. The cork or other material used for the cancelling device, die, or type will be pressed into the said tube or pipe at recess F, cylinder C, Fig. 2, and the same is then firmly held, substantially as shown at G, Fig. 4. The device or configuration for the cancellation of the postage-stamp, in the manner substantially as aforesaid, may be seen at C and G, Fig. 3, when cork is used. But when iron, steel, or other suitable metal is used, the device or configuration may be as seen at G[1], Fig. 6. The invention and improvements contained in and covered by the several claims hereto annexed or below given is and are not contained in the letters patent granted [on my application, in due form, on "the 9th day of August, 1859," nor is or are the same to be found in my said letters patent granted] to me "December 16th, 1862," but the said invention and improvements are contained in my caveat duly filed in the U. S. Patent Office in the year 1853, containing also other improvements.]

Old way.

Questions for the office.

Having thus described my original invention and improvements in "postmarking" and "postage-cancelling" devices, combined and arranged for the purposes aforesaid, what I claim and desire to secure by letters patent of the United States of America is:

2573 First. The postage-stamp cancelling device, cylinder, or tube, C, containing a die or type, G, made of cork, wood, or other suitable material, or any equivalent for said cylinder or tube, C, or for the said cancelling die or type, G, whereby to efface, cancel, or destroy the postage-stamp with indelible or other ink, in the manner and for the purposes substantially as herein described and set forth.

No cylinder antecedent in the claim.

Second. I claim the cancelling device, cylinder, or tube, C, with cork, or wood, or any substantial equivalent thereof, forming the die or type, G, therein, in combination with the cross-bar or piece, B, and with the postmarking device, D, substantially as and for the purposes herein described and set forth.

Third. I claim the postmarking of letters, envelopes, and packets, and the cancellation of the postage-stamps thereon with ink, at one and the same blow or operation of the instrument, in the manner and by the means substantially as herein described and set forth.

Fourth. I claim the employment and combination of a postmarking device, with a postage-stamp cancelling device, both being operated by one and the same handle, for the postmarking of letters, envelopes, or packets, and for the cancellation of the postage-stamps thereon, with indeli-

ble or other ink, in the manner substantially as herein described and set forth.

In testimony whereof I have on this 12th day of July, 1869, hereunto set my hand in the presence of two witnesses, to wit:

MARCUS P. NORTON.

Witnesses:
J. C. LATHROP.
F. W. DOW.

(Endorsement:) Patent Office, July 19, 1869. U. S. S.

2574 U. S. PATENT OFFICE,
Washington, D. C., July 22, 1869.

MARCUS P. NORTON,
Troy, N. Y.:

SIR: Please find below the decision of the examiner in charge of the matter of your application for a second reissue of patent No. 38175, dated the 14th day of April, 1863, for a post-office stamp, and issued to applicant.

Filed July 19, 1869.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 37.

The application above referred to has been submitted to a preliminary examination, and about nine of the fourteen pages of the specification found to consist of superfluous verbiage, all of which is particularly and carefully pointed out in pencil thereon. New matter is also introduced into this application and illustrated by new figures added to the drawings which was not in the original patent, and not therefore admissible in a reissue application.

Further action upon the case is postponed until it is amended in these particulars.

D. S. STEWART,
Ex'r.

(Endorsement:) Office, July 22, '69. Norton. (1) 1st requiring am'dt.

U. S. PATENT OFFICE,
Washington, D. C., July 22, 1869.

MARCUS P. NORTON,
Troy, N. Y.:

SIR: Please find below a communication from the examiner
2575 concerning your application for a second reissue of your patent, No. 38175, granted April 14, 1863.

Filed July 19, 1869.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 37.

In the matter above referred to the applicant having refused to erase the matter not found in the original application (although by an oversight admitted into a previous reissue), and also to erase the "unnecessary prolixity," all of which is definitely and carefully pointed out in

pencil on the specification, the examiner is compelled to reject the application not only in compliance with the request of the applicant of this date, but also in accordance with the requirements of sections 6 and 13 of the law of 1836, the former of which requires the invention to be described in "* * exact terms, avoiding unnecessary prolixity," and the latter requires the reissue to be "for the same invention" as the original patent, and also section 53 of office rules and the new rules issued by the Comm'r June 10, 1869, which more specifically define the latitude allowable for modifications on reissues.

D. S. STEWART,
Ex'r.

(Endorsement:) Office, July 22, '69. Norton. 1. Rejection on preliminary points.

WASHINGTON, D. C., *July 22d*, 1869.

Hon. COMMISSIONER OF PATENTS:

SIR: In answer to your communication in relation to my application for reissue of my letters patent dated April 14, 1863, and reissued bearing date the 23d day of August, 1864, I have to say that I most
2576 respectfully decline to make such amendments as your letter would seem to require. I would therefore respectfully ask that you reject the said application the first and second times, so that I may take the entire case to the board of examiners-in-chief for their decision upon the whole case at an early time.

Respectfully yours, &c.,

MARCUS P. NORTON.

P. S.—The above application is for improvements in postma'king of letters, and for the cancellation of stamps thereon.

NORTON.

(End:). Patent Office, July 22, 1869.

U. S. PATENT OFFICE,
Washington, D. C., July 28, 1869.

M. P. NORTON,
Troy, N. Y.:

SIR: Please find below the decision of the examiner in charge in the matter of your application for a second reissue of patent No. 38175, dated the 14th day of April, 1863, for a post-office stamp, and issued to M. P. Norton.

Filed July 19th, 1869.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 37.

The rejections of the 22d inst. upon preliminary matters having been reversed by the board of examiners-in-chief, and the case having again come before the primary examiner upon the merits of the claims, further examination has been made with the following results:

The first clause of the present reissue claim is in substance for "cancelling device C containing die or type G, made of "cork, wood,
2577 or other suitable material (not equivalent as in the 1st reissue), or any equivalent for the said cylinder C, or for said die G, whereby to efface stamps with ink, in the manner, &c., &c."

This claim concerns the blotter alone without reference to the other portions of the stamp. In the original application, and in the present one, the advantage of using cork, wood or rubber (called a blotter) is especially emphasized as being incident to their quality of elasticity and ink containing or receiving capacity over that of metal. No allusion to the substitution of iron or steel occurs in either the specification, drawings or model of the original case, but the specific nature of this elastic blotter is clearly set forth in line 20, page 1, and lines 5 to 10, p. 2, of the main body of the specification, and in lines 2 to 4, p. 1, of Amendment A, and lines 4 to 9 and 17 to 30 of p. 2, Amendment B, and also in both clauses of the original issued claim. The erased portions of this original specification constituting a part of p. 2, and lines 17 to 20 of p. 4; also the erased clause of claim, referred to steel knives or cutters, located in the postmarking or "dating" portion forming the other branch or half of the stamp, and entirely distinct from this blotting device which was never changed by amendment of any kind in the original application. In no line or wood of either this original specification, or the three amendments of it, nor in the drawing or model, does any allusion to or representation of a metallic substitute for this elastic blotter occur, but on the contrary, in lines 29 and 30 of Amd't B "solid metal" is unequivocally discarded for stated objections.

The present first claim makes this blotter consist of "cork wood" (rubber is now omitted) "or other suitable material," and an iron or steel blotter has been added to the drawing and inserted (obviously as an afterthought) in the first reissue specification. The applicant filed an affidavit of a model maker, going to show that such a model has been made, in order to prove that such a model had also been filed; no
2578 such model can be found in the office, and none such was before the examiner at the time of the original examination. But section 55 of Office Rules expressly excludes all such affidavits as this of Sherwood as utterly inadmissible even if significant, which this one is not.

Taking the claim, however, as it stands, an analysis shows it to be first for cancelling device C (considered now apart from the dating portion of the entire double stamp) containing die G, of cork, wood, or other suitable material.

The specification includes iron and steel (lines 7 to 11, p. 3, and line 25, p. 4) as such suitable material. We have, therefore, thus far, cancelling device C, containing die G, of metal as well as of cork, &c. The claim then goes on to embrace "any equivalent for said cylinder or tube C," and as lines 26 to 32, p. 7, specifies that this tube C may be entirely dispensed with, and the die or blotter be fastened to the bar B (i. e., to a handle, the combination of the blotter with the specific cross bar B to form a double stamp, is the subject of the next claim, No. 2, which is not objected to) "by means of a screw, pin, or bolt," we have presented as the substance of the claim, taken in connection with the specification, a metallic cancelling device or blotter attached to a handle by a pin, screw, or bolt, which is virtually attaching it by any common means to any common handle.

As early as 1850, there were used in all the important post-offices in this country, especially in the one at Wheeling, Va., cancelling stamps composed of metallic heads bearing the well known grid-iron device, and attached to wooden handles, as illustrated in the margin, and constructed substantially as shown in the section, as an inquiry at the Post-Office Department will no doubt corroborate. That such stamps were also constructed of wood alone, at that time, is a well-known fact. The de-
2579 partment having extensive contracts with A. N. Zeverly, of Cumberland, Md., who furnished large numbers of such wooden stamps for use in the smaller offices, when light work admitted, of wood as a cheaper material than metal in the construction of such stamps. Such wooden stamps were also freely used at that time in the Cumberland post office for rating, franking, and cancelling letters. This clause of claim is therefore rejected as having been at the date of the original patent deficient in novelty.

The second clause of claim, which is for the double instrument substantially as constructed, is not objected to, no such compound hand-stamp, prior to this original application, having been found; but the third and fourth clauses, taken in connection with the second clause, if meaning anything beyond mere tautology, must be considered as broadly claiming the process of double stamping. The handle mentioned in the latter is a common and indispensable part of every hand-stamp, and therefore has no special significance in the claim. Such broad claims for double stamping by one and the same act or operation are unpatentable. See English Patents, by G. T. Robinson, No. 2563, and P. Hill, No. 832, both of 1857, as well as applicant's own patents of Dec. 16, 1862, and Aug. 9, 1859.

The first clause of claim as now constructed and related to the specification, and also the third and fourth broad and equivalent clauses, are therefore rejected.

The whole subject of the invention is thought to be fully covered by the second clause. The first, however, if restored to its original form, and the broad, and, indeed, incompatible portions of the specification before alluded to as qualifying it were erased, would not be objected to. All others must, from the nature of the invention, be merely substantial repetitions of these, or mere "changes" upon devices already fully cov-
ered in former patents of applicant. In fact, to establish a patent-
2580 able difference between the present application and the patent of December 16, 1862, tasks to the utmost all the possible elasticity of the patent law, assisted by the widest liberality in its construction.

D. S. STEWART,
Examiner.

(Endorsed:) Office, July 28, '69. Norton. 1st rej. ¾ on merits.

WASHINGTON, D. C., *July 28th*, 1869.

HON. COMMISSIONER OF PATENTS:

SIR: In the matter of my application for reissue of my letters patent dated April 14th, 1863, reissued August 23, 1864, for and upon improvements in "postmarking of letters, packets, &c., and for the cancellation of postage-stamps thereon," now pending before the examiner in charge, twice rejected, and then appealed to the "board of examiners-

in-chief," and then returned to the said examiner in charge, and by him again rejected, I have to request that the same be again rejected pro forma, as I at present decline to make any changes in the specifications or claims, and thus I propose to again appeal the said case to the said "board of examiners-in-chief" for their decision thereon.

Respectfully,

MARCUS P. NORTON.

(Endorsed:) Patent Office, July 28, 1869. Request for a further appeal.

2581	1st. Reissue claim. Or'g'l pat. filed Jan. 5, '63.	2d. Reissue. Abridged.
	1st. Postage cancelling device C, with wood, cork, or rubber type or blotter G therein, or any eq'v't therefor, so as to cancel, blot, or efface the postage-stamp with indelible or other ink in the manner, &c., &c., &c.	Stamp-cancelling device C, containing die or type G, made of cork, wood, or other suitable material, or any eq't for 3d cylinder or tube C, and for the said cancelling die or type G, whereby to efface * * * the stamp with * ink in the manner, &c. * *
	2d. We claim the cancelling device C, with wood, cork, or rubber, or any equivalent therefor, forming the type or blotter G therein in combination with cross-piece B, and with postmarking device D, sub'y, &c.	Cancelling device C with cork or wood, or any equivalent thereof, forming the die or type G therein, in combination with cross-bar or piece B and with postmarking device D, sub'y, &c.
	3d. Both cancelling and postmarking by the same blow with ink or operation and by the means sub'y, &c.	Same.
	4th. Employ't and comb'n of postmarking device, with * * cancelling device, both being operated by one and the same handle for the postmarking of the letter, envelope, &c., &c., &c., for the distinction of the postage-stamp thereon with indelible or other ink, sub'y.	Same.

2582 Reissue. 1869.

No. 3,586. 417/47

Marcus P. Norton,
of Troy, County of Rensselaer, State of New York.

POST-OFFICE STAMPS.

Rec'd	July	19,	1869.
Petition	"	"	"
Affidavit	"	"	"
Specification	"	"	"
1 Drawing	"	"	"

Old reissue pat., No. 1748, Aug't 23, '64.

Cert. dep.
Cash $30, July 19, 1869.
Add'l fee cert.
" " cash.
Examined July 30, '69, by the board.
Issue, Grinnell, July 30, '69, p.
Patented April 14, 1863. Reissued Aug. 23, 1864. Again reissued August 3, 1869.
Recorded vol. page
Circular.

1869.

Letter July 22, '69.
1st rejection July 22, '69.
2d do. (pro forma) July 22, '69.
Above rejections reversed by board July 23, '69.
1st rejection ¾ (on merits) July 28, '69.
2d rejection on merits (pro forma) July 28, '69.
Ex'd—E. A. M., H. M. H.

2583 *Def't's Ex.* 158. *April* 1, 1878.—*J. A. S., Ex.*

United States Court of Claims.

Petition—No. 2571.—*Filed Feb.* 21, 1867.

JACOB SHAVOR & ALBERT C. CORSE
vs.
THE UNITED STATES.

Amount claimed, four hundred thousand dollars ($400,000). For the past use of the invention in post-office, postmarking and postage-cancelling stamp patented April 14, 1863, and reissued August 23, 1864, to Marcus P. Norton.

Marcus P. Norton, of Troy, N. Y., att'y for plaintiffs and petitioners.

2584 United States Court of Claims.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims of the United States of America:

Jacob Shavor and Albert C. Corse, each of the city of Troy, county of Rensselaer, State of New York, who are citizens of the United States of America aforesaid, and loyal thereto, and to the government thereof, bring this their joint petition, and file the same with the clerk of this honorable court, in accordance with the laws of said United States, and in conformity to and with the rules of said court, and they aver, charge, and declare the fact and the truth to be, that on the 14th day of April, 1863, letters patent of the said United States were duly granted, issued, and delivered unto Marcus P. Norton, a loyal citizen of the United States

aforesaid, also a citizen of the State of New York, and residing at the said city of Troy, for and upon an invention in the postmarking of letters, packets, &c., and for the cancellation of postage-stamps thereon, of which said invention the said Norton was the original and first inventor as by law required; that said invention is useful and of great value, as hereinafter set forth; that the said letters patent were, on the 20th day of April, 1863, duly and legally assigned and transferred, for a good and sufficient consideration, as by law made and provided, unto said Jacob Shavor and Albert C. Corse, by the said Marcus P. Nor-
2585 ton, the inventor and patentee, which said deed of an assignment was duly recorded in the U. S. Patent Office on the 8th day of March, 1864, in libre C, 7, page 458, of transfer of patents; that on after the making of said assignment and transfer as aforesaid, the said Shavor and Corse, in conformity with the provisions of the law in such cases made and provided, did surrender the said letters patent to the Hon. Commissioner of Patents, and thereupon and thereafter, upon the petition of said Shavor and Corse, in due form of law, the said letters patent were duly reissued on corrected and amended specifications, drawings, and claims, bearing date the 23d day of August, 1864; that said patents were granted in due form of law, and in the manner and upon the terms and conditions required and provided by the several acts of Congress and all amendments thereto. Duly certified copies of said deed of assignment, and of said reissued patent, are hereto annexed, and make a part hereof if so required, and to each and every of which the said Shavor and Corse beg leave now and hereafter to refer.

And the said Jacob Shavor and Albert C. Corse, plaintiffs in the manner and form aforesaid, aver and charge the truth to be, that the said invention so patented, assigned, and reissued as aforesaid, is of great and important value, to wit, of the value of four millions of dollars ($4,000,000), and also of great and important value to the public, and especially so to the Post Office Department or Government of the United States of America in the postmarking of letter-packets, &c., and in the cancellation of postage-stamps thereon, so that great labor is saved in the postmarking of letters, &c., and in the cancellation of the postage-stamps thereon, and in facilitating the making up of mails for transportation, and in canceling postage-stamps in such thorough and effectual manner as to prevent frauds on the revenue by a second or re-use of any postage stamps, substantially as described and set forth in
2586 the specification attached to and forming a part of the letters patent assigned, reissued, and bearing date August 23d, 1864, as hereinbefore set forth.

That the utility and validity of said letters patent, and the invention therein contained, as well as the legal and equitable title thereto, were tested and tried in a suit at law of said Shavor and Corse against Edmund Hoole, government sub-contractor, in the circuit court of the U. S., northern district of New York; that in that suit the validity of said letters patent was fully sustained, and said patent was then and there declared to be good, sufficient, and valid for each and every of the purposes therein described and set forth, and that said Shavor and Corse were the lawful owners thereof and thereto; that said suit, and all proceedings therein, were commenced, conducted, and terminated as by law provided and required, and as by the rules of said court made and provided; a correct and printed report of said suit and all proceedings therein, under the seal of said court, is now ready to be produced and will be produced, by said plaintiffs, if this honorable court shall so direct.

And the said plaintiffs, Jacob Savor and Albert C. Corse, aver and charge the fact and the truth to be, that on or about the 1st day of April, 1863, the then Postmaster-General made a contract with Fairbanks & Co., of the city of New York, to manufacture, for the term of four years from that date, and deliver to, and for the use, benefit, and advantages of the Post-Office Department of said United States, said post-office postmarking and cancelling stamp, according to the said invention so made, patented, assigned, and reissued as aforesaid, and with the understanding and the agreement between claimant and the Postmaster-General that the government would pay a just, fair, and equitable compensation for such use of said invention, as the said department had come to the conclusion that it must, as a matter of necessity in the economy of time, and as security in correctly making up the mails, and preventing frauds by reuse of postage stamps, 2587 put said invention into general use in the post-offices in said United States, and said department, acknowledging the full validity of said invention and patent, desired the full and free use of the same, without hindrance by said patentee or his assignees aforesaid, and that if said department were permitted such use of said invention that the government would pay said inventor or his assignees a full, fair, and just compensation for the use thereof during all the time it continued to use the same, to which said claimant consented and agreed.

And said claimants, Shavor and Corse, aver and charge the fact and the truth that, relying wholly upon this contract, agreement, and understanding aforesaid, they have permitted said department to cause to be manufactured for its use, and to put into, and continue in use the said patented invention from that time until now, and in all respects, and at all times, have conformed to said agreement and understanding made as aforesaid and assented to by every subsequent Postmaster-General; that said contract to so manufacture has been in full force and operation from that time until now, and now is in full effect and operation, by reason and by means of which the Post-Office Department aforesaid has put the said invention into very extensive and continued use in a very large number of the post-offices throughout said United States, and said department now is engaged in putting the said invention, so patented as aforesaid, into extensive and increased use and operation in the different post-offices in said United States, to the great gain, benefit, and advantage to said Post-Office Department, whereby a large annual saving is had to and for the said department as herein set forth; that the said department, prior to the letting or making of the said contract, to manufacture the said invention, for the use of said department, for said term of four years, and under and by the directions of the Postmaster-General, the said invention was put upon a most thorough test 2588 and trial in the post-office of the city of New York, as well as in several other of the large post-offices of the said United States; that the postmaster at said New York City post-office made a report in writing to said Postmaster-General, which is now on file in said department, and bears date on or about the 3d day of January, 1863, a copy of which is here submitted:

POST-OFFICE, NEW YORK,
January 3, 1863.

SIR: Some time since you requested that I should test the utility of Norton's double postmarking and cancelling and stamping iron, and report my opinion thereon. It was in use in this office when I first entered

upon my duties. Since then the cancelling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation; but it is liable, even if used with the greatest care, to injure the contents of the envelope, especially if the enclosures are cards, photographs, and the like. We have, also, used cork by inserting it in the cylinder of the cancellor. This has proved successful, and our cancellation is now performed in this way.

I am confident no office in the country performs cancellation more thoroughly.

The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interests of the department would be subserved by securing its general use.

We are now testing a stamp and cancellor on Norton's plan, made of boxwood. It promises well, and can be made at a very trifling expense. I am fearful, however, its liability to yield to the wear to which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obedient servant,

ABRAM WAKEMAN, *Postmaster*,
Per Secretary.

A. N. ZEVELY, Esq.,
Third Ass't P. M. G., Washington, D. C.

2589 Wherein and whereby was recommended the adoption and general use of said invention, and thereupon and immediately thereafter, the said Postmaster General adopted the said invention, and put the same in general, extensive and continuous use in the different post-offices in this country, and has ever since continued such use, and now and still continues such use, to the great gains, profits, and advantages of the said department, and in accordance with the consent, or license, or agreement, by and with said Shavor and Corse, as herein stated and set forth.

And said plaintiffs aver and charge the fact and the truth to be, that said Post Office Department has, by the use and means of said invention, so patented and assigned, saved in clerk hire alone in said several post offices more than ($250,000) annually, two hundred and fifty thousand dollars, and during the four years' use of said invention, in the manner aforesaid, the said department has saved, in cash, through and by the said invention, over nine hundred thousand dollars ($900,000) in clerk hire alone; that there has also been many other advantages and benefits derived from the use of said invention from the fact that it greatly facilitates the dispatch of letters for transportation in the mails; that it also greatly economizes in the time in the making up of the mails for transportation; that it cancels in a more perfect and permanent manner the postage stamps on letters, packets, &c., and at the same time gives on the envelope an intelligent postmark; and that it also contributes to prevent frauds on the revenue by chemical cleansing or washing of postage stamps for reuse or reissue after once used, so that the said Post Office Department and Government of the United States annually saves more than the said sum of two hundred and fifty thousand dollars, and has and have actually saved more than one million of dollars in and during the last four years of the use of said invention, so
2590 made for said Post-Office Department under said contract, and so put into use in the several large post offices of the United States.

And the said Jacob Shavor and Albert C. Corse would most respect

fully show unto this honorable court, that they, by their petition, applied to the Thirty-eighth Congress of the United States aforesaid, for compensation for the use of said invention, and for the purchase of said letters patent; that said petition was, by the House of Representatives, referred to the Committee on Post Offices and Post Roads of said House of Representatives; the said committee required the validity of said patent, and the title to said invention to first be established in and by the proper courts. Whereupon said Shavor and Corse commenced the suit hereinbefore mentioned, and at the trial thereof, by and before the Hon. Samuel Nelson and Hon. Nathan K. Hall, each judges of the said United States court, the validity of said letters patent was, in each and all respects, fully maintained and sustained, and the legal title to said invention and patent was declared to be in, and owned by said Shavor and Corse, a duly certified copy of which proceedings was duly filed in the Post-Office Department, and also presented to said House of Representatives, and duly referred to said committee; that at the next session of said Congress, the said petition was partially acted on by said committee, and Congress finally adjourned without having completed action thereon; that, at the next Congress a new petition, relating to the said invention, and said use and purchase thereof was presented in the House of Representatives, and duly referred to the committee thereof on the Post Offices and Post Roads; that said committee examined the whole subject upon proofs produced, and on the 24th day of July, 1866, reported to the said House a joint resolution to pay said Shavor and Corse the sum of fifty thousand dollars in payment for the said use of said invention and patent thereon, to which report said plaintiffs
2591 and petitioners, Shavor and Corse, most respectfully ask leave to refer, a printed copy of which is hereto annexed; that said Shavor and Corse, in view of the great value and importance of said invention, as aforesaid stated, most respectfully declined to accept of said sum of fifty thousand dollars ($50,000), and no bill was therefore passed by Congress; that upon the convening of the present session of Congress, the said Shavor and Corse made a new petition concerning said invention and patent, and the use of the same, and caused the same to be presented in the Senate of the United States, which was duly referred to the Senate Committee on the Post Offices and Post Roads, which committee, after due examination of said petition and accompanying papers, and after mature deliberation thereupon made and agreed upon, unanimously, and reported to the Senate a report in the following words and figures, to wit:

[Senate. Rep. Com. No. 164. 39th Congress, 2d session.]

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1867.—Ordered to be printed.

Mr. Van Winkle made the following report. (To accompany Bill S. No. 582.)

The Committee on the Post Offices and Post Roads, to whom was referred the petition of Jacob Shavor and Albert C. Corse, asking compensation for past and future use of "Norton's Marking and Canceling Stamp," report:

That they have duly considered the same, and they find that letters patent, dated April 14, 1863, were granted and issued to Marcus
2592 P. Norton, of the city of Troy, New York, and by him assigned to Jacob Shavor and Albert C. Corse, on the 20th day of April, 1863, and duly recorded as by law provided, and afterwards a reissue

granted to said Shavor and Corse, on the 23d day of August, 1864, as by law provided, which said invention, so patented, assigned, and reissued, was for and upon improvements in "postmarking and postage-canceling device," and which invention has been in practical and continuously exclusive use, by and under the order and direction of the Postmaster-General since the 1st day of April, 1863, the said invention having previously been tested in the most thorough manner in the New York City post office for more than one year, and approved and recommended to the Postmaster General by that office, without any compensation whatever to the said inventor or said assignees, nor upon any other stipulation than his or their consent that the same might thus be used until its utility and advantages to the government should be effectually tested, when a fair and equitable compensation for either its use or the patent should be made to them by the government.

This invention having been sufficiently proven as a labor-saving instrument, and its utility in every respect satisfactorily tested by uninterrupted use in various post offices in the United States, application was made to the Thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already alluded to. Another claimant to said invention appearing, the House committee of that Congress, who were then considering the subject of compensation, decided that since the validity of the title to the same, as well as that of prior invention, was called in question, that should first be determined by the courts, and the case was accordingly thereupon remanded.

By a transcript of the proceedings and judgment now submitted as rendered in the United States circuit court for the northern dis-
2593 trict of New York, it appears that the question of invention and of validity of title were tried, and decided in favor of the patent and the assignees, Shavor & Corse. Again, therefore, the assignees appear before the present Congress, claiming a suitable remuneration for said invention and patent, on condition of an assignment of all their right and title to the same to the United States.

The value and importance of this invention to the government is verified in the nature and manner following, to wit:

Having used the said invention, the postmasters at Washington, District of Columbia; Baltimore, Maryland; New York City, Brooklyn, Albany, Troy, Syracuse, Rochester, and Buffalo, State of New York; Hartford, Connecticut; Boston, Springfield, and Worcester, Massachusetts; Cincinnati, Ohio; Detroit, Michigan; and Chicago, Illinois, formally certify that, in their several offices, the government is thereby saved from one-third to one-half the stamping and canceling clerk hire heretofore required and employed, and that "it greatly facilitates the despatch of letters for transportation in the mails"; that "it greatly economizes in the time in the making up of the mails for transportation"; "that it cancels in the most perfect and permanent manner the postage-stamps on letters, packets, &c., and at the same time gives on the envelope an intelligent postmark"; and that "it also contributes to prevent frauds on the revenue by the chemical cleansing or washing of postage stamps for reuse or reissue after once used."

Its utility, facility, and economy in labor are so far established that the invention is being put into use in the larger post-offices of the United States as rapidly as they can be supplied by the government manufacturers. The government has contracted for their manufacture with Messrs. Fairbanks & Co., of New York, at a price of six dollars each, whose contract bears date on or about the 1st day of April, 1863,
2594 and for a term of four years, and consequently it will expire on

the 1st day of April, 1867. The Post-Office Department is now supplying post-offices at the rate of more than five hundred per annum.

The government, in consulting its interest, has fully committed itself, through the Post-Office Department, to the adoption, general and continuous use of said invention; and over four years' use determines it an indispensable requisite to the safe, rapid, and economical operation of marking, stamping and cancelling in the postal department.

It is shown by a letter from Postmaster-General Dennison, under date of March 15, 1866, addressed to Senate Committee on the Post Offices and Post-Roads, that at that time the government was saving, by the use of said invention, the compensation annually of two hundred and fifty-four clerks of the various salaried classes. At an average salary of $900 per annum, this saving for labor alone would amount to the sum of $228,600, and an aggregate at this rate for the four years which the government has already enjoyed the use of the invention, it will amount to the sum of $914,400, to say nothing of the other benefits and advantages derived from this invention during the past four years. In view of this saving in labor, directly traceable to the use of said invention, the saving must be much larger annually, by its future and increased use in many more and other large post-offices throughout the United States, where the Norton stamp is being rapidly substituted for the old unreliable and discarded device, used prior to the making of the Norton invention aforesaid.

The present Postmaster-General, in his letter to this committee, bearing date January 15, 1867, states that the Post-Office Department has already saved several hundred thousand dollars by the use of said invention; that the question of value to that department has long since been settled; that the continued use of the invention by that department is a necessity beyond question; that it is the best invention
2595 there is for the postmarking of letters and packets, and for the cancellation of stamps thereon, and that there is no doubt but that the government will continue to save large sums by its future use.

The committee, therefore, after a most thorough examination and consideration of the whole subject, have determined upon the sum of ($100,000) one hundred thousand dollars as a full and just compensation to the assignees, Shavor & Corse, for the past and future use of said invention and patent, and in full compensation for the transfer of said patent to the Post-Office Department. To carry out such determination, the committee recommend the passage of the accompanying bill.

And passed the following bill to a second reading, to wit:

[S. 582.—39th Congress, 2d Session.]

IN THE SENATE OF THE UNITED STATES.

FEBRURRY 9, 1867.

Mr. Van Winkle, from the Committee on Post-Offices and Post-Roads, submitted a report (No. 164), accompanied by the following bill, which was read and passed to a second reading:

A bill to provide for the payment of past and future use and purchase of the invention and patent upon "postmarking of letters, packets, and so forth, and cancellation of postage-stamps thereon," made by and patented to Marcus P. Norton, of Troy, New York, April fourteen, eighteen hundred and sixty-three, and reissued August twenty-three, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of
2596 the United States of America, in Congress assembled, That the

Postmastr-General be, and he is hereby, authorized and directed to pay, out of any moneys heretofore or hereafter appropriated for the Post-Office Department, the sum of one hundred thousand dollars to whoever shall appear to be the rightful owner or owners of the letters patent of the United States granted to Marcus P. Norton, of the city of Troy, State of New York, on the 14th day of April, eighteen hundred and sixty-three, and reissued on the twenty-third day of August, eighteen hundred and sixty-four, provided that within thirty days from the approval of this bill such assignees, owner, or owners of said patent shall duly assign and transfer the said letters patent and the invention therein contained to the United States of America for the use of the Post-Office Department, and formally accept of the said one hundred thousand dollars, in full compensation for the past use, title to, and right to use said letters patent and the invention therein contained.

Which said bill is now pending in the Senate of the said United States.

Which sum of one hundred thousand dollars ($100,000), so recommended in compensation for the past and future use of said invention and patent, the said Shavor and Corse are unwilling to accept, in view of the fact of the great value and importance of said invention to the public and to the Post-Office Department, and in view of the great saving already had, in cash, and the great economy in the management of the affairs of the postal department of the government, as fully shown in and by the following letter written by the Postmaster-General, to wit:

POST-OFFICE DEPARTMENT,
Washington, D. C., January 15, 1867.

SIR: I have examined the papers sent to me in regard to Norton's cancelling stamp, as suggested by your letter of the 20th December.

2597 It is difficult for me to determine the amount which ought to be allowed for the use of that invention. The department has saved already several hundred thousand dollars by its use, and I have no doubt will continue to save large sums by its future use. The question of value to the department has long been settled.

The necessity to the department of its continued use is beyond question. It is also necessary that some settlement be immediately made with the owners of the patent for this cancelling stamp. About the first of February next the department must again advertise for furnishing cancelling stamps, and Norton's stamp is the one desired; it is the best there is. If no settlement is made by the government, so that these stamps can be made and furnished to the department without interference or embarrassment from the owners of the patent, it is apprehended the department will be compelled to resort to a more expensive and less approved method of cancelling stamps, and so incur great expense and suffer great loss.

I cannot undertake to fix what the value of this invention is to the department and to the public. The fact that this department derives the chief benefit from this improvement, and that economically it is a necessity, is no argument against a full and fair compensation for its exclusive use. I think twenty thousand dollars entirely too small a sum, and that fifty thousand dollars is not a fair measure of the great value of this invention.

In conclusion permit me to urge that this question be settled in some way, and on some terms, at this session of Congress.

Very respectfully, &c.,

ALEX. W. RANDALL,
Postmaster-General.

Hon. T. W. FERRY,
Of Com. of Post-Offices and Post-Roads.

2598 And the said Shavor and Corse would now most respectfully show unto this honorable court that they were recommended and advised by a former Postmaster-General to apply to the Congress of the United States aforesaid for payment for the use of said invention, in conformity to said agreement and understanding aforesaid, and for the purchase of the said letters patent, and that upon such application he would recommend said Congress not only to pay for the past use, but also to purchase said invention and patent for some fair, just, and equitable compensation or sum, as it was a matter of necessity that that department should use said invention, and at that time to let a contract to manufacture the same for a term of four years. That from that time until now, said Shavor and Corse have urged upon said Congress the payment for past use of said invention, and for the purchase of said invention and patent. That during said time said Congress has taken the action substantially as hereinbefore stated in relation to said use and purchase of said invention and patent, and said Shavor and Corse, plaintiffs and petitioners, have now come to the conclusion that no fair, just, and equitable compensation will be agreed upon by the present Congress, and being unwilling to incur the large expense, delays, and uncertainty as to when Congress will so act as to do justice to the wants and demands of the department and country in relation to said invention and patent, as well as justice to the legal and equitable rights of said plaintiffs and petitioners in the premises, under said agreement and understanding in relation to such use of said invention, they have deemed it best, as well as their duty, to apply to and to petition this honorable court for payment for past use of the said invention, according to said agreement and understanding for and during the said past four years as aforesaid.

2599 And the said Shavor and Corse claim for the aforesaid past use of said invention by said department and government in the manner as aforesaid stated, and with the right so to use said invention—and under the said agreement and understanding that the said department would of necessity use said invention, and let said contract to manufacture it for its use, and that the government should pay a fair, just, and equitable compensation for such use of said patented invention as aforesaid—the sum of one hundred thousand dollars ($100,000) for and during each year of the said four years' use of said invention; and they, therefore, claim for the said four years of such past use of said invention the sum of four hundred thousand dollars ($400,000) as a fair, just, and equitable compensation for the said past use of said invention in the several post-offices throughout this country as aforesaid. The said Shavor and Corse therefore pray that judgment for the sum of four hundred thousand dollars ($400,000) for such past use of said invention by the P. O. Department, in the manner as aforesaid, may be duly entered of record by this honorable court, in the manner and form as by the law and rules of this court is provided.

And said Shavor and Corse, plaintiffs and petitioners, would most

respectfully show unto this honorable court that the papers filed by them under their petitions to Congress as aforesaid were printed by an order of the House of Representatives, copies of which are hereto annexed, including the said report of the Senate committee, and to which they would respectfully ask leave of this honorable court to refer.

And the said Jacob Shavor and Albert C. Corse, plaintiffs and petitioners, aver and declare that they and each of them and the original and every prior owner of said invention and letters patent have at all times borne true allegiance to the Government of the United States; that they have not, in any way, voluntarily aided, abetted, or given encouragement to the rebellion against said government; that the entire title to said invention and patent now is fully vested in the said
2600 Shavor and Corse as hereinbefore set forth; that they fully believe that the said sum or amount claimed herein, to wit, four hundred thousand dollars, is justly due from the said United States to said Shavor and Corse, after allowing all just credits and offsets, if there be any such.

JACOB SHAVOR,
ALBERT C. CORSE,
Plaintiffs and Petitioners, of Troy, N. Y.

MARCUS P. NORTON,
Attorney and of Counsel for said Shavor & Corse, Troy, N. Y.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Jacob Shavor, of the city of Troy, county of Rensselaer, and State of New York, being duly sworn, doth depose and say: My name is Jacob Shavor; I reside at the city of Troy, aforesaid; I am one of the claimants named in the petition to which this affidavit is annexed. And deponent says that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated. That said claimants are justly entitled to the amount therein claimed from the United States of America, after allowing all just credits and offsets, and he verily believes the facts as stated in said petition are true in each and evey respect and particular.

Subscribed and sworn to before me on this 21st day of February, 1867.

CHARLES WALTER,
Justice of the Peace, Washington, D. C.

2601 In the Court of Claims of the United States.

SHAVOR & CORSE
vs.
THE UNITED STATES. } No. 2571.

Claimants respectfully ask leave to file an amended petition in this cause, to be substituted for the original petition in the record.

June 1, 1868.

A. L. MERRIMAN,
For Pet'rs.

(Endorsement:) 2571. Shavor & Corse vs. The U. S. Amendment allowed nunc pro tunc as of 29 April, 1868. 1 June, 1868. Filed June 1, 1868. By the court.

Amended petition.—Filed June 1, 1868.

In the Court of Claims of the United States.

JACOB SHAVOR, ALBERT C. CORSE
vs.
THE UNITED STATES.
No. 2571.

To the honorable the judges of the Court of Claims:

Your petitioners, Jacob Shavor and Albert C. Corse, who are citizens of the city of Troy, in the State of New York, respectfully state unto your honors:

2602 That on the 14th day of April, A. D. 1863, letters patent were issued to one Marcus P. Norton for an invention and improvement in the post marking letters and of the cancellation of postage-stamps thereon, of which said Norton was the first and original inventor; that the said letters patent were, on the 20th day of April, A. D. 1863, duly assigned and transferred to petitioners, although petitioners were the equitable owners of such invention for several months prior to the date of such transfer, they having purchased the same from the said Norton several months prior thereto.

Petitioners further state that in the month of March, 1863, or thereabouts, the Postmaster-General, being desirous of using the said invention in his said department, obtained the consent of petitioners thereto, and promised petitioners to pay for such use its fair and reasonable value, and thereupon with the consent and agreement of petitioners that the government should be permitted to use such invention, the said Postmaster-General adopted the said invention into use, and has constantly used said invention in his said department from the first day of April, A. D. 1863, until the present time. Petitioners further state that such agreement has been at different and numerous times since such date repeated by the said Postmaster-General and his successors in office, upon and for the consideration that petitioners would permit the government to use the same, and not embarrass or prevent its use as aforesaid by legal proceedings.

Petitioners further state that the use of such invention so the property of petitioners as aforesaid has been and is of great value to the United States; that such use has saved, and does save, to the United States, as petitioners are informed believe, an annual expense of clerk-hire over two hundred and thirty thousand dollars; that such use also greatly facilitates the business in the post-offices in the

2603 making up mails for transportation; that such use enables the Post-Office Department to cancel the postage-stamps in a more perfect manner, thus preventing frauds upon the government in the re-use of such postage stamps.

Petitioners further state that they applied to the 38th Congress of the United States for compensation for such use; and also for the sale of such invention to the United States, which petition of petitioners was by the House of Representatives referred to the Committee on Post-Offices and Post Roads of said House, who required petitioners to establish in court their title to such invention and the validity thereof; whereupon petitioners instituted a suit in the circuit court of the United States for the northern district of New York against Edmund Hoole, who was then engaged in the manufacture of post-office stamps for the Post-Office Department, in which suit it was determined that the said

invention was new and useful; that the said Norton was the first inventor thereof, and that the title of such invention was vested in petitioners, as will more fully appear by reference to the record of such suit. Petitioners, however, state that [in pursuance of their aforesaid agreement with the said Postmaster General, they waived all damages as against said Hoole, simply demanding nominal damages of six cents.

Petitioners further state that] at each Congress thereafter prior to the filing their original petition in this case, they presented their like application to Congress, but without success, as Congress failed to pass any act for the relief of petitioners in the premises, although such applications were presented by and with the advice of the Postmaster-General, who invariably declined and refused to assume the responsibility of fixing the amount of such compensation, or of the purchase of said patent; but he at the same urged upon Congress to purchase such patent for the use of his said department, and to pay for such use.

Petitioners further represent that the use of the said patent for
2604 the period aforesaid is reasonably worth the sum of two hundred and fifty thousand dollars, which sum they now claim in this action.

'etitioners further state that they are the sole owners of this claim; that petitioners and said Marcus P. Norton have at all times borne true allegiance to the Government of the United States, and that neither have petitioners or said Norton in any way voluntarily aided, abetted, or given encouragement to the late rebellion against said government.

And as in duty bound your petitioners will ever pray, &c.

A. L. MERRIMAN,
Att'y for Petitioners.

STATE OF NEW YORK,
County of Rensselaer, ss:

Jacob Shavor, one of said claimants, being first duly sworn, deposes and says, that no assignment or transfer of said claim has been, or of any part thereof, or any interest therein; that the claimants are justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

JACOB SHAVOR.

Subscribed & sworn to before me, a notary public within & for said county. Witness my hand and seal notarial, this 15th day of May, 1868.

[SEAL.] C. M. WELLINGTON,
Notary Public, Troy, N. Y.

2605 In the Court of Claims of the United States. December term, 1867.

THE UNITED STATES
vs.
JACOB SHAVOR & ALBERT C. CORSE. } No. 2571.

And the said defendants come and make answer to the amended petition of the claimant on file herein, and do hereby deny each and every allegation therein contained, and calls for proof of the same.

And as to so much of said petition as sets forth and avers that the United States is indebted to said claimant in the sum of two hundred

and fifty thousand dollars, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

T. LYLE DICKEY,
Ass't Att'y Gen'l.

(Stipulation endorsed thereon:)

This traverse may be filed as of June 2, 1868, without prejudice as to time.

Jan'y 7, 1869.

A. L. MERRIMAN,
Cl'ts Att'y.

2606 *Findings of fact and conclusions of law in the Court of Claims.—Filed December 6, 1869.*

SHAVOR ET AL.
vs.
THE UNITED STATES. } No. 2571.

This case coming on to be heard the 28th day of January, A. D. 1869, before all of the judges of the Court of Claims, the said court finds as matter of fact:

1. The claimants are and have been the assignees and owners of the patent issued to Marcus P. Norton April 14, 1863, for his invention for postmarking and stamp-cancelling letters, more particularly set forth and described in the petition in this action.

2. The defendants have used the said invention in the Post-Office Department since the year 1863, and the said invention has been of great use and value to the defendants. But the cancelling instruments used by the defendants in their Post-Office Department were for the most part manufactured and sold to them by the firm of Fairbanks & Company, of the city of New York, under a contract bearing date the 18th April, 1863, whereby the said firm represented and agreed "to furnish for the use of the post-offices of the United States, for four years from the first of April next, marking stamps with Norton's attachment for cancelling the postage-stamps at the same time the marking stamp is applied, letters patent for which have been issued, and which patent is exclusively under our control."

3. This court finds as matter of fact that the contract set up in the claimant's petition of March 11, 1863, alleged to have been entered into by the Postmaster-General with the claimants for the use of the
2607 said invention, was never entered into by the claimants and defendants as in the said petition alleged, but that, on the contrary, it was expressly agreed between the claimants and the agents of the defendants (the Postmaster-General and his successors) that the Postmaster-General had no authority to purchase the said patent right or its use, and that the claimants should allow the use of the invention in the postal service so long as they, the claimants, saw fit, leaving the matter of remuneration, if any, to the will and action of Congress.

4. Congress have never sanctioned or approved of the use of the said invention in the postal service, and have never awarded remuneration to the claimants for the use thereof; and the claimants have voluntarily continued to allow it to be used in the postal service under the agreement and upon the condition set forth in the preceding finding of fact, and have never been remunerated therefor.

And this court, as a conclusion of law upon the facts aforesaid, decides:

That the claimants having wholly failed to prove and sustain the contract or agreement between themselves and the defendants, declared upon in their petition, their petition should be dismissed.

2608 In the Court of Claims of the United States, December term, 1868.

SHAVOR & CORSE
vs.
THE UNITED STATES. } No. 2571.

At a Court of Claims, held at the Capitol, in the city of Washington, on Monday, the 15th day of February, 1869, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree, that the claimants, the said Shavor and Corse, take nothing by their suit, and that their said petition be dismissed.

By the court.

2609 In the Court of Claims.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
THE UNITED STATES. } No. 2571.

I certify that the foregoing printed and manuscript pages, numbered from one to thirty-two, inclusive, contain true copies of pleadings, of the findings of fact and conclusion of law thereon by the court, filed in the cause aforesaid, and of the final judgment of said court, rendered the 15th day of February, A. D. 1869, therein.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 23d day of March, 1878.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles D. Drake, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph, assistant clerk of said court, is in due form.

C. D. DRAKE.

2610 *Defendant's Exhibit* 159.—*April* 1, 1878.—*J. A. S., Ex.*

In the Court of Claims.

JACOB SHAVOR & ALBERT C. CORSE
v.
THE UNITED STATES. }

The testimony of Marcus P. Norton for the plaintiffs and claimants.

CITY, COUNTY, AND STATE OF NEW YORK:

On the 16th day of November, A. D. 1867, personally appeared before

me Marcus P. Norton, the witness within named, who being first by me duly sworn to tell the truth, the whole truth, and nothing but the truth, the narratives and questions within contained in the within deposition were written down by the commissioner and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was present and represented by John J. Weed, esq., assistant solicitor of Court of Claims.

WM. W. MANN,
Commissioner of Court of Claims of New York.

The deposition of MARCUS P. NORTON, taken at the request of the plaintiffs and claimants in this action, before William W. Mann, a commissioner of the Court of Claims in and for the State of New York, at his office, 149 Fulton street, in the city of New York, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Jacob Shavor and Albert C. Corse vs. The United States, and being duly sworn to tell the truth, the whole
2611 truth, and nothing but the truth, the witness says in reply to questions by the commissioner:

My name is Marcus P. Norton; my age is thirty-seven years; am a practicing attorney; residence during the past year in Troy, New York; I have no interest in the claim which is the subject matter of inquiry, and am not related to either of claimants.

Being examined for plaintiffs by Mr. MERRIMAN, their counsel, the witness says:

I am the original inventor of the invention and improvement named and set forth in the petition in this case, which invention I assigned to the claimants April 20, 1863, as will appear from "Exhibit D, Shavor and Corse," in the manner and form therein stated. The invention named in the petition was first put into use in the New York City post-office in the latter part of the year 1860, by way of experiment, at my request, and by the Post-Office Department. It was so continued in use until some time in 1862, when the whole subject-matter of the invention was by the Post-Office Department referred to the postmaster of New York for a full report, to show whether, in the experience of that office, that the postage-stamps were and would be so effectually destroyed by the use of my invention as to prevent its being cleansed and used a second time, and also to ascertain the amount of labor saved by the use of the invention.

Some time in the forepart of winter or year 1863 I received a letter from the Post Office Department stating that the Postmaster-General desired to see me personally in relation to the adoption and permanent use by the Post-Office Department of the invention tested in the New York post-office, as I have before stated, and also set forth in the petition in this case. That letter also stated that the Post-Office Department was about to make a contract under an advertisement for proposals to fur-
2612 nish rating and canceling stamps for the use of the department. That letter contained a printed copy sent by the department to me and was a copy of the advertisement for proposals to furnish such stamps and had the appearance of being cut or taken from some newspaper. Among other things it contained a request for proposals to furnish postmarking and postage-canceling stamps of my invention and of the character set forth in the petition in this cause. I went to Washington soon after and had an interview with the then acting First As-

sistant Postmaster-General, whom, I think, was General Skinner, the present First Assistant Postmaster-General, and also with the Postmaster-General, in relation to the adoption and permanent use of this invention. In the spring of the year 1863 I saw the persons last above named in relation to the matter of which I have testified. The First Assistant Postmaster-General stated to me at that time that upon opening the package of proposals to furnish instruments containing my invention which I have before named, it was found that several parties had offered to manufacture and furnish for the department's use machines or instruments containing the invention named in the petition in this cause, varying somewhat in the price for the manufacture of the same. He also stated to me at that time that the Post-Office Department had determined to adopt for general use the invention in all the large post offices in the country, as it was a matter of great economy to the postal service and in the management of the Post Office Department. That the department desired to make a contract with some of the parties who had made proposals to furnish the postmarking and canceling instruments about which I have testified and for the use of the department. He at that time inquired of me if either of the parties who had made proposals to the department to furnish my said invention had any legal right to manufacture and furnish such for the use of the Post-Office Department.

2613 I replied that neither of the parties who put in proposals as stated to me had any rights or privileges whatever to my said invention or under any patent granted thereon; that I would grant no such right to any person whatever for the reason that the government were and would continue to be the users of my invention, which would, of course, be of more value to me and bring me greater profit than any manufacturer of the instrument could well afford to pay, and that the law made the manufacturer, the vendor and user of a patented machine separately responsible for the infringement of a patent; that the patentee or his assignees might elect to pursue one or all for such infringements. He then inquired of me that in case the department should make a contract to furnish my invention for the use of the department if I would grant license to such party, giving them a right to manufacture for that purpose. I told him that there would be no such license granted, but that an arrangement might be made with the Post Office Department which would answer the same purpose, which was by the department purchasing the invention and the patent thereon. Upon this question of purchase we together went into the rooms of the Postmaster General and there had an interview with him upon this whole matter. The Postmaster-General said that he did not believe that he had the legal right to purchase this or any other patent, but if the department were permitted to obtain this invention through some of the persons that had put in bids to manufacture the same and thereafter to use the same without hindrance or molestation on account of the patent, that there should be paid by the government a liberal and just compensation for such use of the invention to the original and first inventor of it or to his assignees; and that at the next session of Congress thereafter he would recommend that Congress pay for the past use and purchase of the invention and patent; and that if I would consent to this

2614 it should be the understanding and arrangement between us, and, as he thought, the best way to dispose of it, as it had become a matter of necessity to the department that this invention go into general use in the larger post-offices. I told him that would be satisfactory and left his office with that understanding, and that under this

agreement he might make the contract to manufacture and furnish such instruments containing my invention with whoever he pleased.

I then, previous to leaving, stated to him that a petition would be sent to the next session of Congress, which would cover the case and understanding, and ask for the purchase and payment of the patent. At this time this invention really belonged to the claimants, and I was acting as their agents and attorney in the matter, for I had agreed with the claimants to assign this patent when issued, as the application was then, and had been for some time, pending before the Commissioner of Patents, and the patent had at that time been ordered to issue, but there was some delay in the Patent Office in the engrossment and preparation to issue the patent. The patent was issued upon and bears date April 14, 1863, and was assigned, as I have before stated, on the 20th of April, 1863, in pursuance of my former agreement.

(Mr. Weed, on behalf of the United States, excepts and objects to so much of the testimony of this witness as purports to give the contents of letters received by him from the Post-Office Department, or any advertisements for proposals for furnishing said department with a postmarking and canceling machine, and also to all conversations had by this witness with either the Postmaster-General or the First Assistant Postmaster-General, in regard to the use, or the payment for such use, by the Post Office Department of the invention of said witness, for the reason, first, that the said testimony is illegal, incompetent, and
2615 immaterial to the issues involved in this case; and, second, because neither the Postmaster-General nor the First Assistant Postmaster General had authority under the law to make the contract upon which the claimants in this case rely, nor was such pretended contract made in the manner required by law.)

The witness further testifies as follows:

At the next session of Congress, after the agreement of which I have testified, a petition was sent to the House of Representatives, signed by these claimants, which was presented and referred to the Committee of Post-Offices and Post-Roads, and by that committee was transmitted to the Postmaster-General for his reply. He replied to the petition by admitting the matter therein contained, but denied the validity of the patent, and the committee required, before proceeding further on the petition, that the validity of patent should be tested in the proper court, the Postmaster General having denied its validity on the ground only that I was not the original and first inventor of the invention therein contained. A suit was accordingly brought against Edmund Hoole, contractor, who was at that time furnishing these instruments to the department for the use of the department, and after a lengthy and expensive litigation the suit was decided in favor of patent, and that I was the original and first inventor of the invention.

I have had an interview with every subsequent Postmaster-General in regard to this invention and the continued use of it by the department, as well as in regard to the purchase of the patent by Congress. With Postmaster General Dennison I had conversation in relation to the delay of complainants' petition in Congress for the use and purchase of patent, that such delays on the part of Congress would be likely to induce the complainants to undertake to prevent the further manufacture and use of the invention. He said he hoped not, and hoped
2616 and wished the contractors would be allowed to continue to manufacture these stamps under their contract with the department, and for the department's use. That if the complainants would permit the continued manufacture of the stamps for the government, that the

government would pay for the use of the invention and improvements a fair, just, and liberal compensation. This was the agreement and understanding made with Mr. Dennison as P. M. General, and relying upon this, the manufacturer of the instrument was permitted to continue, and the P. O. Department was permitted to continue to use the instrument and invention. When Mr. Randall became Postmaster-General the same arrangement was made with him, and under similar circumstances, and the claimants have permitted the use of this invention under this agreement up to the present time.

The first contract with the person for the manufacture of this instrument was for four years, and it expired on the first day of April, 1867, and a new contract has been made by the Post-Office Department for another and second term of four years from the first day of April, 1867, to manufacture and furnish this invention for government use.

(Mr. Weed, on behalf of the government, objects and excepts to so much of the foregoing testimony as gives, or purports to give, conversations with Postmasters General Dennison and Randall, for the reasons stated in his objections to former testimony of this witness.)

And the witness further says this invention and improvement has always, since the year 1863, been considered by the Post Office Department, and acknowledged by postmasters, where it has been used since then, as one of great value and importance to the postal service, in that, by its use, one person will do the work of two persons in the same length of time, and also for the more permanent cancellation or destruc-
2617 tion of the postage-stamp on letters and other post-office packages. By its use the postmark upon the envelope is more plain and legible, while at the same time and blow the enamelled surface of the postage stamp is somewhat broken, thereby allowing the ink to penetrate the paper portion of the stamp, thereby contributing to prevent the rewashing or chemical cleansing of such postage-stamp for second use; and it also saves the handling or sorting over of letters or packets more than once to postmark and cancel stamp thereon. By its use in the larger post-offices mails may be kept open until a later hour before closing the same for transportation by car or otherwise, thus allowing business men time to get their letters into the post-office. In the foregoing conversations, about which I have testified, I do not undertake to give the exact words as they may have occurred, but I do undertake to give and to testify and swear in the most positive manner to the substance of each of those conversations and the subject-matter thereof, at the time, place, and manner as I have testified.

This invention has now been more than four years in constant use in many of the post-offices throughout the country, under these several agreements made with the several Postmasters-General and First Assistants, as I have testified.

Since the filing of the petition, as I have testified, and at every session of Congress since that time, these claimants, through me, as their agent and attorney, have petitioned Congress, requesting the settlement and payment for the use of this invention, and for the purchase of the patent for future use; and at every session the matter has been before the Committee on Post-Offices and Post-Roads of the House or of the Senate, and such committee have always reported in favor of such petition; and at the last session of the Thirty-ninth Congress the Senate passed a bill to provide for the payment of past use and for the purchase of the patent of this invention. This bill was laid upon
2618 the table of the House at the last session of Thirty-ninth Congress on the motion of a jackass.

(Mr. Weed, on behalf of government, objects and excepts to all this evidence detailing the action of either House of Congress.)

For several years past I have been extensively engaged in the practice of law where the subject-matter of inventions and infringement of patents were brought before the court for adjudication, and have also been somewhat extensively engaged in the purchase of patents upon good inventions. I therefore consider myself competent to judge of the character and value of an invention. In regard to the value of this invention I have to state, that having made the same for the accomplishment of particular objects, and the same being fully accomplished in the actual use and operation of the invention, and having personally had conversation with the present Postmaster-General and other officers of the Post-Office Department as to the real and substantial value of this invention in the economy of time in the making up of mails for transportation, as well as for postmarking and cancelling of stamps; under all these circumstances I would fix the sum of $100 on each stamp in use as a fair and reasonable sum, under all circumstances.

MARCUS P. NORTON.

Subscribed and sworn before me Nov. 16, 1867.

WM. W. MANN,
Comm'r of Court Claims for New York.

The further examination of this witness was then, by consent of parties, adjourned until Monday, Nov. 18th, 1867, at my office, 149 Fulton street, New York.

2619 No. 149 FULTON STREET,
New York, Monday, Nov. 18th, 1867.

Parties all present, and the witness, being interrogated by Mr. MERRIMAN for plaintiffs and claimants, says:

"Exhibit A, Shavor and Corse," is constructed upon the principle and contains the invention set forth and described and claimed in the patent mentioned in the petition in this case, and about which I have testified. It contains substantially the same invention, and is the same invention about which I had interviews and conversations with the several Postmasters-General in the manner and at the times and places as I have before testified; and it is the same invention which the government have been using through the Post-Office Department since the spring of 1863, at which time it was adopted and put into general use by the Post-Office Department, and it has been continued in use until the present time, under the arrangement, agreement, or contract, as I have before testified. And it was, about two years previous to 1863, upon trial in the New York City post-office under the directions of the Post-Office Department, for the purpose of ascertaining its utility and value in the postal service.

"Exhibit B, Shavor & Corse," contains a package of letter envelopes, most of which are directed to me personally, and were received by me from different post-offices to whom the same were directed and received in a regular business way.

The envelopes contained in this package are postmarked with an instrument containing the invention and improvements of which I have testified, and also contained in the patent mentioned in the petition, with the exception of two, which are postmarked, and the postage stamps are cancelled under the old system of postmarking and cancellation, which I request the commissioner to mark as Exhibits B B, Shavor &

Corse, and they are so marked by the commissioner; and two other
2620 envelopes which are postmarked with an instrument containing an iron or steel cancelling device in combination with the postmarking part of the instrument, and which are covered by the third claim of the patent mentioned in the petition, and they show not as thorough cancellation as that done by the cork part, covered by the first and second claims of patent, which I request the commissioner to mark "B B B, Shavor & Corse," and they are so marked. Most of the other envelopes the postage-stamps are cancelled with the cork device mentioned in the patent.

Being cross-examined by Mr. WEED, in behalf of the United States, the witness says:

The first arrangement made with regard to the use of this cancelling stamp was made with the First Assistant Postmaster-General and the Postmaster-General; I think General Skinner was then the First Assistant, and Montgomery Blair was Postmaster-General; I saw the First Assistant Postmaster-General several times in regard to this matter; and, on the morning of the day in which the contract was made with parties to manufacture and furnish this invention for the use of the department, I saw Postmaster-General, and saw him but once and at request of the then Acting First Assistant Postmaster-General, General Skinner.

Q. What length of time was the Post-Office Department to be permitted to manufacture and use this postmarking and cancelling stamp under the arrangement you claim to have made with the department?

A. For four years at least, commencing April 1, 1863, and during all the time the department might deem it best to continue its use.

Q. Was anything said in any of the arrangements you claim to have made with the Post-Office Department in regard to the compensation you was to receive for the use of this instrument, or when such compensation was to be paid?

2621 A. There was nothing said as to the price or amount to be paid, and there was nothing said as to when any sum was to be paid. We could not then get any price or amount which would do justice to the claimants or the government; but if the future and continued use of the invention proved of such benefit to the department in other post-offices as had at that time been shown by the use of the invention in the New York post-office, that there would then be no difficulty in getting at a fair, just, and equitable compensation. This was promised on the part of the Post-Office Department in any event.

The invention at that time had been used in but few of the larger post-offices, and we could not in justice fix any price; it so was understood.

Q. Have you, since you made the first arrangement with the Post-Office Department in regard to the use of your patent postmarking and cancelling stamp, had a more specific agreement with the department in regard to the amount you are to receive for the use of this patent?

A. There has never been any other agreement to my knowledge than that made with the several Postmaster-Generals, and testified to by me in my direct examinations.

Q. Was it not understood that the whole matter of compensation you should receive for the use by the Post-Office Department of your postmarking and cancelling stamps should be referred to and determined by Congress?

A. It was not so understood, but the Postmaster-General thought it best, that it might be an object for the government to purchase the pat-

ent, as the patent would have seventeen years to run before the invention would become public property; and the patent containing an invention of great service and value to the department, it would be well for the government to purchase the patent; and he and the First Assistant Postmaster-General requested that I cause a petition to be sent to Congress asking Congress to purchase the patent, and ex-
2622 pressed a desire or hope that Congress would allow a sum sufficiently large to cover the past and present use of the invention at the time of purchasing the patent.

By COMMISSIONER:

Do you know any other matter or thing relative to the claim in question? If so, state it.

A. I think of nothing else at this time.

(Signed) MARCUS P. NORTON.

Subscribed and sworn before me this 18th day of November, 1867.

WM. W. MANN,
Commissioner of Court of Claims.

(Indorsed): 2571. Jacob Shavor & Albert C. Corse agt. The United States. In Court of Claims. Testimony of Marcus P. Norton for pl'ffs & claimants. New York City, Nov. 16th & 18th, 1867. Wm. W. Mann, comm'r of Court Claims for New York. Filed Nov. 21, 1867.

In the Court of Claims.

JACOB SHAVOR AND ALBERT C. CORSE
vs.
THE UNITED STATES. } No. 2571.

I certify that the foregoing manuscript pages, numbered from one to twenty-seven, inclusive, and upon which I have written my name, contain a true copy of the deposition of Marcus P. Norton filed in the cause aforesaid, November 21, 1867; that the corrections of this copy,
2623 made on pages 3, 6, 7, 8, 9, 13, 17, 18, 19, 21 and 24, and opposite which I have written my initials, were made by me, upon a careful comparison with the original on file.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 24th day of January, A. D. 1878.

JOHN RANDOLPH,
Ass't Cl'k Court of Claims.

I, Charles D. Drake, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph, assistant clerk of said court, is in due form.

C. D. DRAKE.

(Indorsed): Norton's deposition, Ct. of Claims. Deft's Ex. 159. Mr. Jones.

2624 *Def't's Ex.* 160.—*April* 1, 1878.—*J. A. S., Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this

office of the caveat of Marcus P. Norton, filed October 20th and 27th, 1853, for "Machine for Mailing and Folding Letters," and that said annexed copy has been compared by me with the originals, and that it is a correct transcript therefrom and of the whole of the contents thereof.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this third day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

To the Commissioner of Patents:

The petition of Marcus P. Norton, of Troy Conference Academy, West Poultney, & county of Rutland, and State of Vermont, respectfully represents:

That he has invented a certain machine for mailing and folding letters in the outside wrapper with their way-bills, and that he is now engaged in making experiments for the purpose of perfecting the
2625 same, preparatory to his applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office, agreeably to the provisions of the act of Congress in that case made and provided; he having paid twenty dollars into the Treasury of the United States, and otherwise complied with the requirements of said act.

Troy Conference Academy, West Poultney, Vt., Oct. 13, 1853.

MARCUS P. NORTON.

SUBJOINED DESCRIPTION.

My post-office stamp & way-bill folding machine is so constructed as to print the name of the town, State, month & day thereof, also the name of the postmaster, paid 3 cts. & unpaid 5 cts., upon the letter, and to fold the same, together with its way-bill, in an outside envelope, 2d envelope & way-bill are made together, & in the form and manner as shown by a place which I send enclosed.

That part of the machine which stamps the letter consists of a shaft, upon which is placed two arms crossing each other at right angles, which contains the type in the form as shown upon the way-bill; upon the same shaft are two cams, one at or near each end of the same, which are used to move the continuous or sliding platform (upon which the letter is moved under the type) down so as to let it receive an impression from the type. The platform upon which the letter passes under the type is continuous or to slide under and back as I may deem best upon experimenting. The platform belt is to be moved with the same speed of the type cylinder by means of a band or its equivalent. The platform plays up & down by means of spiral springs around the guides of s'd platform, which are four in No. The belt or band is tightened at
2626 pleasure by means of movable boxes & screws. The types are to be inked by means of inx rollers, two in number, placed in such a manner by means of movable boxes & screws so as to roll over the face of the types as they pass around. In order to change the motion of the platform belt or slide, two small gears are used, one on the cam & type shaft, the other on the crank shaft. The frame for the entire work is to be made in any form to suit the eye of the mechanic. A pulley is fastened to one of the cams, for the pur-

pose of moving the continuous belt or slide & the ink rollers. That part for folding the letter with its way-bill in the outside envelope consists of a small table placed at one end of the stamping part upon legs. A hole is made through the center of this table large enough to receive any size letter, around this is made a box containing four folders which turn upon hinges by means of levers, two of which move at a time only, which fold one half of the envelope, after which the other two move & fold the remaining half; then the bottom of the aforesaid box opens & lets the letter drop out folded in its way-bill envelope ready for transportation. The folders are worked by means of levers fastened to them, at the end of which a cord is fastened, which passes up through the table, over pulleys down through the table, & are fastened to pedals. At the other end of the levers are fastened cords for the purpose of opening the folders when closed. Those cords for opening the folders are worked by means of weights or springs.

Having thus described my machine, I will now state its object, &c. Its object is—

1st. To facilitate mailing & wrapping up letters with their way-bills, &

2nd. To save the expense of paper for wrapping purposes, lessening the cost about one-half, & saving all of the paper, as now requi'd for way-bills.

2627 3d. To lessen the No. of laborers, as now required in large post-offices.

(Endorsed:) Rec'd 2. Oath written for Oct. 20, '53. S. T. S. Exhibit A.

TROY CONFERENCE ACADEMY,
West Poultney, and County of Rutland and State of Vermont, ss:

On this twenty fifth day of October, one thousand eight hundred and fifty-three, before the subscriber, a justice of the peace, personally appeared the within-named Marcus P. Norton, and made solemn oath that he verily believes himself to be the first and original inventor of the improvement described in his caveat for mailing & enveloping letters together with their way-bills in an outside envelope, and that he does not know or believe the same was ever before known or used; and that he is a citizen of the United States.

Before me.

J. B. BEAMAN,
Justice of the Peace.

(Endorsed:) Rec'd & filed Oct. 27, 1853. S. T. Shugert.

T. C. A., WEST POULTNEY, VT.,
Oct. 25th, 1853.

Hon. CHAS. MASON,
Commissioner of Patents:

SIR: I send enclosed an oath of my improvement in mailing & enveloping letters, &c., as described in my caveat. I consulted the patent laws for an oath to accompany a caveat, but did not find one.

2928 But one for an application for a patent. Pardon me, sir, for the mistake. I am anxiously waiting to hear from those papers; drawings & model for my impt. in R. R. car brakes as rejected.

Most respectfully, your ob't serv't & friend,

MARCUS P. NORTON.

Hon. C. MASON,
Com'r of Patents.

TROY CON. ACAD.,
West Poultney, Vt., Oct. 27th, '53.

To the Commissioner of Patents:

SIR: I send enclosed a plan for my type for letter-stamp & way-bill folder, which should have gone with the caveat which I sent you yesterday, but was left out through a mistake, & not noticed until too late for the mail.

Most respectfully, yours,

MARCUS P. NORTON.

COMMISSIONER, &C.

Know all men by these presents, that I, Marcus P. Norton, of Tinmouth, in the county of Rutland, hereby constitute and appoint Silas H. Hodges, of said Rutland, for me and in my name and behalf, to prosecute and attend to my application for a patent for a post-office letter-stamp and way-bill folding-machine, and I hereby request the Commissioner of Patents to correspond with him respecting the same, and also respecting my caveat filed for the above improvement for me.

Rutland, Vt., Mar. 11, 1854.

MARCUS P. NORTON.

(Endorsed:) M. P. Norton's power of att'y to S. H. Hodges. Rec'd & filed 14 March, 1854. A. B. S.

2629 TINMOUTH, VT., *Aug. 7th,* 1854.

To the Commissioner of Patents:

SIR: I send to day an additional description of my machine for mailing & folding letters, &c.

When will my caveat expire? The copy you sent me has no date; I wish to petition for a patent before the caveat shall expire. Please communicate the ans. to Mr. Hodges if I trespass your rules, &c.

Respectfully, your ob't serv't,

MARCUS P. NORTON.

EXHIBIT B.

To the Commissioner of Patents:

SIR: I wish the following to be added to my subjoined description for mailing and folding letters, for which I have a caveat in your office.

In the mailing of letters I have provided means for postmarking of letters, newspapers, and the like, and for the cancelation of the postage-stamps thereon, at one and the same blow or operation of the instrument or machine by which the postmark is had or made upon the letter, envelope or wrapper or package in a plain and intelligible manner, and thereby always retaining the same, while the postage stamp or stamps are more effectually and permanently cancelled, so as to prevent frauds upon the revenue derived from the sale and use of such stamps.

The said device is arranged upon the type-cylinder contained in first paper filed in my said caveat, between the way-bill form of type, and it gives the impression in ink upon the letter, envelope, or packet by means of the revolving cylinder, and at the same time and operation it also gives a heavy impression in ink upon the postage-stamp when or where used upon the said letter or envelope, and
2630 the postage-stamp becomes thoroughly impregnated with ink by

the means herein provided, and therefore it cannot be cleansed by chemical washing or by other means so as to allow of the same being used a second time, and thus frauds are prevented. If there should be no stamp used for payment of postage on letters, packets, &c., this device would do no sort of harm to the letter, envelope, &c., for it would only postmark the same with the name of the town & date; such as month, day of the month, and year, and upon one side thereof at same time give a heavy impression in ink, which would appear was only intended for cancellation of the postage-stamp as aforesaid stated. This would make a plain and more intelligable postmark than by the old method now in use, while it would at same time, blow, and operation of the instrument cancel in ink the postage-stamp or stamps, when such are used, as aforesaid, in a most thorough, perfect and permanent manner, so that the same could not be cleansed for the purpose of being used a second time. This part of my invention I construct of the ordinary form of type now used in the post-offices for the postmarking of letters with the name of the town, month, day of the month, and the year, &c., and I combine therewith in some good, practical, and suitable manner, a device, which I denominate a postage-stamp canceling type, to be used in or with any kind of ink suitable for that purpose, and by such combined instruments one device is formed, which will give the name of post-office, month, day of the month, & year, and at same time and blow cancel and thus destroy the postage-stamp, thereby greatly economizing in the time now required in the making up of the mail—in fact saving one half of the labor required for postmarking and for canceling of postage-stamps, when it is desirable to give the impression of name of the town & date upon the envelope, letter, or packet in order to preserve the same for any purpose of proofs or other thing. I now
2631 think that the best way to make this part of my invention is to use a cross-bar or cross-piece upon the periphery of the cylinder set forth in other papers in my caveat, and fasten in some suitable manner the postmarking stamp upon one end thereof, and the postage canceling type or device upon the other end of said bar or cross-piece, which would of course give dating stamp at one end and canceling stamp at the other end thereof. This bar thus constructed with said type arranged thereron as aforesaid, is securely fastened to the periphery of said cylinder in some suitable manner. The canceling type or stamp may be made of iron, steel, wood, rubber, cork, or of any other suitable material, and the same may be combined with said cross-bar by the drilling of a suitable hole therein, or by a tube to receive the same, and said tube being suitably fastened to said cross-bar, or the same may be fastened directly upon and to the said cross-bar at any required dis-
Material. tance from said dating part or dating type. A screw may pass through said cross-bar into the material used for the canceling type and thus hold it firmly thereto, or a suitable tube may first be fastened to said cross-bar and then the canceling material or part used for the canceling type may be inserted therein, and thereon, and thereby held until worn out by use, when the same may be replaced. Rubber or cork, I think, will make the best and most suitable canceling type or device, while soft wood used endwise will make a most excellent cancelling type. If it should be found impracticable to use the said cylinder and other parts of said machine as contemplated in the caveat papers now on file, then the said cross-piece or bar may be removed from the said type cylinder by means of loosening the screws by which it is fastened thereto, and a suitable handle affixed thereto in place of such cylinder and the same then used as a hand stamping device for post-

marking & canceling postage-stamps. The said cross-bar may be removed from said cylinder in order to reset the type for the date
2632 to be given, or for the purpose of removing and replacing the said canceling type or stamp, and then the same may be replaced upon said cylinder as aforesaid. By means of this device I get a good and more perfect impression upon the letter, envelope, or packet of the name of the town, day of the month, month, &c., and at the same time and operation, cancel the postage-stamp or stamps in ink in a most complete, thorough and perfect manner. When cork is used it contains a greater quantity of the ink used, and being somewhat elastic, and somewhat rough upon the face containing the ink, it will to a considerable extent break the enameled surface of the postage-stamp, formed as such by means of the indelible ink used in the manufacture of such stamp so as to form a hard surface in order that the stamp might not become defaced by transportation to places of sale, while on sale, or while being carried in a person's pocket ready for use, and having broken somewhat such surface of such postage-stamp by the blow of the cork upon the same, the ink impregnates in a most thorough manner the whole postage-stamp, and of course it cannot be removed without destroying the printed surface of such postage-stamp and so defacing it that such efforts at reuse of it would be at once detected. Soft wood used endwise will have nearly the same effect, so therefore some soft and porous material will be the most suitable to use in the construction of said canceling type or device used for the cancellation of all postage-stamps.

The cam-frame which draws the letters under said type cylinder for postmarking of letters, packets, &c., and for the cancellation of postage-stamps thereon, will give the blow against the said postmarking and postage canceling device which is done at one operation and at the same time, and when thrown out of gear, then the way-bill printing part may be worked and thus print the way-bills as I have described in former papers on file in my said caveat. I would perfer the use of an in-
2633 delible ink with my said device or instrument, or machine, if the same could be had by all the postmasters who use the said machine, &c.

This part of said machine may easily and readily be converted into a hand stamp when and where no other part of said machine would be used, save and except the postmarking containing the name of the town, when used, the month and day of the month, and year, &c., and the postage-stamp cancelor or canceling device attached to and combined with the said cross-bar or cross-piece substantially as aforesaid, with a suitabl handle at the centre of said cross bar or piece, or at some suitable place between the two stamping devices aforesaid, which handle is used for the giving of the blow or impression of the two devices attached to said cross-bar as aforesaid, and of course it would then be a simple device of postmarking stamp, of cross-bar, and cork, rubber, or wood (or other suitable material) postage-stamp canceling device combined thus into one instrument, and operated by the handle with one blow, and to be used in or with any kind of ink desired. One blow of the instrument in the hand of the operator will do the printing of the name of the town, of the month, of the day of the month, upon the letter or envelope, and the cancellation of the postage-stamp in a most complete and effectual manner, substantially as aforesaid, thereby saving great labor and the rehandling over of the letters in order to postmark them, and afterwards to cancel the postage-stamps when it is desired to have an intelligable postmark preserved on the letter or envelope, and to have the postage.

stamp permanently canceled so as to prevent frauds by the reuse of the same, as is often now the case. This instrument will therefore prevent such frauds and very much simplify and economize in the time for the making up the mails for transportation. This will be the effect and result if no other part of said machine be used, save the said parts converted into a simple hand stamp as aforesaid, to wit, the postmarking
2634 part, the postage stamp canceling part, all attached to the said cross-bar and combined therewith as and in the manner aforesaid.

If the entire machine set forth in all the caveat papers be used, there will be great saving of labor and time in mailing of letters, and a large quantity of paper, twine, & sealing wax, &c., by the use set forth in all the papers of this caveat. There would be also great labor saved as aforesaid by the use of such hand stamp combined as aforesaid. I am having a full size machine made according to my caveat papers, which when done I shall apply for a patent, or at least as soon, hereafter as I may be able to get the Post-Office Department to consider and adopt for use in the various post offices my said improvements or some parts thereof, preferring to submit the same to the judgment of that department before applying for my patent upon the invention herein contained. I desire you to file this with my other papers in my said caveat. I intend to renew my caveat if such be at all necessary in order to protect my rights while engaged in efforts with the Post-Office Department for the general use of my invention, and especially that part which relates to the hand stamp form of postmarking & postage-stamp canceling combined with and upon a cross-bar or piece containing a suitable handle substantially as aforesaid, so as to give both impressions at one blow and operation of the instrument as aforesaid, thereby saving great labor, and preventing frauds, &c.

MARCUS P. NORTON.

TINMOUTH, VT., *August* 7, 1854.

EX.—J. A. W. M. McK.

(Endorsed:)

EXHIBIT B.

This paper, marked Exhibit B, after due notice to M. P. Nor-
2635 ton and trial had before a commission appointed by the Commissioner of Patents, was by the said commission adjudged to be fraudulent, and to have been surreptitiously introduced into the caveat file of M. P. Norton for a mach. for mailing & folding letters, filed Oct. 20th and 27th, 1853.

In the order of the Commissioner of Patents, dated Sept. 18th, 1871, and approved by the Sec'y of the Interior, in the case of the trial of M. P. Norton for gross misconduct, see the finding of the commission as to charges 1 and 2.

This paper does not therefore form a valid portion of the above-named caveat.

M. D. LEGGETT,
Commissioner of Patents.

EXHIBIT C.

TINMOUTH, VT., *Aug.* 21, 1855.

Com. of Patents

Will you please send me the 2d part of your report of 1854?

Can I make application for a patent (on my caveat), for post-office waybill printing & folding machine at two different times?

The caveat has expired. I wish to make application on the folding part first, as the whole machine will be subject to two patents or applications. If I can apply for one at the time, can the caveat fee be applied on that one application?

Respectfully, your obt. servt.,

MARCUS P. NORTON.

(Endorsed:) Rec'd & fld. Aug. 25, 1855. S. T. Shugert.

EXHIBIT C.

This paper (marked Exhibit C, and to which the paper marked
2636 D is attached) does not pertain to the caveat file of M. P. Norton for a R. R. ticket printing press, filed June 21st, 1855, but does pertain to the caveat file of M. P. Norton for a mach. for mailing & folding letters, filed Oct. 20th and 27th, 1853.

See the endorsement on the back of Exhibit D, hereunto attached.

M. D. LEGGETT
Commissioner of Patents.

Paid Aug. 12.

AUGUST 10, 1870.

Hon. Commissioner of Patents:

SIR: Please have made for me certified copy of file wrapper and of the contents therein (in writing) of my caveat upon "machine for mailing & folding letters," filed the 20th day of October, 1853.

I want two copies of these papers certified in two separate packets.

MARCUS P. NORTON.

2 file and cts., Aug. 10. $7.50.

(Written across face:) Sent Aug. 12, '70.

2637 Applied March 21, 1857.

CAVEAT.

No.
Marcus P. Norton,
Of West Poultney, county of Rutland, State of Vermont.

Mach. for mailing & folding letters.

Rec'd Oct. 20, 1853.
Petition " " "
Affidavit " 27, "
Specification, Oct. 20, 1853.
Drawing.
Model.
Cert. dep.
1 cash, $20, Oct. 20, 1853.
Examined.
2
Issue.
3 patented. 185 .
Recorded vol. , page

S. H. HODGES, Att'y.
Power within.

Ex'd.—C. K. H. W. H.

2642 ington, D. C., on the 8th day of September, 1871, at 10 o'clock a. m., and show cause, if any exist, why the said Commissioner of Patents (by virtue of the authority conferred upon him by the seventeenth section of the act of Congress approved July 8, 1870, and entitled "An act to revise, consolidate, and amend the statutes relating to patents and copyrights") should not refuse longer to recognize you as a patent agent, it being alleged that you have been guily of "gross misconduct," more particularly with reference to the matters hereafter named.

1st, viz: That said Marcus P. Norton, having on the 20th day of October, 1853, filed in the United States Patent Office a certain caveat, dated "Troy Conference Academy, West Poultney, Vt., Oct. 13th, 1853," a copy of which is hereto attached and marked Exhibit A. That some time after filing said paper marked Exhibit A he, the said Marcus P. Norton, surreptitiously conveyed to the files of this office a certain other paper, a copy of which is hereto attached and marked Exhibit B, as a subjoined description to said caveat, which said Exhibit B purports to have been written August 7, 1854; and the said Marcus P. Norton is herewith charged and accused of writing said paper marked Exhibit B at a much later date than the said August 7, 1854.

2nd. That the said Marcus P. Norton is hereby charged and accused of gross misconduct for having (without authority from this office and without filing said paper, Exhibit B) placed it among the files of this office with the intention to deceive and practice fraud upon this office.

3rd. That the said Marcus P. Norton, acting for himself and in behalf of his own interest in a certain case wherein he was interested, in letters patent, upon a certain "railroad printing press," did surreptitiously take and remove from the files in said case, in said Patent Office, a certain paper, dated "Tinmouth, Vt., Aug. 21st, 1855," a copy of
2643 which is hereto attached and marked Exhibit C; said paper, marked Exhibit C, was received and filed in said Patent Office, as appears by endorsement, August 25, 1855.

4th. That the said Marcus P. Norton is hereby charged with purloining from said files in said Patent Office said paper or letter marked Exhibit C, and attaching thereto a certain other paper, a copy of which is hereto attached and marked Exhibit D, intending thereby to deceive and practice gross fraud upon this office. That said paper, Exhibit D, purports to have been written and signed by Marcus P. Norton on the said 21st of August, 1855, which paper, marked Exhibit D, said Norton is hereby charged with writing and surreptitiously placing among the files at a much later date than said August 25, 1855, while in fact said paper, marked Exhibit D, was never duly filed in this office, but being attached by said Marcus P. Norton to said letter or paper marked Exhibit C, as said letter marked Exhibit C had been duly received and filed in the Patent Office Aug. 25, 1855, thus practicing gross fraud and deception upon this office, and undertaking and intending to impress upon this office that said paper marked Exhibit D was duly filed Aug. 25, 1855, in said Patent Office.

5th. That said Marcus P. Norton did, on the 15th day of August, 1871, file in this office a false and fraudulent paper, a copy of which is hereto attached and marked Exhibit E, in which he alleges that he never did make any assignment to F. G. Ransford and Peter Low, dated May 2nd, 1859, and that if any such is on file in this office, or has been recorded in "Liber G, page 73," of "transfers of patents," is in error "and is a gross fraud and a forgery," and that said paper was duly received and filed in this office on said 15th day of August, 1871, and

sworn to by Marcus P. Norton before T. C. Connolly, a justice of the peace of the city and county of Washington, D. C.

6th. That the said Marcus P. Norton, acting for himself and in
2644 his own behalf, and in order to defeat the rights of other parties, viz, F. G. Ransford and Peter Low, did write, utter, and publish a certain paper, a copy of which is hereto attached and marked Exhibit F. That said paper purports to have been written July 20th, 1857, and signed by F. G. Ransford and P. Low, and witnessed by R. G. Fox and Thomas H. Hardman. That said Marcus P. Norton is hereby charged (on or about July or August, 1871,) with writing, publishing, and forging said paper marked Exhibit F, and of forging the names of said F. G. Ransford and P. Low, the pretended assignors, as well as the names of R. G. Fox and Thomas H. Hardman, witnesses to said assignment.

7th. That said Marcus P. Norton filed in the United States Patent Office in person said paper marked Exhibit F, as the original paper or assignment, for record in said office, on the 22nd day of August, 1871, and claimed said paper marked Exhibit F was an original paper duly executed by said F. G. Ransford and P. Low, and duly witnessed by said R. G. Fox and Thomas H. Hardman, intending thereby to practice gross deception upon this office.

8th. That the said Marcus P. Norton is hereby charged of forging the signatures of F. G. Ransford and P. Low, the assignors, as well as with forging the names or signatures of R. G. Fox and Thomas H. Hardman, the witnesses to said paper or assignment marked Exhibit F, and presenting the same for record in said Patent Office, to wit, said paper marked Exhibit F, and presenting it as a genuine and true paper or assignment for record on said Aug. 22d, 1871, all of which he did in defiance of the rights of said assignors, viz, F. G. Ransford and P. Low, and the said Marcus P. Norton was and is guilty of gross misconduct as a patent attorney or agent, and is unworthy of the confidence or respect of the United States Patent Office.

M. D. LEGGETT,
Commissioner.

2645 (Copies of the exhibits were served on Mr. Norton, but, being voluminous, are omitted here.)

By the request of the attorney of said Marcus P. Norton, the hearing in the matter of the above charges was postponed until September 14th, at 10 o'clock a. m.

Understanding that Mr. Norton was fearful the Commissioner would not do him exact justice, he was informed that, if agreeable to his wishes, a commission of three gentlemen connected with the Patent Office would be appointed to hear and investigate the charges, and to report their findings to the Commissioner. He expressed his satisfaction with such arrangement, provided he might designate persons whom he did not want on the commission. He was granted such privilege, whereupon examiners T. C. Connolly, Ellis Spear, and C. M. Parks were appointed such commission.

At the time to which said case had been postponed, said Marcus P. Norton appeared before the commission, and was assisted in his defense by two able attorneys. He plead "not guilty" to all the charges. Over two days were occupied in the hearing. The report of the commission is as follows, to wit:

Hon. M. D. LEGGETT,
Com'r of Patents:

SIR: We, the undersigned, having been appointed a commission to

nvestigate certain charges made against Marcus P. Norton, a practicing attorney before the United States Patent Office, by order dated Sept. 14, 1871, have carefully investigated said charges, examined the papers and witnesses in the case, and heard the arguments of counsel on both sides, and respectfully submit the following report:

We find that the accused, Marcus P. Norton, is—

Of the first charge, guilty.

Of the second charge, guilty.

2646 Of the third charge, not guilty.

Of the fourth charge, guilty, except of the words "purloining from said files" * * said papers, &c.

Of the fifth charge, guilty.

Of the sixth charge, guilty.

Of the seventh charge, guilty.

Of the eighth charge, guilty.

All of which is respectfully submitted.

T. C. CONNOLLY.
ELLIS SPEAR.
C. M. PARKS,
Commission.

U. S. PATENT OFFICE, *Sept.* 18, 1871.

It is therefore adjudged:

I. That said Marcus P. Norton has been guilty of such "gross misconduct" as to make it the duty of the Commissioner of Patents to refuse longer to recognize him as a patent agent, and it is accordingly ordered, by virtue of the authority conferred upon the Commissioner of Patents under the 17th section of the act approved July 8, 1870, that the said Marcus P. Norton, or any firm of which he shall be a continued member, after said firm shall have been notified of this order, be hereafter excluded from practicing before the Patent Office in any and all cases.

II. In view of the fact that said Marcus P. Norton is also an inventor and frequently appears in his own behalf in prosecuting applications for patents, extensions, interferences, &c., and whereas it having been clearly proven in this case that he is an unsuitable person to be trusted with the files in this office, it is further ordered that hereafter said Marcus P. Norton shall not be permitted to have personal access to any of the files, drawings, or models in the Patent Office for any purpose what-
2647 ever. When necessary, in the transaction of business connected with his own personal interests, to know the contents of documents on file in the office, he must call for certified copies, or make examination by an attorney.

III. The examiners and other employees of the Patent Office will take cognizance of and enforce the above orders.

M. D. LEGGETT,
Commissioner of Patents.

Approved.

C. DELANO,
Secretary of the Interior.

2648 *Def't's Ex.* 162.—*April* 1, 1878.—*J. A. S., Ex.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of Exhibits A, B, C and D, referred to in charges made against Marcus P. Norton by the Commissioner of Patents; said charges having been served upon the above Norton on or about their date, to wit, August 29, 1871.

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this ninth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

W. H. DOOLITTLE,
Acting Commissioner.

To the Commissioner of Patents:

The petition of Marcus P. Norton, of Troy Conference Academy, West Poultney, and County of Rutland, and State of Vermont, respectfully represents:

That he has invented a certain machine for mailing and folding letters in the outside wrapper with their way-bills, and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to his applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office, agreea-
2649 bly to the provisions of the act of Congress in that case made and provided; he having paid twenty dollars into the Treasury of the United States, and otherwise complied with the requirements of said act.

MARCUS P. NORTON.

TROY CONFERENCE ACADEMY,
West Poultney, Vt., Oct. 13th, 1853.

SUBJOINED DESCRIPTION.

My post-office stamp and way-bill folding machine is so constructed as to print the name of the town, state, month and day thereof, also the name of the postmaster, Paid 3cts., and Unpaid 5 cts., upon the letter, and to fold the same together with its way-bill, in an outside envelope; said envelope and way-bill are made together, and in form and manner as shown by a plan which I send enclosed.

That part of the machine which stamps the letter consists of a shaft, upon which is placed two arms crossing each other at right angles, which contains the type in form as shown upon the way-bill; upon the same shaft are two cams, one at or near each end of the same, which are used to move the continuous or sliding platform (upon which the letter is moved under the type) down so as to let it receive an impression from the type. The platform upon which the letter passes under the type is continuous, or to slide under and back, as I may deem best upon experimenting The platform belt is to be moved with the same speed of the type cylinder, by means of a band or its equivalent. The

platform plays up and down by means of spiral springs around the guides of s'd platform, which are four in No. The belt or band is tightened at pleasure by means of movable boxes and screws. The types are to be inked by means of ink rollers, two in number, placed in such a manner by means of movable boxes and screws so as to roll over the face of the types as they pass around. In order to change the motion of the platform belt or
2650 slide, two small gears are used, one on the cam and type shaft, the other on the crank shaft. The frame for the entire work is to be made in any form to suit the eye of the mechanic. A pulley is fastened to one of the cams for the purpose of moving the continuous belt or slide and the ink rollers. That part for folding the letter with its way-bill in the outside envelope consists of a small table placed at one end of the stamping part upon legs. A hole is made through the center of this table large enough to receive any size letter; around this is made a box containing four folders, which turn upon hinges by means of levers, two of which move at a time only, which fold one-half of the envelope, after which the other two move and fold the remaining half, then the bottom of the aforesaid box opens and lets the letter drop out folded in its way-bill envelope ready for transportation. The folders are worked by means of levers fastened to them, at the end of which a cord is fastened which passes up through the table over pulleys, down through the table, and are fastened to pedals. At the other end of the levers are fastened cords for the purpose of opening the folders when closed. Those cords for opening the folders are worked by means of weights or springs. Having thus described my machine, I will now state its object.

Its object is—

1st. To facilitate mailing and wrapping up letters with their way-bills, &c.

2d. To save the expense of paper for wrapping purposes, lessening the cost about one-half, and saving all of the paper as now required for way-bills.

3d. To lessen the No. of laborers, as now required in large post-offices.

Ex.—J. A. W., M. McK.

(Endorsed:) Ren'd 2 oath. Written for Oct. 20, '53. S. T. S. Exhibit A.

2651 EXHIBIT B.

To the Commissioner of Patents:

SIR: I wish the following to be added to my subjoined description for mailing and folding letters, for which I have a caveat in your office:

In the mailing of letters I have provided means for post-marking of letters, newspapers, and the like, and for the cancellation of the postage-stamps thereon at one and the same blow or operation of the instrument or machine by which the post-mark is had or made upon the letter, envelope, or wrapper or package in a plain and intelligible manner, and thereby always retaining the same, while the postage-stamp or stamps are more effectually and permanently cancelled so as to prevent frauds upon the revenue derived from the sale and use of such stamps.

The said device is arranged upon the type cylinder contained in first paper filed in my said caveat between the way-bill form of type, and it gives the impression in ink upon the letter, envelope, or packet by means of the revolving cylinder, and at the same time and operation it also

gives a heavy impression in ink upon the postage stamp when or where used upon the said letter or envelope, and the postage-stamp becomes thoroughly impregnated with ink by the means herein provided, and therefore it cannot be cleansed by chemical washing, or by other means, so as to allow of the same being used a second time, and thus frauds are prevented. If there should be no stamp used for payment of postage on letters, packets, &c., this device would do no sort of harm to the letter, envelope, &c., for it would only postmark the same with the name of the town and date, such as month, day of the month, and year, and upon one side thereof, at same time give a heavy impression in ink, which would appear was only intended for cancellation of the postage-stamp, as aforesaid stated. This would make a plain and more
2652 intelligible postmark than by the old method now in use, while it would at same time, blow, and operation of the instrument cancel in ink the postage-stamp or stamps, when such are used as aforesaid, in a most thorough, perfect, and permanent manner, so that the same could not be cleansed for the purpose of being used a second time. This part of my invention I construct of the ordinary form of type now used in the post-offices for the post-marking of letters with the name of the town, month, day of the month and the year, &c., and I combine therewith, in some good, practical, and suitable manner, a device which I denominate a postage-stamp canceling type to be used in or with any kind of ink suitable for that purpose, and by such combined instruments one device is formed which will give the name of post-office, month, day of the month, and year, and at the same time and blow cancel and thus destroy the postage-stamp, thereby greatly economizing in the time now required in the making up of the mail—in fact saving one-half of the labor required for post-marking and for canceling of postage-stamp when it is desirable to give the impression of name of the town and date upon the envelope, letter, or packet, in order to preserve the same for any purpose of proofs or other things. I now think that the best way to make this part of my invention is to use a cross bar or cross-piece upon the periphery of the cylinder, set forth in other papers in my caveat, and fasten in some suitable manner the post-marking stamp upon one end thereof, and the postage-canceling type or device upon the other end of said bar or cross piece, which would of course give dating-stamp at one end and cancelling-stamp at the other end thereof. This bar, thus constructed with said type arranged thereon as aforesaid, is securely fastened to the periphery of said cylinder in some suitable manner; the canceling type or stamp may be made of iron, steel, wood, rubber, cork, or of any other suitable material, and the same may be combined with said cross-bar by the drilling of a suitable hole therein,
2653 or by a tube to receive the same, and said tube being suitably fastened to said cross-bar, or the same may be fastened directly upon and to the said cross-bar at any required distance from said dating part or dating type. A screw may pass through said cross-bar into the material used for the canceling type and thus hold it firmly thereto, or a suitable tube may first be fastened to said cross-bar and then the canceling material or part used for the canceling type may be inserted therein and thereon, and thereby held until worn out by use, when the same may be replaced. Rubber or cork, I think, will make the best and most suitable canceling type or device, while soft wood used endwise will make a most excellent canceling type. If it should be found impracticable to use the said cylinder and other parts of said machine as contemplated in the caveat papers now on file, then the said cross-piece or bar may be removed from the said type cylinder by means of loosen-

ing the screws by which it is fastened thereto, and a suitable handle affixed thereto in place of such cylinder and the same then used as a hand-stamping device for post-marking and canceling postage-stamps. The said cross-bar may be removed from said cylinder in order to reset the type for the date to be given, or for the purpose of removing and replacing the said canceling type or stamp, and then the same may be replaced upon said cylinder as aforesaid. By means of this device I get a good and more perfect impression upon the letter, envelope, or packet, of the name of the town, day of the month, month, &c., and at the same time and operation cancel the postage-stamp or stamps in ink in a most complete, thorough, and perfect manner. When cork is used it contains a greater quantity of the ink used, and being somewhat elastic and somewhat rough upon the face containing the ink, it will to a considerable extent break the enameled surface of the postage-stamp, formed as such by means of the indelible ink used in the manufacture of such
2654 stamp, so as to form a hard surface, in order that the stamp might not become defaced by transportation to places of sale, while on sale, or while being carried in a person's pocket ready for use; and having broken somewhat such surface of such postage-stamp by the blow of the cork upon the same, the ink impregnates in a most thorough manner the whole postage-stamp, and of course it cannot be removed without destroying the printed surface of such postage-stamp, and so defacing it that such effort at reuse of it would be at once detected. Soft wood used endwise will have nearly the same effect, so, therefore, some soft and porous material will be the most suitable to use in the construction of said canceling type or device used for the cancellation of all postage-stamps.

The cam-frame which draws the letters under said type cylinder for post-marking of letters, packets, &c., and for the cancellation of postage-stamps thereon, will give the blow against the said post-marking and postage-canceling device, which is done at one operation and at the same time, and when thrown out of gear, then the way-bill printing part may be worked and thus print the way-bills as I have described in former papers on file in my said caveat. I would prefer the use of an indelible ink with my said device or instrument, or machine, if the same could be had by all the postmasters who use the said machine, &c.

This part of said machine may easily and readily be converted into a hand stamp when and where no other part of said machine would be used, save and except the post-marking containing the name of the town where used, the month, and day of the month, and year, &c., and the postage-stamp canceler or canceling device, attached to and combined with the said cross-bar or cross-piece substantially as aforesaid, with a suitable handle at the center of said cross-bar or piece, or at some suitable place between the two stamping devices aforesaid, which handle is used for the giving of the blow or impression of the two devices
2655 attached to said cross-bar as aforesaid, and, of course, it would then be a simple device of post-marking stamp, or cross-bar, and cork, rubber, or wood (or other suitable material), postage stamp canceling device combining thus into one instrument, and operated by the handle with one blow, and to be used in or with any kind of ink desired. One blow of the instrument in the hand of the operator will do the printing of the name of the town, of the month, of the day of the month, upon the letter or envelope, and the cancellation of the postage-stamp, in a most complete and effectual manner, substantially as aforesaid, thereby saving great labor and the rehandling over of the letters in order to postmark them, and afterwards to cancel the [postage-stamps when it is de-

sired to have an intelligible post-mark preserved on the letter or envelope and to have the postage-stamp permanently canceled so as to prevent frauds by the reuse of the same as is often now the case. This instrument will therefore prevent such frauds and very much simplify and economize in the time for the making up of the mails for transportation. This will be the effect and result if no other part of said machine be used save the said parts converted into a simple hand stamp as aforesaid, to wit, the post-marking part, the postage-stamp canceling part, all attached to the said cross-bar and combined therewith, as and in the manner aforesaid.

If the entire machine set forth in all the caveat papers be used there will be great saving of labor and time in mailing of letters, and a large quantity of paper, twine, and sealing-wax, &c., by the use set forth in all the papers of this caveat. There would be also great labor saved, as aforesaid, by the use of such hand stamp combined as aforesaid. I am having a full size machine made according to my caveat papers, which, when done, I shall apply for a patent, or, at least, as soon hereafter as I may be able to get the Post-Office Department to consider and adopt for use in the various post-offices my said improvements or some
2656 parts thereof, preferring to submit the same to the judgment of that department before applying for my patent upon the invention herein contained. I desire you to file this with my other papers in my said caveat. I intend to renew my caveat if such be at all necessary in order to protect my rights while engaged in efforts with the Post-Office Department for the general use of my invention, and especially that part which relates to the hand stamp form of post-marking and postage-stamp canceling combined with and upon a cross-bar or piece containing a suitable handle substantially as aforesaid, so as to give both impressions at one blow and operation of the instrument, as aforesaid, thereby saving great labor and preventing frauds, &c.

MARCUS P. NORTON.

TINMOUTH, VT., *August* 7, 1854.

Ex'd—H. M. H., E. A. M.

(Endorsed:)

EXHIBIT B.

This paper, marked Exhibit B, after due notice to M. P. Norton and trial had before a commission appointed by the Commissioner of Patents, was by the said commission adjudged to be fraudulent and to have been surreptitiously introduced into the caveat file of M. P. Norton for a mach. for mailing and folding letters, filed Oct. 20 and 27, 1853. In the order of the Commissioner of Patents, dated Sept. 18, 1871, and approved by the Sec'y of the Interior, in the case of the trial of M. P. Norton for gross misconduct. See the finding of the commission as to charges 1 and 2.

This paper does not, therefore, form a valid portion of the above-named caveat.

M. D. LEGGETT,
Commissioner of Patents.

2657 EXHIBIT C.

TINMOUTH, VT., *Aug.* 21, 1855.

COM. OF PATENTS:

Will you please send me the 2d part of your report of 1854?

Can I make application for a patent (on my caveat) for post-office

way-bill printing and folding machine at two different times? The caveat has expired; I wish to make application on the folding part first, as the whole machine will be subject to two patents or applications. If I can apply for one at the time can the caveat fee be applied on that one application?

Respectfully your ob't se'v't,

MARCUS P. NORTON.

Ex'd—C. C. W., F. F.

(Rec'd and filed Aug. 25, 1855.)

S. T. SHUGERT.

(Endorsed:)

EXHIBIT C.

This paper (marked Exhibit C, and to which paper marked Exhibit D is attached), does not pertain to the caveat file of M. P. Norton for a R. R. ticket printing press, filed June 21st, 1855, but does pertain to the caveat file of M. P. Norton for a mach. for mailing and folding letters, filed Oct. 20th and 27th, 1853.

See the endorsement upon the back of Exhibit D, hereunto attached.

M. D. LEGGETT,
Commissioner of Patents.

2658 EXHIBIT D.

Additional Paper to Railroad Printing Press.

TINMOUTH, VT.,
August 21st, 1855.

Hon. COMMISSIONER OF PATENTS:

SIR: I wish to file this paper as an additional caveat description to my Railroad Printing Press, now on file under date of June 4th, 1855, and sworn to the 11th day of June, 1855.

I propose to make the form of type as I have described in my caveat, or make a cylinder of sufficient size to contain upon its surface or periphery the name (in stereotype) of the name of stations on the line of road, in order as they are on said road. This I call the cylinder of towns to where tickets are sold; this cylinder is placed into the form and made to revolve at the will of the operator; there is another cylinder of the same form like unto the other, and this is called cylinder from which the tickets were sold; the name of the road and all other printed matter to be done may be done by cylinders constructed for that purpose, or stationary type may be used for all excepting for the month, the day of the month, and the year, which will be done by cylinders made for that purpose. At one end of each cylinder there is an index for each cylinder. And a pointer connected with the cylinder revolves the same to where it may be desired to use the same, when it is then held by the use of a pin and spring. The operator moves these cylinders to and from whatever name or date he wishes to sell and date tickets for use on the railroad.

This press is chiefly designed to be used in the general ticket office by the general ticket master or his clerks, or it may be used in any office on the line of the road when printing and dating is desired. The said cylinders when moved to their respective places are held fast by a spring connected with the pointer, and governed or regulated by the in-

2659 dexes, as will more fully appear herein. I have set forth a series of revolving type wheels or cylinders for printing certain matter on railroads, but I also intend such wheels to do all kinds of printing required in any office other than the printing the name of towns on a railway line with the date of the selling of the tickets, all of which is done by means of suitable cylinders for that purpose. I have deemed it best to give a more full description of the dating wheels, and it is substantially as follows: I make two wheels, or more if necessary, and on the circumference or periphery of which I have the required type arranged so as to print the several months in the year, and on another cylinder or wheel I have arranged the type to print the day of the month. There may also be a type for the years, so that several years may be printed when desired from the type put on a wheel in same manner as for the month and day of the month. These wheels or cylinders, containing such type may be desired to print from, are put and arranged on a central shaft or other good bearing and turning points, and the printing surface is brought together on a line or in a suitable form when the month, the day of the month, and the year with any other matter connected with the same, or printed by a blow of the instrument arranged to give the impression. It may be used as a hand printing or stamping device for dating anything desired to have the date printed or formed thereon. This would be very convenient for them, there would be no type to lose for all the dates would be on the cylinders from which the same may easily and readily be set or arranged to print the correct dates. The dating cylinders may be if any size that will answer the purpose required. The day of the month wheel may be made of such size as to require two wheels in order to give the correct dates and to reduce the size of the wheels or cylinders. In that case one wheel would have figures 1, 2, 3, on the periphery of the same, while on the wheel to correspond to the same there would be on the periphery 2660 the figures 1, 2, 3, 4, 5, 6, 7, 8, 9, and *a*, *o*, or cipher. These when changed will give any date required. It will now be seen that the correct date is given from and by type wheels or revolving and changing cylinders, or discs. The letters or type may be cast on the periphery of such wheels, or formed in slips or pieces and soldered upon the periphery of the wheel desired, or they may be engraved on the same, or they may be swedged, formed, or pressed thereon out of the same circumference or periphery, or they may be so constructed as to be dovetailed therein. There are various other ways for forming or constructing on such wheels such letters or figures as may be required. The wheels or cylinders may be made of malleable cast iron, or of other cast metal, or made of brass or similar metal. Brass would be the better metal to use when the letters or figures are to be engraved, or swedged or raised, or pressed or formed thereon, because it would work more easy and make better work. Stereotype letters and figures can be made and then soldered on such circumference surface of such wheels. I think the best way will be to dovetail them in, because when worn out a new one can be put in its place, and it would require expensive machinery to cast or press, form a swedge the letters or figures on said circumference or periphery of such type and dating wheels or cylinders. To ink the said wheels or type cylinders when arranged for printing and dating, I pass an ordinary inking roller over the face or surface of all the type to be printed from, and then it is returned to its proper place. This roller is passed over a suitable distributing surface which is for the purpose of getting the ink on the type wheels more evenly and thus make a better impression on the paper to be printed and dated.

These wheels are each operated in a suitable form or close constructed for that purpose. So set them each in proper condition or order for the date, and as a matter of convenience I use pointer or arm of any
2661 suitable construction, and secure the same to the shaft of the type wheel or to the wheel itself, and then I have indexes on the frame or on the respective type wheels so arranged as to enable the operator to put the right month, day of the month, or year, &c., into the printing line or surface so that the same will print the date required. These indexes will be of any suitable construction and engraved, stamped, or otherwise put upon the said type wheel framework or upon each wheel, as may be best, and in such manner that the operator may readily see the same so as to know how to govern the setting of the wheels in order to print correctly the matter desired. These wheels or cylinders are held in their fixed position by a small pin having a suitable spring attached which may be in the arm or pointer, or in the said framework and extending into the respective wheels, having a corresponding hole or opening for the spring to pass into to hold it. The spring is to hold the pin in its place so that the wheel cannot move when in its fixed position and in use. By moving any one of the type wheels or cylinders forward to change its use, either to change the month, or the day of the month, or the year, the pin will be forced into a corresponding opening by the spring and then held until another change is had, and so the operation will continue. Words or figures may be used to index or represent the month, and may be on the side of the wheel, or on the frame holding the type wheels, on their shaft, and will of course always be so constructed as to be in sight the most convenient. This will apply to all the wheels or cylinders for printing the month, the day of the month, and year, so, too, if any cylinder be used to print any other matter, the same may have an index to correspond to the matter to be printed. The said dating type wheels may be in a fixed frame and the impression taken from the top by any suitable device to give the force or blow thereon, and the inking roller made to pass over the top in any good and convenient way, or the said
2662 type, dating wheels and frame in which the same operate may be so arranged as to give a striking like blow by the hand, or put into a frame on a stern and be forced down upon the paper and then brought back by a spring.

I am having a machine made with these improvements in and hope to apply for a patent within the caveat year, yet there are some other improvements I propose to make in this machine as a whole.

The machine may be used for banks, railroad companies, business firms, and in post-offices.

Respectfully, your ob't s'v't,

MARCUS P. NORTON.

(Endorsed :)

EXHIBIT D.

This paper, marked Exhibit D, after due notice to M. P. Norton and trial had before a commission appointed by the Commissioner of Patents, was by the said commission adjudged to be fraudulent and to have been surreptitiously introduced into the caveat file of M. P. Norton for a R. R. ticket printing press, filed June 21st, 1855.

In the order of the Commissioner of Patents, dated Sept. 18th, 1871, and approved by the Sec'y of the Interior, in the case of the trial of M. P. Norton for gross misconduct, see the finding of the Commissioner as to Charge 2.

The paper does not, therefore, form a valid portion of the above-named caveat.

M. D. LEGGETT,
Commissioner of Patents.

2663 *Def't's Ex.* 163.—*April* 1, 1878.—*J. A. S., Ex.*

UNITED STATES OF AMERICA:

POST-OFFICE DEPARTMENT,
Washington, D. C., January 5th, 1878.

I, D. M. Key, Postmaster-General of the United States of America, certify that the annexed are true copies of the original letters now on the files of this department.

In testimony whereof I have hereto set my hand, and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.]

D. M. KEY,
Postmaster-General.

(Copy.)

L. B. 41, p. 199.

POST-OFFICE DEPARTMENT,
APPOINTMENT OFFICE,
Washington, D. C., September 28th, 1860.

POSTMASTER, *New York, N. Y.:*

SIR: It appearing from your reports that about the same number of letters is each day deposited in the lamp-post boxes for the mail upon which the carrier's fee is unpaid, and the public having now had sufficient time to become advised of this new order requiring prepayment of such fee, the P. M. General directs that you give notice in the newspaper that after a given day all such letters will be treated like letters placed in the post-office wholly unpaid. Thereafter you notify the parties ad-
2664 dressed, that on transmitting the postage due, their letters will be forwarded.

Very respectfully,
(Signed)

H. KING,
1st Ass't P. M. G.

(Copy.)

L. B. 41, p. 82.

POST-OFFICE DEPARTMENT,
APPOINTMENT OFFICE,
Washington, D. C., August 10th, 1860.

POSTMASTER, *New York, N. Y.:*

DEAR SIR: Referring to that part of your letter of the 8th inst., relating to the number of letters collected by carriers to be transmitted by mail, I am instructed by the Postmaster-General to request you to inform the department, from time to time, as far as practicable, what proportion of these letters have upon them the carrier's (one cent) stamp, as it may become necessary at no distant day to inform the public, under

an order of the department, that all letters not having the carrier's fee prepaid by stamp will be held for postage, the same as other letters on which no part of the postage has been prepaid.

Very respectfully,
(Signed) ST. JOHN B. L. SKINNER,
For 1st Ass't P. M. G.

2665 *Def't's Ex.* 163.—*April* 1, 1878.—*J. A. S., Ex.*

(Copy.)

L. B. 41, p. 82.

POST-OFFICE DEPARTMENT,
OFFICE OF THE 1ST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., August 10th, 1860.

POSTMASTER, *New York, N. Y.:*

SIR: I have to acknowledge the receipt of your letter of the 8th inst., in relation to cancelling stamps. The arrangement is an excellent one, and will save much labor in making up the mails, but I fear the attachment you have affixed to your marking stamp has not only been thought of before, but has actually been patented. If so, it may at some future time subject your office to a heavy charge to the patentee for its use, or perhaps to a lawsuit. The Postmaster General therefore desires that you will give the subject such timely attention as will be calculated to avoid such consequences.

He also desires me to call your attention to the imperfect impressions made by the marking stamps in your office, and to ask if a remedy cannot be found for the defect. Complaints are received at the department almost daily from all parts of the Union on this subject, and the P. M. General would be much gratified if some plan could be devised to make them less frequent.

Very respectfully,
(Signed) ST. JOHN B. L. SKINNER,
Acting 1st Ass't P. M. G.

2666 *Defendant's Exhibit* 165.—*April* 1, 1878.—*J. A. S., Ex.*

(Copy.)

TROY, N. Y., *March* 14, 1864.

Hon. POSTMASTER GENERAL:

SIR: Herewith I enclose you a certified search of Patent-Office records in relation to the title of the invention in "Post-marking and Cancelling Postage-stamp Device," now before the Committee of the House on the Post-Offices and Post-Roads.

Your ob'd't servant,
(Signed) MARCUS P. NORTON.

POST-OFFICE DEPARTMENT,
Washington, D. C., Mar. 28, 1878.

I, David M. Key, Postmaster-General of the United States of America, certify this to be a true copy of the original now on file in this department.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post-Office Department to be affixed at the city of Washington the day and year above written.

[SEAL.]

D. M. KEY,
Postmaster-General.

2667 *Defendant's Exhibit* 166.—*J. A. S., Ex'r.*

UNITED STATES OF AMERICA:

POST OFFICE DEPARTMENT,
Washington, D. C., January 25th, 1878.

I, D. M. Key, Postmaster-General of the United States of America, certify that the annexed is a true extract from one of the records of this department.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

D. M. KEY,
Postmaster-General.

POSTAGE-STAMPS SENT.

Day sent.	Date of receipt.	Office and postmaster.		Denomination.		Amount.
				10's.	5's.	
1847. July 1 * * *	1847. July 1 * * *	New York, N. Y..... * * * * * * * * * *	R. H. Morris..... * * * * * * * * * * * *	20,000 * *	60,000 * *	$5,000 00 * * * *
				3's.	1's.	
1851. June 30 *	1851. July 2 * *	New York, N. Y..... * * * * * * * * * *	W. V. Brady..... * * * * * * * * * * * *	20,000 *	10,000 *	$700 00 * * *

(Here follows diagram marked page 2668.)

2669 *Defendant's Exhibit* 167.—*J. A. S., Ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the bound volumes of the library of this office of the specification and drawing in the matter of the English letters patent granted D. G. Berri, dated April 24, 1860, No. 1020, for "an improved date stamp."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this sixth day of February, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

W. H. DOOLITTLE,
Acting Commissioner.

A. D. 1860, 24th ril. . 1020.

Date stamp.

Letters patent to David Garden Berri, of Bloomsbury, in the county of Middlesex, for the invention of "An Improved Date Stamp." Sealed the 27th September, 1860, and dated the 24th April, 1860.

2670 Complete specification filed by the said David Garden Berri, at the office of the Commissioner of Patents, with his petition and declaration, on the 24th April, 1860, pursuant to the 9th section of the Patent Law Amendment Act, 1852.

To all to whom these presents shall come:

I, David Garden Berri, of Bloomsbury, in the county of Middlesex, send greeting:

Whereas I, the said David Garden Berri, have petitioned Her Majesty to grant unto me, my executors, administrators, and assigns, Her Royal Letters Patent for an invention for "An Improved Date Stamp":

Now, know ye, that I, the said David Garden Berri, do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement, and the drawings therein referred to (that is to say):

My invention, which has reference to the improved date stamp, to be employed for the general purposes of stamping letters, documents, or otherwise, whereby any alteration, by means of movable type, may be made with greater facility than hitherto, consists in the lower portion or face of the stamp or plate being connected to the body of the same by means of a hinge joint and screw fastening, in such manner that the said face may be thrown or turned back, and admit of the removal of the type for the purpose of changing the same when required for the alteration of the date or otherwise.

But in order that my said invention may be more fully understood and readily carried into effect, I now proceed to describe the same by the aid of the accompanying drawings, reference being had to the letters and figures thereon marked (that is to say)-

Fig. 1 represents a vertical end view of my improved date stamp Fig. 2 a side view thereof; Fig. 3 a plan or underneath view;

2671 showing the face of the stamp or engraved plate as applied to postal purposes; Fig. 4 a side view of the same, showing the application of the hinge opening joint, and the manner in which the type are to be removed or changed; Fig. 5 a top or plan view thereof; Fig. 6 a longitudinal section, taken through the dotted line in Fig. 5; Figs. 7 and 8 detached front and side views of the thumb-screw for securing the face to the body of the stamp; and Figs. 9 and 10 corresponding views of one of the type. In each figure the same letters of reference denote similar corresponding parts.

A A the handle of wood or otherwise; B B metallic hinge plate or body of the stamp to which the handle is attached; C C engraved face or plate from which the impression is taken; D D pin or hinge joint for enabling the stamp to be opened or separated for the removal or changing of the type, as represented at Figs. 4 and 5; E E thumb-screw or pin for holding or securing the parts together when closed and required for use; F and F[1] semicircular openings and tap or nut in the upper and lower plates, forming, when closed, the hole or socket in which the screw or pin is secured; G G movable type; H H openings

or perforations in which the same are placed; I I recess or cavity fitting over the flanged heads or tops J J of the type.

In conclusion to the foregoing description, it may be here necessary to note that my improved date stamp may be employed, either in connection with the double or obliterating mark, as represented, or separately, in conformity with the usual requirements, the stamp being used in the ordinary way, and the operation of changing the type effected by the removal of the pin or thumb-screw, so as to admit of the plates being opened or separated, as shown at Fig. 4, and the type removed and others substituted, as required.

Having now described the nature of this my said invention, and the manner in which the same is to be performed, I would have it clearly understood that I do not claim the exclusive use of the several
2672 parts hereinbefore mentioned and referred to, except when the same are employed in and for the purposes of my said invention, which I hereby declare to consist in the construction and employment of a date stamp, in which the engraved portion of the stamp is hinged to the upper plate or body of the same, so as to admit of the separation of the plates, and facilitate the changing of the type.

In witness whereof, I, the said David Garden Berri, have hereunto set my hand and seal this twenty-first day of April, in the year of our Lord one thousand eight hundred and sixty.

DAVID GARDEN BERRI. [L. S.]

Witness:
T. R. DARKIN CAMPBELL,
Clerk to Messrs. Weatherdon & Co., 77 Chancery Lane.

Ex'd—H. M. H., E. A. M.

(Here follows diagram marked page 2673.)

2674 *Defendant's Exhibit* 170—*Robertson.—J. A. S., ex'r.*

DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted T. J. W. Robertson, dated September 22, 1857, No. 18249, for "hand stamp."

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

The United States of America to all to whom these letters patent shall come:

Whereas T. J. W. Robertson, of New York, N. Y., has alleged that he has invented a new and useful hand stamp, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said hand stamp, and

that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the
2675 Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said hand stamp, and praying that a patent be granted for that purpose.

These are therefore to grant, according to law, to the said T. J. W. Robertson, his heirs, administrators, or assigns for the term of fourteen years from the twenty-second day of September, one thousand eight hundred and fifty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said hand stamp, a description whereof is given in the words of the said Robertson in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States of America the eighty-second.

[L. S.] JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

J. HOLT,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, T. J. W. Robertson, of the city, county, and State of New York, have invented a new and useful improvement in hand stamps, and I do hereby declare that the following is a full,
2676 clear, and exact description of the same, reference being had to the accompanying drawings making a part of this specification, in which

Fig. 1 is a side sectional elevation of my improvement.

Fig. 2 is a central sectional elevation of the same.

Fig. 3 is a plain view of the bottom of the stamp.

Similar letters of reference indicate corresponding parts in the several figures.

This invention consists in the construction of hand stamps in the manner herein described and represented.

A is the handle, to the bottom of which is attached a metallic forked shank, B. To the bottom of this shank is attached a metallic ring, C, said ring being secured to the shank by means of screw bolts (*a*). The lower part of the shank is also notched as shown at (*b b*), in order to receive the ring C, and form a front bearing for it. Various other methods may be adopted at the pleasure of the maker for attaching the ring C to the shank B.

When the stamp is intended for a letter stamp, the name of the post-office may be engraved upon the face of the ring C, as shown in Fig. 3.

D is a shaft, which passes horizontally through the shank B. Upon

this shaft are placed three type wheels (*c*, *d*, *e*), which revolve independent of each other on the shaft D. The faces of these type wheels may be provided respectively with the names of the months of the year, and also the ten numerals.

The shaft D is arranged at such a distance from the face of the ring C that the type wheels (*c*, *d*, *e*) may be turned, so that the types upon said wheels will come in line, or form a horizontal plane with the types on the ring C; and thus when the face of the stamp is inked over by any suitable inking device, and the stamp duly pressed upon a letter or other suitable substance, an impression will be left thereupon of the types contained on the ring C, and also of those types of the type wheels (*c*, *d*, *e*) that are in line with the types of the ring C.

2677 It will be seen that only one line of types upon the type wheels can simultaneously come into a horizontal plane with the types on the ring C, the remaining types being distributed around the peripheries of the type wheels (*c*, *d*, *e*), so that they cannot touch the paper on which the impression is to be made.

E is a lock pin which passes horizontally through the shank B, and also through the type wheels (*c*, *d*, *e*). The object of this pin E is to lock the type wheels, so that when any one line of types has been turned and brought into a horizontal plane with the types upon the ring C, the said line of types will be held fast and prevented from getting out of place.

By removing the bolt E the combination of letters on the type wheels (*c*, *d*, *e*) may be changed at pleasure.

F is a space wheel or washer upon the shaft D. It is there placed for the purpose of having a greater distance between the type wheels

The stamp here shown has the face of its ring, C, made in circular form. But it is obvious that the shape of the ring may be changed to suit the pleasure of the purchaser without changing the general construction of the stamp.

The type wheels and ring may also be engraved with any suitable letters or figures.

This device is particularly useful for stamping letters, tickets, etc., where the words or number has to be constantly changed.

The common stamps are provided with movable or separate types secured by means of a screw.

These types are liable to be lost or misplaced. But in my improvement the types are always at hand, ready for use.

Instead of the bolt E for locking the type wheels, a small spring may be used, one end being attached to the shank B, and the other end pressing into the interstices between the lines of types upon the type wheels.

2680 *Defendant's Exhibit* 180.—*Troy, July* 16, 1878.—*I. B., ex'r.*

(Copy.)

TROY, N. Y., *Feb.* 6, 1864.

Hon. ABRAM WAKEMAN, P. M.,
New York:

SIR: Your letter of the 22d ult. is before me for answer, it having been referred to me for that purpose by Mr. Ransford, to whom it is addressed. Mr. Ransford is not and does not claim to be the inventor at all of the stamp to which you refer. The "double canceling stamp" now used by you in your post-office is my invention as far back as the year A. D. 1856, as I can most fully and satisfactorily prove. It was patented to me in the early part of the year 1863, upon an application made by me a long time before then. I had several such stamps made in 1858, as I can prove by the person who made them. In the year 1859 I conceived the plan of attaching a cutting device to a cylinder dating stamp, which combination of "cylinder dates" and "cutting device" was patented to me in August. 1859. This patent was by me assigned to "F. G. Ransford, Peter Low, and Chas. Eddy & Co.," some time during that year. This device was tested in the Washington City post-office in the year 1859 or '60, by order of Hon. Horatio King, First Assistant P. M. G. It was found not to operate well, and Mr. Tree, of the Washington post-office, reported against it. I then returned to the original invention, which I found by test made at the New York office to be the best invention. The "cutting device" was also tested in your office, and found to cut too much into the letter; but at the same time making a more effectual cancellation of the stamp. I then made improvements upon the double canceling stamp (by cutting), which were also patented to me in the early part of 1862. In the year 1859 a
2681 patent was granted to me. In the year 1862 two patents were granted to me, and in the year 1863 one patent was granted to me, all of which were for improvements of a different character in post-office stamps. In the year 1856 I first submitted the double canceling stamp to the Post Office Department for consideration. This is the same stamp in principle and combination which you now use, and have for about three years used in the New York post-office. During each year from 1856 to the year 1863 inclusive I have urged upon the Post-Office Department the use of said stamp. So I have the improvements covered by the patent of 1859-'62, and after having tested them all in the manner and the time (as well as place) selected and directed by the Post-Office Department, the improvements of 1856, patented in 1863, were selected and adopted as the best, and which at first I thought of the least value. The patents of 1862 and 1863 are now held by assignment by "Jacob Shavor & Albert C. Corse" of this city, as the Patent Office records will most fully show, and who also own one-third of the patent of the "cutting device" of 1859, and which was invented by me in that year.

I first began with the Post-Office Department for a change in the then existing unwieldy plan of postmarking and mailing of letters in the year 1854, and have letters, &c., to show that fact. The P. O. Department at Washington contains a large number of letters written by me in the years 1858, '59, '60, '61, '62, and '63, upon the matter of postmarking letters and canceling stamps thereon, also in making up of the mails. I have the best of proof of this. More than that, the records fully show it to be true.

These improvements I have also patented in Europe, and which are now meeting with great favor there. The Postmaster General gave me an order in the fore part of 1859 to use for three months in the Troy post-office my invention now used by you. I have the original order.

Any information you may desire I will furnish you with if in
2682 my power to do so within the strict rule of right. You can address Mr. "Shavor & Corse" aforesaid.

Your ob'd't serv't,
(Signed) MARCUS P. NORTON.

POST-OFFICE DEPARTMENT,
Washington, D. C., Mar. 28, 1878.

I, David M. Key, Postmaster-General of the United States of America, certify this to be a true copy of the original now on file in this department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post Office Department to be affixed, at the city of Washington, the day and year above written.

[L. S.] D. M. KEY,
Postmaster-General.

2683 *Defendant's Exhibit* 181.—*Troy, July* 16, 1878.—*I. B., Ex'r.*

(Copy.)

WASHINGTON, D. C., *Mar.* 14, 1866.

HON. WILLIAM DENNISON,
Postmaster-General:

SIR: In addition to the amount of money expended by Messrs. Shavor & Corse for me and on my account, as stated by them in their affidavit made on the 2nd day of January, 1866, and to be found on page 6 of Ex. Doc. No. 30, 39th Congress, 1st session, I have expended full $5,000 (five thousand dollars), which was done before my assignment of the patents to them. This sum was expended in the perfecting of the invention described in the patents (there being two and one reissue), and in getting the same into use. This is for money actually and necessarily expended, nothing being charged for my services rendered as attorney in the suit brought to establish the validity of the patent, nor was there anything charged for counsel who tried the cause before the court on part of the plaintiffs.

I may further say, that this invention has been in use by the department in the New York office since the fall of the year 1860, at a saving in that office of six thousand dollars per year in the item of clerk hire alone. It is now in extensive use by the department. I have never received from the department or government in any manner whatever a single dollar for the use of this invention, nor have my said assignees.

In order to successfully defend my right to this invention as the original and first inventor, it became necessary to part with the title by deed of assignment to Shavor & Corse, as at that time parties to suits in the United States courts could not be witnesses in their own behalf. Since
then Congress has changed the law in that respect. But for this,
2684 I would to-day have been the owner of the entire invention. So
it is, and all I now ask or expect is a fair, just, and liberal compensation in an equitable proportion to the real and actual value of the invention, for the term or life of the patent, to wit, 17 (seventeen) years from the date thereof.

Very respectfully, your obed't serv't,
(Signed) MARCUS P. NORTON.

POST-OFFICE DEPARTMENT,
Washington, D. C., Mar. 28, 1878.

I, David M. Key, Postmaster-General of the United States of America, certify this to be a true copy of the original now on file in this department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post Office Department to be affixed, at the city of Washington, the day and year above written.

[L. S.] D. M. KEY,
Postmaster-General.

2685 *Defendant's Exhibit* 182.—*Troy, July* 16*th*, 1878.—*I. B., Ex'r.*

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. M. McGrew, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct copy of the original receipt of Chauncey Clifford Nott, dated March 31, 1853, for fifty dollars, for services in the Post-Office at Cleveland, Ohio, from February 2d to March 9th, 1853, pertaining to the accounts of D. M. Haskell, late postmaster at Cleveland, Ohio, in the office of the Sixth Auditor.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] J. M. McGREW,
Auditor.

Dan. M. Haskell, P. M., to Chauncey Clifford Nott (age 27 years), Dr.

To services in the post-office at Cleveland, Ohio, from Feb. 2d to March 9th, 1853 ..... $50 00

Received of D. M. Haskell, postmaster of Cleveland, Ohio, fifty dollars in full of the above account.

Post-office, Cleveland, Ohio, March 31st, 1853.

C. C. NOTT.

(Here follow folios 2686 and 2687, text and cut.)

2688 NORTON'S POSTMARKING AND POSTAGE-CANCELLING STAMP.

Hon. J. A. J. CRESWELL,
Postmaster-General of the United States of America:

Your department having under consideration the application for settlement of and payment for the past and future use of the invention and improvements in postmarking letters, packets, &c., and for the cancellation of the postage-stamps thereon, contained in the letters patent granted to Marcus P. Norton, of the city of Troy, State of New York, as the original and first inventor thereof, on the 14th day of April, 1863, and reissued on the 3d day of August, 1869; also another letters patent dated July 13th, 1869, and antedated to June 10, 1869; and also certain other letters patent bearing date as follows, to wit: December 16, 1862, and August 15, 1865, the invention and improvements patented April 14, 1863, reissued August 3, 1869, having been in successful and extensive use by the Post-Office Department for the past

eight years, after an experimental trial and test of the same in the larger post-offices for a term of nearly two years prior to the permanent adoption of the same, in March, 1863, by the Postmaster-General, it is deemed best in the examination of the papers and consideration of the premises and case by you, to solicit your attention to the following propositions; that is to say:

1st. That the use of this invention is of great value to your department, and results in the saving annually of large sums of money
2689 to the government, and it prevents frauds upon the postal revenue, and economizes in time and facilities the making up of the mails for transportation.

2d. That you have authority under the law to make compensation for the use of this invention under the said patents, or either of the same, by contract for a term of years.

3d. That Marcus P. Norton has legal right to receive from the Post-Office Department compensation to be made by it for the past and future use of said invention by virtue of any contract which may be made by the Postmaster-General, founded upon said patents or either of them, and upon the value, usefulness and importance of said invention to the postal service.

POINT FIRST.

As to the value, usefulness, necessity, importance, and expediency of this invention for purposes in the postal service.

Proceeding to the consideration of the testimony upon this point, it is so conclusive and so abundant that it is no longer a matter of controversy. The records of your department afford much evidence upon this question, and this is strongly corroborated by those witnesses who have testified to its value, in the legal investigations where its value has been drawn in question. The testimony of the officers and agents of your department as to the necessity and value of the use of this invention, is so complete and full that we direct your special attention to it. In July, 1860, the Postmaster-General issued an order prohibiting the cancellation of postage-stamps by the dating or postmarking stamps, and requiring this canceling to be done by a separate
2690 instrument. This involved much additional expense, and the postmaster at New York, then General Dix, stated that it could not be done without a large additional clerical force. In this extremity he attempts to construct an instrument which will avoid the necessity of the employment of the required additional clerical force. He describes his supposed invention in these words:

"The order of the Postmaster-General of the 23d of July last, prohibiting the cancelling of postage-stamps by the dating or postmarking stamps, and requiring the work to be done in conformity to the postal regulations as well as in conformity to the law in relation thereto, by a separate instrument, could not be executed without an increase of the clerical force. We were compelled a few days ago to keep back a mail nearly half an hour in order that the postage-stamps on letters to be transmitted by it might be properly cancelled.

"When the letters amount to thousands, the duplication of the work of cancelling and postmarking is a very serious matter.

"In this extremity, and with an extreme reluctance to augment the clerical force of this office for the purpose of doing the work, I have hit upon an expedient which answers the purpose perfectly. It occurred to me that the separate instrument required by the department might

be attached to the postmarking stamp, and I sent for the stamp-maker and gave him my idea, which he has carried out very well. The cancelling-stamp is soldered on to the other, so that one handle answers for both; the double operation is performed with one blow; there is, therefore, no increase of work."

And there was therefore no increase of the clerical force or number of clerks in that office, as would certainly have been the case to just twice the number of clerks then employed in the postmarking and postage-cancelling of letters, &c., had not this Norton invention at that very time come to the rescue and to the aid of the department in such necessity and extremity.

On the 10th day of August, 1860, General Dix is informed by
2691 Acting First Assistant Postmaster-General Skinner that his supposed invention had been thought of before, whereupon he says:

"The arrangement is an excellent one and will save much labor in making up the mails, but I fear the attachment you have fixed to your marking stamps has not only been thought of before but has actually been patented; if so, it may at some future time subject your office to a heavy charge to the patentee for its use, or perhaps to a lawsuit.

"The Postmaster-General, therefore, desires that you will give the subject such timely attention as will be calculated to avoid such consequences."

The Post-Office Department desired to test the utility of this invention, and for that purpose the Postmaster at New York was requested to report to the Post-Office Department as to the utility of this invention, and on the 3d day of January, 1863, Mr. Wakeman, in his report upon this subject, uses the following language:

"Some time since you requested that I should test the utility of Norton's double or combined postmarking and postage-cancelling stamp and then report my opinion thereon. It was in use in this office when I first entered upon my duties.

"We have used the cork for the cancelling device, by inserting it in the cylinder of the cancellor. This has proved successful, and cancellation is now performed in this way. I am confident that no office in the country performs cancellation more thoroughly.

"The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interests of the department would be subserved by securing its general use."

Marcus P. Norton, who is the inventor and patentee of this invention, memorialized Congress for compensation for the use of this invention, and the committee of the Senate, to which the memorial was referred, of which Hon. Jacob Collamer was chairman, desired from the Post-Office Department information respecting the claim then pending before them. On the 1st day of March, 1865, Postmaster-General Dennison, in reply to the communication of the Senate committee, said:

2692 "SIR: I have the honor to return herewith the papers submitted to me, with your letter of the 24th ultimo, in relation to the claim upon the patent granted to Marcus P. Norton for a combined postmarking and cancelling stamp, now in use by this department.

"In reply to your inquiries on the subject, I have to state, that this stamp is an invention of importance and value to the postal service, particularly at our large post-offices, where expedition in the making up the dispatch of mails is always an object of importance; and it is also an effectual instrument for cancelling postage-stamps, and in that respect

it is of value to the extent that it diminishes the chances of cleansing postage stamps and using them a second time.

"It is stated that the use of these stamps effects a saving in labor of seven clerks at the New York post-office, and it is probable that a saving of clerical labor, in like proportions, has been effected by its use in all the large post-offices. The extent to which the cancelling stamp has protected the postal revenues from losses incidental to the cleansing of postage-stamps once used, and using them the second time, is of course impossible to determine."

The subject of the memorial in relation to said invention not having been disposed of by Congress at that session, its attention was again invited to the consideration of this subject.

The Committee on Post-Offices and Post-Roads of the House of Representatives addressed a communication to the Postmaster-General, soliciting information upon this subject. On the 15th day of January, 1867, your predecessor in office, in reply to the communication of said committee, used the following language:

"I have examined the papers sent me in respect to Norton's cancelling stamp, as suggested by your letter of the 20th of December. It is difficult for me to determine the amount which ought to be allowed for the use of that invention. The department has already saved several hundred thousand dollars by its use, and I have no doubt it will continue to save large sums by its future use. The question of value to
2693 the department has long been settled. The necessity to the department of its continuing it in use is beyond question. It is the best there is.

"If no settlement is made by the government so that these stamps can be made and furnished to the department without interference or embarrassment from the owner of the patent, it is apprehended the department will be compelled to resort to a more expensive and less approved method of cancelling stamps, and thus incur great expense and suffer great loss."

Congress having failed to take any action on the memorial, suit was instituted against the United States, in the United States Court of Claims, to recover compensation for the use of said invention by the Post-Office Department. During the pendency of that suit in the Court of Claims, your department was called upon to furnish evidence to be used upon the trial of said cause, and in response to a rule of the Court of Claims issued for that purpose, your department, on the 25th day of March, 1868, made a return to the rule of the Court of Claims. One of the questions submitted to your department, and upon which information was desired, was as follows:

"4th. Statement of the estimated saving of expense per annum to the United States by the use of the 'Norton postmarking and cancelling stamp,' that this statement shall embrace the number of clerks engaged in post-marking letters and cancelling stamps in the different post-offices where the Norton stamp is in use, giving the number required to perform said work before and subsequent to the introduction of said Norton stamp, and the salaries or compensation paid annually to persons so employed."

The reply of your department to this inquiry was as follows:

"It is not within the power of the department, at this time, to furnish any reliable estimate of the saving of expense by the use of the Norton stamp.

"From data obtained in 1866 it was estimated that the depart-

2694 ment then saved, annually, the compensation of two hundred and fifty-four clerks, whose salaries ranged from $700 to $900 a year."

Your department, in the communication from which the above extract is taken, stated that at that date there had been manufactured and used by the Post-Office Department two thousand two hundred and one of these stamps.

At the present time there is a largely increasing demand for the use of the said invention and improvements by the postmasters throughout the country, and the same are being furnished by your department under a contract made by your predecessor with Benjamin Chambers, jr., at the rate of between two and three hundred per quarter on an average, or from eight hundred to one thousand during each year.

There is a great saving to the department in the cost of the manufacture of this instrument as compared with the old devices used separately for the postmarking of letters, and thereafter for the cancellation of the postage-stamps by a second handling of the said letters. The same will last a long time, and not require repairs at any expense to the department. The cork is the most certain, the less laborious in the use of the postmarking stamp, and more successful and economical than any other known cancelling device.

We now invite your attention to the testimony of the witnesses who were examined upon the question of the value of the use of these stamps, taken and submitted to the Court of Claims.

Samuel P. Kittle testifies:

"Supposing an office required two clerks for the performance of the duties for which this stamp or contrivance is intended, and that one of the clerks were able to do it by the introduction of this, which I judge to be a fair statement of the case, then the office would save the hire of one clerk; it would also save an item in the expense of stamps; it would also save an item in the room that would otherwise be re-
2695 quired; it would also, in my judgment, cancel the postage-stamp more perfectly. All of this saving justified me in the conclusion that the stamp would be worth at least the salary of one clerk in each office during each year. As a business man and as a mechanical expert, I would state, that the government ought, at least, to be willing to pay the man who was the means of inventing, contriving, and furnishing an instrument to create so great a benefit to the department, and the people, in truth, at least one-half that saving."

And this witness being asked whether $100 per stamp would be unreasonable to pay to the inventor, answers that it would be a very low price.

Edmund Hoole, the former manufacturer of these stamps, for the government, under the contract of Fairbanks & Co., says, "that $100 for each stamp manufactured would be a fair price for the government to pay for the use to this patent."

Benjamin Chambers, jr., the contractor, who manufactures these stamps for your department, under a contract made by the Postmaster-General with him for a second term of four years, says:

"If the stamp cancelling and marking the letter at the same time save the labor of an extra hand during that time, and the patent-right for the same belonged to me, in my judgment, if I asked for the use of said patent-right stamp the sum of seventy-five dollars for every one used, I would not be unreasonable, and I don't think I should hesitate to ask one hundred dollars each. What I have said on this subject is the result of no close calculations, but merely my judgment of it; the

result of a few moments' consideration of the amount of labor saved by it, and the number of postage-stamps which it probably prevents the reissue of by perfect cancellation."

The record from which this testimony is extracted is filed with the clerk of the U. S. Court of Claims, at his office at the Capitol, and may be found therein and thereat, if the same shall be required of us. We may safely assume, therefore, that the question of the value of the use of
2696 this invention is settled beyond all question. Neither your department, the committee of Congress, nor the Court of Claims have declined to award compensation for this invention because it was not valuable, useful, and of great importance to the postal service. It is conceded by all of them that it is an invention of great value, and that its use saves very large sums of money to the government each year. The Court of Claims (two of its judges dissenting) failed to give judgment in the suit before them, because the evidence did not satisfy the court that there was a specific contract by your department to make compensation for the use of this invention, and that because of the want of evidence of the existence of such contract, the court had no power to award the compensation which it was conceded this invention was entitled to receive under said patents, and which ought to be allowed and paid.

Point Second.

As to your legal authority to make compensation for the use of this invention, by a specific contract or otherwise.

It is very clear that there is no law which prohibits your making an agreement to make compensation for the use of this invention, unless such prohibition results from the provisions of the acts of Congress in relation to the making of contracts by the executive departments of the government. The only act of Congress now in force on this subject is as follows:

"No contract or purchase shall hereafter be made unless the same be authorized by law, or be under an appropriation adequate to its fulfillment." (12 U. S. Stat. at Large, p. 220. sec. 10, ch. 84.)

You can, therefore, make a contract with the inventor and pat-
2697 entee, Norton, to compensate him for the use of his invention, for there is a law authorizing you to make the contract, and there are appropriations which may be applied to that purpose. It is not necessary that there should be a law authorizing the specific contract which we propose and offer to make. If the making of it is an incident of the general duties which devolve on you, then your power is as broad as the duty imposed. The duties which the law imposes upon you are to be found in the act organizing your department. The first section of that act defines the general duties of the Postmaster-General, in the following language:

"He shall pay all expenses which may arise in conducting the Post Office and in the conveyance of the mail, and all other necessary expenses arising on the collection of the revenue and management of the General Post-Office." (Sec. 1 act of March 3, 1825, 4 U. S. Stat. at Large, 102.)

"All letters brought to any post-office half an hour before the departure of the mail shall be forwarded therein; but at offices where, in the opinion of the Postmaster-General, more time for making up the

mail is required, he may prescribe accordingly, not to exceed one hour's time." (Act of March 3, 1825, U. S. Statutes at Large, vol. 4, page 105, section 11.)

The act of Congress requiring postage-stamps to be defaced and destroyed, so as to prevent their reuse, for the prepayment of postage on letters after once used, is as follows, to wit:

"It shall be the duty of every postmaster to cause to be defaced, in such manner as the Postmaster-General shall direct, all postage-stamps attached to letters deposited for delivery or to be sent by mail." (9th U. S. Stat. at Large, 589.)

It was the duty of the Postmaster-General, under this law, to prescribe the best mode of accomplishing the ends or purposes required.

2698 The legal duty of the Postmaster-General to cause the postage-stamps used in the transmission of letters to be effectually defaced and destroyed is very clear, and that there is coupled with that legal duty authority to that officer to make such agreements or contracts for such instrument as will most effectually accomplish the desired object, is equally clear. The Post-Office Department having decided that this invention is best adapted to the perfect cancellation and destruction of postage-stamps, and having adopted it for general use, should make compensation for the use of said invention. The use of this invention results from the imposition of legal duties upon the Postmaster-General, and he may lawfully use any means which in his judgment will best enable him to discharge those duties. These principles are fully affirmed in several cases by the Supreme Court of the United States. We refer to some of them. In the case of Nelson vs. Lagow, 12 How., 101, it was objected that the United States could not acquire the legal title to land under a deed of trust given to secure the payment of money due to it; that the United States, by the act of Congress approved May 1, 1820, could purchase no land except under a law authorizing such purchase. But the court, in this case, held that the act did not prohibit the acquisition of the legal title to land, without express legislative authority, when obtained as aforesaid, and say, "That such powers exist as an incident to the general right of sovereignty, and may be exercised by the proper department, if not prohibited by special legislation, we consider settled by the cases of Dugan, ex'r, vs. The United States (3 Wheaton, 172); United States vs. Tinzey (5 Peters, 117); United States vs. Bradley (10 Peters, 343); United States vs. Lynn (15 Peters, 290).

These authorities fully sustain the legal proposition for which we are here contending. They fully recognize the right of the head of

2699 an executive department to use such means to discharge legal duties as to him shall seem most appropriate, and best adapted to that end and purpose.

The right of a department to make compensation for the use of a patented invention has been considered by the Attorneys-General at different times. We refer you to two cases where this right is fully conceded. In the 9th volume of the Opinions of the Attorneys-General, p. 135, there is an opinion of Attorney-General Black upon this question, in which he uses the following language:

"The department under whose direction a machine for which a patent was issued was made and used, may legally allow the patentee the amount claimed by him as damages for such use, provided there be any fund under the control of the department which can be appropriated for that purpose."

Attorney-General Stanton, upon the reference of a similar question to him, says:

"There is nothing in the act of Congress of July 2, 1836, which forbids an employee from supplying your department, at agreed rates, with any device or improvement invented and patented by him, that may be useful or convenient in the postal service." (Trott's Case, Opinions of Attorneys General, vol. 10.)

The question in that case was whether the Postmaster-General could make a contract with an employee of his department for an improved label for mail bags, for which he had obtained a patent. It was supposed that the act of Congress approved July 2, 1836, prohibited the making of such contracts, because the inventor was an employee of the Post-Office Department. The Attorney General held that there was no prohibition of such contract in the act referred to, and advised that the Postmaster-General might lawfully make a contract for the needed article. There was no appropriation then made to pay for the desired article, nor was there any law authorizing the special contract, yet the contract was actually and lawfully made.

2700 Congress annually appropriates money for the necessary and required expenses of your department. Portions of this fund are subject to your exclusive control, and may be disbursed as you see proper in the management of the business and affairs of your department required by the law. You may, therefore, use such portions of it as you may deem just and expedient to compensate the inventor and patentee, Norton, for this invention, and for its use in the postal service by the authority of your department.

"The law of Congress, approved on the 3d day of March, 1851, among other things, provides that all stamps used for the payment of postage upon mail matter shall be defaced or cancelled at the post office where the same shall be mailed." (See U. S. Statutes at Large, vol. 9, page 589.)

"It shall be the duty of every postmaster to cause to be defaced in such manner as the Postmaster-General shall direct, all postage-stamps attached to letters deposited in his office for delivery, or to be sent by mail; and if any postmaster sending letters in the mail with postage-stamps attached, shall omit to deface the same, it shall be the duty of the postmaster to whose office such letter shall be sent for delivery to deface the stamp, and to report the delinquent postmaster to the Postmaster General; and if any person shall use or attempt to use, in prepayment of postage, any postage-stamp which shall have been before used for like purposes, such persons shall be subject to a penalty of fifty dollars for every such offence, to be recovered in the name of the United States, in any court of competent jurisdiction." (See section 279 Postal Laws and Regulations.)

The records of the Post-Office Department will show most conclusively, and beyond doubt, that hitherto it has been the right of, and customary for, the Postmaster-General to contract, in such manner and upon such terms as could be agreed upon for the best interests of the government, for the use of such patented inventions and improve-

2701 ments, under letters patent, as by him have been deemed expedient, and considered valuable, useful, and important in the successful, expeditious, and economical management of matters appertaining to the postal service, among which may be found devices for catching and delivering mail-bags upon postal cars, also improvements for the construction of the postage stamp by the puncturing or embossing, or breaking of the under side in such manner as to permit the ink from

the cancelling device to impregnate the same with more ease and certainty, also mail locks for mail bags, and many other inventions and improvements not deemed necessary here to specify.

The law or acts of Congress requiring the Postmaster-General to do certain things in the management of the affairs and business of the Post Office Department, carries with it the legal right to employ such means or devices as in his judgment shall be the most effective, expeditious, economical, and successful in the accomplishment of the same, or of such things as shall have been required by the law.

The Norton combined postmarking and postage cancelling stamp is now furnished by the Post-Office Department at the rate of not less than two hundred per quarter of three months, and, besides this, the same is being furnished to the postal railway cars quite extensively, and for which there is a rapidly increasing demand for its use, it having thus proven of great service, and regarded as almost indispensable in the making up of the mails, in postmarking, and for the cancellation of the postage stamps upon letters for delivery at the stations on the route, and especially so when the time and the distance between stations is short, as is very frequently the case on almost all routes where postal cars are now used.

The saving in the clerk-hire or employment of at least six hundred and seventy six clerks at this present time, October, 1869, in the
2702 post-offices alone throughout this country, effects a saving of at least as many thousand dollars during each and every year, for it cannot but be regarded as a fair estimate, at least, that you pay one thousand dollars per year to each clerk employed.

You have 148 No. 1 post offices,
" " 287 " 2 " "
" " 599 " 3 " "

now in full operation, while there are many others rapidly advancing to take a place among these classes of post offices, as the country grows in size, and the population increases.

Were it not for the said Norton invention and stamps, your first-class offices would at least need, and absolutely require, from one to eight extra stamping or post-marking and postage-stamp cancelling clerks.

The very lowest possible estimate that can be made will save two clerks on an average in all the first class offices, which will be 296 clerks. In the No. 2 or second class post offices, say two thirds on an average, which would be 180 clerks, and in the No. 3, or third class post-offices, say one-third on an average, which would be 200 clerks, and in all these, at this low estimate, the whole amount will be 676 clerks, whose services would be actually and positively required in addition to those now employed, but for the use or employment of the said Norton invention; and as the country advances in its greatness, and the number of post-offices become increased from year to year, permanently, so will the value and importance of this invention and improvements become correspondingly increased.

The above estimate does not include the postal car clerks employed in same line of duty, of which there are already a large number, and which are also largely and rapidly increasing, and where this stamp and invention must be used in many cases, and on many routes, in order that the mails may be made up in time for delivery at the stations.
2703 We submit, therefore, that your authority to make a contract to pay for this invention, or for its use, is very clearly shown, and that you have that authority from the existence of said appropriations, as well as from the act of Congress which imposes upon you the duty

of providing the means by which the stamps used in the transmission of letters shall be defaced and destroyed by the postmaster at the office where the same shall have been deposited for transportation in the mails, whereby to protect and secure the postal revenue of the government, and requiring expedition in the making up and transportation of the mails.

POINT THIRD.

Marcus P. Norton, the original and first inventor of the invention and improvements contained and set forth in the several letters patent under consideration, with the view and purpose of settling and determining compensation for the use of the same, being the patentee and the legal and equitable owner of said invention and said several patents, has the lawful right to contract for and to receive compensation for the use of said invention and improvements.

A printed pamphlet, marked No. 7 in the schedule of documents and papers now before you (upon which documents the application before you is founded), and signed by six different persons, has been filed, claiming certain things founded in gross untruthfulness, without even a shadow of evidence or proof to sustain a single point therein asserted as to the said patents and the title thereto, now before you for consideration in said application for compensation.

A letter signed by Jacob Shavor and Albert C. Corse, and dated Troy, N. Y., August 12th, 1869, in speaking of the title and
2704 ownership of the said invention and patents, and for the most positive and reliable information as to the same, very properly refers you to the records of the U. S. Patent Office.

We have produced certified copies of each and every paper in anywise relating to the said letters patent, and the same are marked in the said schedule as Nos. 16 and 17, and to which you are most respectfully referred. We have also produced for your inspection and examination a certified search and abstract of the U. S. Patent Office records upon the subject-matter of the title and ownership of the said several inventions and patents before you, and named in the said schedule as well as numbered 1, 2, 3, and 4, to which you are most respectfully referred.

By these papers, under the great seal of the U. S. Patent Office, it will at once fully appear that the full, complete, and perfect ownership of the said inventions and patents is vested exclusively in Marcus P. Norton, the patentee and original and first inventor of the aforesaid invention and improvements.

On the 20th day of April, 1863, Norton assigned, in trust for certain legal purposes, the letters patent of April 14, 1863, to Jacob Shavor and Albert C. Corse, of Troy, N. Y., which was not recorded in the U. S. Patent Office until nearly one year thereafter, to wit, March 8, 1864, and on the 20th day of December, 1862, the patent granted December 16, 1862, was assigned to Jacob Shavor and Albert C. Corse in trust, as was the fact and purpose in relation to the said patent dated April 14, 1863.

The other and remaining patents were never assigned to any person whatever. It is the letters patent dated April 14, 1863, reissued, bearing date August 3d, 1869, and the patent dated July 13th, 1869, antedated June 10, 1869, and the inventions therein contained and set forth that are of so great value, usefulness, and importance to your department in the postal service of the United States.

2705 It will be observed by reference to said printed pamphlet, that

the pretended claim of these several persons is founded upon mere statements and declarations made by them without the producing of a single paper or thing in proof or in evidence to support such declarations and statements. It is submitted that the legal and sacred rights of persons cannot be assailed, delayed, or stayed in any manner whatever by such statements. Were such to be the case and rule of action, how easy it would be for evil-minded and corruptly-inclined persons to delay, and to secure the whole or an interest in any person's just claim upon or against the government. Whose rights would be secure for a moment before any department of the government, were such proceedings to be allowed to interfere, or to have consideration at all? Whose business would be safe, or who could transact any business in security before any department?

On the other hand, we produce the record from the U. S. Patent Office full, complete, and perfect on the matter concerning the title and ownership of this valuable invention and of the several patents thereon. This record shows beyond a question of doubt that Marcus P. Norton, of the city of Troy, N. Y. (who is the original and first inventor of the said invention and improvements), is the legal and equitable owner of the said inventions and patents, and that all rights under the same are fully vested in him.

Not a single authenticated paper or document is produced by the said six persons, or either of them, to in any manner sustain their pretended, unjust, wicked, and most cruel claim, while, on the other hand, we produced duly-authenticated copies of each and every assignment, transfer, or other paper ever made as touching the title and ownership of the said inventions and patents, and the same show that Marcus P. Norton is the lawful owner of the same, and fully vested with all and the exclusive rights and privileges conferred by virtue of the said
2706 patents or either of them, as granted and issued to him.

The law and court decisions in relation to the Patent-Office records is briefly summed up in the following cases, to wit:

1. A certified copy of an assignment of letters patent is competent evidence, and the party producing the same cannot be required to produce the original assignment. (Brooks vs. Bicknell, 3d McLean, p. 436.)

2. Certified copies of papers in the Patent Office must be received in evidence when offered. (Emerson vs. Hogg, 2 Blatchford, p. 12.)

3. Certified copies of papers in the Patent Office is prima-facie evidence of the genuineness of the original, and absolute evidence of the correctness of the copies from the records. (Parker vs. Haworth, 4th McLean, p. 371.)

We desire to refer your honor to the statement and chain of title as set forth in the fore part of the specifications of the reissued patent now before you, dated August 3d, 1869, for there it will be seen that the chain of title and the ownership of said invention is fully set forth, and being thus set out and contained in such specifications, the same has been endorsed and confirmed as entirely regular and truthful by the Commissioner of Patents, in and by virtue of the reissue of the said patent of April 14th, 1863, in the manner and form therein contained. It will also be observed that this statement in the said specifications is in full harmony, and the same conforms to and with the certified copy record and certified abstract of title produced by us, and filed in the application for settlement, and for compensation for the use of said inventions and patents by your department.

Jacob Shavor and Albert C. Corse never owned, in fact, any part or portion whatever of the inventions patented December 16, 1862,

2707 and April 14, 1863, reissued August 3, 1869. No actual and bona-fide sale was ever made to them, or either of them, of any invention whatever by said Norton. They never paid a single dollar to Norton for any invention in the postmarking of letters and for the cancellation of postage-stamps thereon, or for any other invention or letters patent. The paper called or known as an assignment of said patents was made and executed in trust, in order that Norton might be a competent witness in relation to his caveat upon the invention afterwards patented April 14, 1863; and also that Norton might explain and give testimony in the proposed suit to settle and determine the validity of the patent of 1863 as to the substantial and material differences between the aforesaid patented invention of April 14, 1863, and that on which the patent of August 9, 1859, was granted. The law at that time not allowing an inventor to testify in a suit wherein he should be a plaintiff, they were to occupy for the time the relation of friends to Norton. Congress has since passed a law allowing inventors to be both party and witness in any suit in court, in his own behalf and interest, upon any letters patent.

The said Shavor and Corse instituted the suit in the U. S. Court of Claims to recover against the United States for the use of said invention for the time intervening the date of the assignment from Norton to them (dated April 20, 1863) and the time or date of their reassignment and retransfer of said patent to Norton, on the 23d day of February, 1864. Norton was put on the stand as a witness in that suit, and he testified that he had no interest in the then pending claim, which was for that portion of time above referred to, and which is self-evident upon examination of the said original assignment and reassignment and retransfer of said letters patent. The question was not asked, nor did Norton on that occasion, or upon any other occasion or time, testify that he had no interest in the said letters patent dated April 14,
2708 1863; for at that time Norton held in his possession the explanatory deposition and reassignment and retransfer of the said patent of April 14, 1863, by said Shavor and Corse to him. No question touching the title or ownership of said letters patent was put by the then government solicitor to said Norton upon the cross-examination of Norton as a witness on that occasion.

On the 23d day of February, 1864, the said Jacob Shavor and Albert C. Corse made a deposition explaining their relations with Norton, and the reasons, as well how they came to have the assignment of April 20th, 1863, made to them, and Norton not being able to do much with his said patent in or before Congress while the same stood in their names as assignees, they at his request returned the title to him, Norton, in and by an absolute assignment and transfer attached to the said deposition, which was also done in conformity to the terms of the original verbal agreement, as stated in said deposition of February 23d, 1864.

This reassignment and retransfer by them to Norton was not put upon the U. S. Patent Office record until in the month of July, 1869; and the reason of this delay of the recording was because of the proceedings then pending before Congress as well as in the U. S. Court of Claims; for had this instrument been recorded at an earlier time, it would have necessitated a change in all those proceedings, and it was deemed best not thus to interfere with the same until they should have come to a close, which was done in the month of February, 1869.

If this delay in the recording of this assignment and transfer, under the law, renders null and absolutely void the instrument itself, because it was not recorded within the three months' time named in the law of

Congress, then the assignment and transfer made by Norton to Jacob Shavor and Albert C. Corse on the 20th day of April, 1863, is by the same rule and law void and of none effect, for that was not re-
2709 corded until nearly one year after it was executed by Norton; and this would bring the title back into Marcus P. Norton, by virtue of the original patent granted to him as the original and first inventor of the invention therein contained. The said act of Congress in relation to assignments reads as follows, to wit:

"That every patent shall be assignable in law, either as to the whole interest or any undivided part thereof, by any instrument in writing; which assignment, and also every grant and conveyance of the exclusive right under any patent to make and use, and to grant to others to make and use the thing patented within and throughout any specified part or portion of the United States shall be recorded in the Patent Office within three months from the execution thereof." (See section 11, act of Congress approved July 4, 1836.)

In any event, or under any and all circumstances, there is, there can be, no doubt, but that the legal and equitable title and ownership is fully and rightfully vested in Marcus P. Norton, the patentee; and for full and unequivocal proof and evidence of this we again ask your permissi*ng* to refer you to the authenticated record we produce and put on file with you in this application, and the same being upon the schedule of documents referred to by the Third Assistant Postmaster-General in his report to you, as Nos. 16, 17, 18, 19, 20, and 21, which stand forth as pure, faithful, and reliable evidence and proofs on this point.

There is but other matter contained in the said printed pamphlet deemed at all necessary to mention, and that is the effort made to drag in the letters patent of August 9, 1859, held and owned by Ransford, Low, Hatch, and Chas. Eddy & Co., under an assignment from Norton, dated May 2d, 1859. A more unjust, wicked, and malicious claim rarely has ever been made; especially so, when we consider this fact, that it was this same claim made by these same persons when the petition was pending before Congress, on the part and behalf of said Nor-
2710 ton, that compelled Marcus P. Norton to assign patents of December 16th, 1862, and of April 14th, 1863, to said Jacob Shavor and Albert C. Corse, IN TRUST, in order to settle that question, thus raised, by judicial proceedings in the courts. Accordingly a suit was instituted by said Shavor and Corse against Edmund Hoole, a government subcontractor under Fairbanks & Co., who claimed the right to manufacture under license from said Hatch, who claimed to have obtained his right from said Ransford, Low, and Eddy & Co., under their said assignment of said letters patent dated August 9, 1859, and who was a partner in the said firm of Fairbanks & Co., to whom a contract had been awarded by P. O. Department to manufacture Norton's invention, patented, not August 9th, 1859, but on the 14th day of April, 1863. That suit was brought to trial before the Hon. N. K. Hall, U. S. judge, and formerly Postmaster General; and the trial was by a jury. That suit fully established the validity of Norton's letters patent, dated April 14th, 1863, as against his said patent of August 9th, 1859, and also against each and every other claim or thing. We beg leave to refer you to a duly authenticated copy of the case and proceedings in that suit and trial, and made Nos 8 and 13 of the said schedule of documents presented by the report of the Third Assistant Postmaster-General. The patent of August 9, 1859, was the cause of the assignment, in trust, by Norton to Shavor & Corse, and it was the cause of that suit against Hoole; and the verdict being in favor of the patent of April 14, 1863,

and against that of August 9, 1859, and the validity of the patent of April 14, 1863, having been fully established and maintained by the courts, no question upon the same can here be successfully made. The invention of 1859 is altogether and entirely different from that of April 14, 1863. That of August, 9, 1859, was condemned as entirely worthless by the post-office at New York and by the Post-Office De-
2711 partment, while that of April 14, 1863, has stood the test, and is now so extensively and successfully used to the great gain, profit, and advantage of your department.

Please examine the last part of the specifications in the reissued patent, dated August 3, 1869, and also same part of the specifications in the patent of July 13, 1869, ante-dated to June 10, 1869, and immediately preceding the claims in each patent, and you will find it stated that the invention contained in each patent, and covered by the respective claims thereof, are no part or parcel, in any form, shape, or manner, of the cutting device patent dated August 9, 1859, and which is said to be claimed by these six persons. In such conditions, with each specification containing such statement of facts, the Commissioner of Patents granted and issued each of the said patents, under the respective dates stated, which is conclusive evidence of the substantial and material difference in the two inventions, and which fully endorses and affirms the judgment of the courts in the aforesaid suit at law between the said Shavor and Corse vs. Hoole, as well as fully sustains the declarations and statements of the inventor, Norton, that there is no conflict whatever between the patent of April 14, 1863, reissued August 3, 1869, and the patent dated August 9, 1859, which last-named patent is entirely worthless and of no value whatever in the postal service, and which has been so declared by the New York City post-office, and by the Post-Office Department, upon a full and fair trial of the same in the said New York post-office.

It is a curious fact, and a matter to which we wish to invite your careful attention, that when Shavor and Corse learn that they cannot wrest from Norton his valuable property and invention of April 14, 1863, under their assignment in trust, dated April 20, 1863, and finding that they cannot compel Norton to yield his just and lawful rights to them, they seek to damage him all in their power by setting up the patent of August 9, 1859, whereby to induce you to believe that the patent of April 14, 1863, is
2712 in conflict with said patent of 1859, and they modestly ask you to refer a question of their own making to the courts for a decision, and thus delay action on the application for compensation, and, if possible, prevent Norton from having and receiving the benefits of his own property for the time being; and for this purpose they invoke the aid of, and confederate with their former adversaries—Ransford, Low, Hatch & Co. (holders of the said patent of 1859), who appear quite willing, in the hope of gain, to join in that undertaking, for their names appear with those of Shavor & Corse as signers of the printed paper, which has been placed on file in this application pending before you—no doubt hoping that your honor would overlook the fact that said patent of August 9, 1859, was set up in the pleadings and answer as against said patent of April 14, 1863, in the suit at law in the circuit court of the United States, northern district of New York—and which case will appear fully reported by reference to said schedule No. 8.

We have no reflections to make, no words to utter on the question of honesty or the honorable motives of these six men; we leave them and their unjust, malicious, and wanton record, bearing upon its very face

the motive that induced this printed pamphlet, and placed it upon your file, as well as the desire that has inspired their brains into action.

POINT FOURTH.

Marcus P. Norton, of the city of Troy, N. Y., is the original and first inventor of each and every part of the inventions and improvements set forth and contained in each and every aforesaid named letters patent; and he is also the legal and equitable owner, exclusively so, of the entire invention and improvements covered by or contained in the said
2713 patents of April 14, 1863, reissued August 3, 1869, and dated July 13, 1869, ante-dated to June 10, 1869; and he therefore has the good and lawful right and privilege to enter into any contract, concerning the same, with the Postmaster-General that may be deemed beneficial to the Post-Office Department, and for the security and maintainance of his right in the premises. The Post-Office Department having exclusively used his aforesaid invention for so many years without any compensation to said Norton, and now continuing the same in such use, it is but fair, right, and just, that said department now enter into contract with him, to compensate him for the use of his said valuable inventions, covered and protected by the said letters patent thereon under date as aforesaid. That compensation should be fair, just, equitable, and liberal, in view of the great length of time the department has used the same without any compensation whatever to him therefor, as well as in view of the great labor saved, and many other benefits conferred upon the postal service, and upon the Post-Office Department, also, upon the people paying postal revenue and transacting business in and through the mails.

Having thus presented the facts, the law, and the case, we now leave the same in your hands, trusting to your own good judgment and liberal views upon all questions of right and equity, to measure up justice to one who merits liberal compensation for the lasting benefits and great economy bestowed by means of his said inventions and improvements.

2714 *Defendant's Exhibit* 184.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

The grand jurors of the United States of America for the county and District aforesaid, on their oath present:

That Marcus P. Norton, late of the county aforesaid, yeoman, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy one, with force and arms, at the District aforesaid, feloniously did falsely make and forge a certain paper writing, which said paper writing is as follows, that is to say:

An agreement concerning the application of Marcus P. Norton, of Troy, State of New York, for a patent upon "Post-Office Postmarking Stamp," dated on or about the 14th day of June, 1859, and rejected June 27, 1859, by Commissioner of Patents, and now pending in the U. S. Patent Office, under said rejection.

Whereas, the above-named application has been rejected by the Commissioner of Patents upon a patent granted to T. J. W. Robertson, and dated on or about the 22d day of September, 1857, with the exception of the third claim, to which there now appears to be no objection to the granting of a patent, and which is for a cutting device to cancel postage-stamps, by cutting the same; and whereas, before a patent can be

granted upon the invention covered by the rejected claims aforesaid, to wit, the first, second, and fourth claims in said application, it will be necessary to have an interference case with said Robertson, upon the patent of September 22d, 1857, and the said pending application of said Marcus P. Norton; and whereas we, the undersigned, are unwilling to undertake any further and additional expenditure of time and
2715 money, which such an interference would be likely to demand or result in, and preferring not to incur or become in any way responsible for any expenses whatever beyond those now incurred in said application of June 14, 1859, we give up and surrender to said Marcus P. Norton any and every claim we have or may have by reason of our contract and agreement with him to all invention and improvement contained in said application, and not covered by said third claim, so as to allow him to make a new application for a patent upon the same, he having requested us so to do, or to go on, and carry out our said agreement with him, all of which is to be done at his own expense; while he, at the same time, shall release us, and each of us, from our said contract and agreement with him, upon which the said application of June 14, 1859, was by him made to the Commissioner of Patents; and whereas the said Marcus P. Norton desires himself to separate and divide the said pending application, taking a patent upon the said "third claim," not now rejected, and thereafter to make an application for a patent upon the invention and improvements contained in said rejected claims, to wit, "first," "second," and "fourth" and thereafter have the same put into "interference" with said patent of September 22d, 1857, and granted to said Robertson as aforesaid, at his own cost, expense, and charges. We do therefore, and by reason of these premises aforesaid, hereby consent to such division as he, the said Marcus P. Norton, shall desire to make of the said pending application of June 14th, 1859, upon the conditions aforesaid, and for that purpose we agree and consent that two separate applications may be made out of said pending application as aforesaid. And we do hereby release and relinquish each and every claim we now have, or may have, in, to, and for the invention in "type dating wheels and printing device," and contained in the said rejected claims aforesaid, which the said Marcus P. Norton may at any time put into a new application for a patent as his own invention and im-
2716 provement, and for which we have no claim whatever on and after the signing of these papers by us, and for which any patent hereafter granted may issue to said Marcus P. Norton, the same as though we had made no previous contract and agreement with him concerning the obtaining of a patent upon the said invention contained in said application of June 14, 1859, and the introduction of the same into public and general use. And no cost or charge shall be made against us, or either of us, of any kind whatever, by said Marcus P. Norton, upon such division and such new application for a patent upon said invention covered by said rejected claims.

And we hereby authorize and permit the said Marcus P. Norton so to amend the said pending application of June 14th, 1859, as that a patent shall issue upon the invention covered by said third claim and known as the "Cutters or knives" for cancelling the postage-stamps by cutting the same, while the said "first," "second," and "fourth claims," and the invention and improvements contained therein, may be erased therefrom and from said application, and reserved for, and put into another division or new application for a patent upon the same at any time whenever said Norton may desire to do the same, without any expense to us or either of us, and for which we now and forever relinquish and

surrender unto the said Marcus P. Norton any and every claim or right which we may now have or ever did have thereto in any manner or means whatsoever, hereby giving and granting a full release and acquittance to said Marcus P. Norton for the said invention and improvements contained in the said "first," "second," and "fourth" claims now standing rejected as aforesaid, to wit, June 27, 1859; also, any and every invention and improvement set forth and described or mentioned in the specifications in said application of June 14, 1859, and not covered by said third and unrejected claim. Each and every matter herein contained shall also apply to the heirs and assigns of the said Marcus P. Norton, the original and first inventor of the said invention and improvements.

2717

F. G. RANSFORD.
P. LOW.

We have hereunto set our hands on this 20th day of July, 1859, in the presence of—

R. G. Fox.
THOMAS H. HARDMAN.

To the prejudice of the rights of a private person, to wit, Frederick G. Ransford, with intent to defraud the said Frederick G. Ransford, against the form of the statute in such case made and provided, and against the peace and government of the United States.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Marcus P. Norton afterwards, to wit, on the day and the year aforesaid, with force and arms, at the county and District aforesaid, feloniously did falsely pass, utter, and publish as true, a certain or other false, forged, and counterfeit paper writing, which said last mentioned false, forged, and counterfeited paper writing, which is as follows; that is to say:

An agreement concerning the application of Marcus P. Norton, of Troy, State of New York, for a patent upon "Post office Postmarking Stamp," dated on or about the 14th day of June, 1859, and rejected June 27th, 1859, by Commissioner of Patents, and now pending in the U. S. Patent Office under said objection.

Whereas the above-named application has been rejected by the Commissioner of Patents, upon a patent granted to T. J. W. Robertson, and dated on or about the 22d day of September, 1857, with the exception of the third claim, to which there now appears to be no objection to the granting of a patent, and which is for a cutting device to cancel postage-stamps, by cutting the same; and whereas, before a patent can be granted upon the invention covered by the rejected claims aforesaid, to wit, the first, second, and fourth claims in said application, it will be necessary to have an interference case with said Robertson upon the patent of September 22d, 1857, and the said pending application of said Marcus P. Norton; and whereas, we, the undersigned, are unwilling to undertake any further and additional expenditure of time and money which such an interference would be likely to demand or result in, and preferring not to incur or become in any way responsible for any expenses whatever beyond those now incurred in said application of June 14, 1859, we give up and surrender to said Marcus P. Norton any and every claim we have or may have by reason of our contract and agreement with him, to all the invention and im-

2718

provements contained in said application, and not covered by said third claim, so as to allow him to make a new application for a patent upon the same, he having requested us so to do, or to go on and carry out our said agreement with him, all of which is to be done at his own expense, while he at the same time shall release us, and each of us, from our said contract and agreement with him, upon which the said application of June 14, 1859, was by him made to the Commissioner of Patents. And whereas the said Marcus P. Norton desires himself to separate and divide the said pending application, taking a patent upon the said "third claim" not now rejected, and thereafter to make an application for a patent upon the invention and improvement contained in said rejected claims, to wit, "first," "second," and "fourth," and thereafter have the same put into "interference" with said patent of September 22d, 1857, and granted to said Robertson, as aforesaid, at his own expense and charges. We do, therefore, and by reason of the premises aforesaid, hereby consent to such division as he, the said Marcus P. Norton, shall desire to make of the said pending application of June 14, 1859, upon the conditions aforesaid, and for that purpose we agree and consent that two separate applications may be made out of said
2719 pending application as aforesaid. And we do hereby release, relinquish each and every claim we now have, or may have, in, to, and for the invention in "type dating wheels and printing device," and contained in the said rejected claims aforesaid, which the said Marcus P. Norton may at any time put into a new application for a patent, as his own invention and improvement, and for which we have no claim whatever on and after the signing of this paper by us, and for which any patent hereafter granted may issue to said Marcus P. Norton, the same as though we had made no previous contract and agreement with him concerning the obtaining of a patent upon the invention contained in said application of June 14, 1859, and the introduction of the same into public and general use.

And no cost or charges shall be made against us, or either of us, of any kind whatever, by said Marcus P. Norton, upon such division and such new application for a patent upon said invention covered by said rejected claims.

And we therefore hereby authorize and permit the said Marcus P. Norton so to amend the said pending application of June 14, 1859, as that a patent shall issue upon the invention covered by said third claim, and known as the "Cutters or knives," for cancelling the postage stamp by cutting the same, while the said "first," "second," and "fourth" claims, and the invention and improvements contained therein, may be erased therefrom and from said application, and reserved for and put into another division or new application for a patent upon the same at any time whenever said Norton may desire to do the same, without any expense to us, or either of us, and for which we now and forever relinquish and surrender unto the said Marcus P. Norton any and every claim or right which we may now have, or ever did have thereto, in any manner or means whatsoever, hereby giving and granting a full release and acquittance to said Marcus P. Norton for the said invention and
2720 improvements contained in the said "first," "second," and "fourth" claims now standing rejected as aforesaid, to wit, June 27th, 1859. Also any and every invention and improvement set forth and described or mentioned in the specifications in said application of June 14, 1859, and not covered by said third and unrejected claim. Each and every matter herein contained shall also apply to the heirs and assigns of the

said Marcus P. Norton, the original and first inventor of the said invention and improvements.

F. G. RANSFORD.
P. LEON.

We have hereunto set our hands on this 20th day of July, 1859, in the presence of—

R. G. FOX.
THOMAS H. HARDMAN.

To the prejudice of the right of a private person, to wit, Frederick G. Ransford, with intent to defraud the said Frederick G. Ransford, he, the said Marcus P. Norton, at the time he so passed, uttered, and published as true the said last mentioned false, forged, and counterfeited paper writing as aforesaid, then and there well knowing the same to be false, forged, and counterfeited, against the form of the statute in such case made and provided, and against the peace and government of the United States.

3. And the grand jurors aforesaid, on their oath aforesaid, do further present:

That the said Marcus P. Norton afterwards, to wit, on the day in the year aforesaid, at the District aforesaid, with force and arms, feloniously did falsely make and forge a certain paper writing, which said paper writing is as follows, that is to say:

An agreement concerning the application of Marcus P. Morton, of Troy, State of New York, for a patent upon "Post-office post marking stamp," dated on or about the 14th day of June, 1859, and rejected June 27, 1859, by Commissioner of Patents, and now pending in the U. S. Patent Office under said rejection.

2721 Whereas the above named application has been rejected by the Commissioner of Patents upon a patent granted to T. J. W. Robertson, and dated on or about the 22d day of September, 1857, with the exception of the third claim, to which there now appears to be no objection to the granting of a patent, and which is for a cutting device to cancel postage stamps by cutting the same; and whereas, before a patent can be granted upon the invention covered by the rejected claims aforesaid, to wit, the first, second, and fourth claims in said application, it will be necessary to have an interference case with said Robertson upon the patent of September 22d, 1857, and the said pending application of said Marcus P. Norton; and whereas we, the undersigned, are unwil ing to undertake any further and additional expenditure of time and money, which such an interference would be likely to demand or result in, and preferring not to incur or become in any way responsible for any expenses whatever beyond those now incurred in said application of June 14, 1859, we give up and surrender to said Marcus P. Norton any and every claim we have or may have by reason of our contract or agreement with him, to all the inventions and improvements contained in said application, and not covered by said third claim, so as to allow him to make a new application for a patent upon the same, he having requested us so to do, or to go on and carry out our said agreement with him, all of which is to be done at his own expense; while he at the same time shall release us, and each of us, from our said contract and agreement with him, upon which the said application of June 14, 1859, was by him made to the Commissioner of Patents; and whereas the said Marcus P. Norton desires himself to separate and divide the said pending application, taking a patent upon the said

"third claim" not now rejected, and thereafter to make an application for a patent upon the invention and improvements contained in
2722 said rejected claims, to wit, "first," "second," and "fourth," and thereafter have the same put into "interference" with said patent of September 22, 1857, and granted to said Robertson, as aforesaid, at his own cost, expense, and charges. We do, therefore, by reason of the premises aforesaid, hereby consent to such division as he, the said Marcus P. Norton, shall desire to make of the said pending application of June 14th, 1859, upon the conditions aforesaid; and for that purpose we agree and consent that two separate applications may be made out of said pending application as aforesaid. And we do hereby release and relinquish each and every claim we now have or may have in, to, and for the invention in "type dating wheels and printing device," and contained in the said rejected claims aforesaid, which the said Marcus P. Norton may at any time put into a new application for a patent as his own invention and improvements, and for which we have no claim whatever on and after the signing of this paper by us, and for which any patent hereafter granted may issue to said Marcus P. Norton, the same as though we had made no previous contract and agreement with him concerning the obtaining of a patent upon the invention contained in said application of June 14th, 1859, and the introduction of the same into public and general use. And no cost or charges shall be made against us, or either of us, of any kind whatever, by said Marcus P. Norton, upon such division and such new application for a patent upon said invention covered by said rejected claims.

And we therefore hereby authorize and permit the said Marcus P. Norton so to amend the said pending application of June 14th, 1859, as that a patent shall issue upon the invention covered by said "third claim," and known as the "cutters or knives," for cancelling the postage-stamps by cutting the same, while the said "first," "second," and "fourth" claims and the invention and improvements contained therein, may be erased therefrom, and from said application and reserved
2723 for and put into another division or new application for a patent upon the same, at any time whenever said Norton may desire to do the same, without any expense to us, or either of us, and for which we now and forever relinquish and surrender unto the said Marcus P. Norton any and every claim or right which we may now have or ever did have thereto, in any manner or means whatsoever, hereby giving and granting a full release and acquittance to said Marcus P. Norton for the said invention and improvements contained in the said "first," "second," and "fourth" claims now standing rejected as aforesaid, to wit, June 27th, 1859; also, any and every invention and improvement set forth or mentioned in the specifications in said application of June 14, 1859, and not covered by said third and unrejected claim. Each and every matter herein contained shall also apply to the heirs and assigns of the said Marcus P. Norton, the original and first inventor of the said invention and improvements.

F. G. RANSFORD.
P. LOW.

We have hereunto set our hands on this 20th day of July, 1859, in the presence of—

R. G. FOX.
THOMAS H. HARDMAN.

To the prejudice of the right of a private person, to wit, of one Peter Low, with intent to defraud the said Peter Low against the form of the

statute in such case made and provided, and against the peace and government of the United States.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Marcus P. Norton afterwards, to wit, on the day in the year aforesaid, with force and arms, at the District aforesaid, feloniously did falsely pass, utter, and publish as true, a certain other false, forged, and counterfeited paper writing, which said last mentioned false, forged, and counterfeited paper is as follows, that is to say:

2724 An agreement concerning the application of Marcus P. Norton, of Troy, State of New York, for a patent upon "Post-office Postmarking Stamp," dated on or about the 14th day of June, 1859, and rejected June 27th, 1859, by Commissioner of Patents, and now pending in the Patent Office under said rejection.

Whereas the above-named application has been rejected by the Commissioner of Patents upon a patent granted to T. J. W. Robertson, and dated on or about the 22d day of September, 1857, with the exception of the third claim, to which there now appears to be no objection to the granting of a patent, and which is for a cutting device to cancel postage stamps by cutting the same; and whereas, before a patent can be granted upon the invention covered by the rejected claims aforesaid, to wit, the first, second, and fourth claims in said application, it will be necessary to have an interference case with said Robertson upon the patent of September 22d, 1857, and the said pending application of said Marcus P. Norton; and whereas we, the undersigned, are unwilling to undertake any further and additional expenditure of time and money, which such an interference would be likely to demand or result in, and preferring not to incur or become in any way responsible for any expenses whatever beyond those now incurred in said application of June 14th, 1859, we give up and surrender to said Marcus P. Norton any and every claim we have or may have by reason of our contract and agreement with him to all the invention and improvements contained in said application, and not covered by said third claim, so as to allow him to make a new application for a patent upon the same, he having requested us so to do or to go on and carry out our said agreement with him, all of which is to be done at his own expense; while he, at the same time, shall release us, and each of us, from our said contract and agreement with him, upon which the said application of June 14, 1859, was
2725 by him made to the Commissioner of Patents. And whereas the said Marcus P. Norton desires himself to separate and divide the said pending application, taking a patent upon the said "third claim" not now rejected, and thereafter to make an application for a patent upon the invention and improvements contained in said rejected claims, to wit, "first," "second," and "fourth," and thereafter have the same put into "interference" with said patent of September 22d, 1857, and granted to said Robertson, as aforesaid, at his own cost, expense, and charges: We do therefore, and by reason of the premises aforesaid, hereby consent to such division as he, the said Marcus P. Norton, shall desire to make of the said pending application of June 14th, 1859, upon the conditions aforesaid; and for that purpose we agree and consent that two separate applications may be made out of said pending application as aforesaid. And we do hereby release and relinquish each and every claim we now have, or may have, in, to, and for the invention in "type dating wheels and printing device," and contained in the said rejected claims aforesaid, which the said Marcus P. Norton

may at any time put into a new application for a patent as his own invention and improvements, and for which we have no claim whatever on and after the signing of this paper by us, and for which any patent hereafter granted may issue to said Marcus P. Norton the same as though we had made no previous contract and agreement with him concerning the obtaining of a patent upon the invention contained in said application of June 14th, 1859, and the introduction of the same into public and general use. And no cost or charges shall be made against us, or either of us, of any kind whatever, by said Marcus P. Norton, upon such division and such new application for a patent upon said invention covered by said rejected claims.

And we therefore hereby authorize and permit the said Marcus P. Norton so to amend the said pending application of June 14, 2726 1859, as that a patent shall issue upon the invention covered by said third claim, and known as the "cutters or knives," for cancelling the postage-stamps by cutting the same, while the said "first," "second," and "fourth" claim, and the invention and improvements contained therein may be erased therefrom and from said application, and reserved for and put into another division or new application for a patent upon the same at any time whenever said Norton may desire to do the same, without any expense to us, or either of us, and for which we now and forever relinquish and surrender unto the said Marcus P. Norton any and every claim or right which we may now have, or ever did have thereto, in any manner or means whatsoever, hereby giving and granting a full release and acquittance to said Marcus P. Norton for the said invention and improvements contained in the said "first," "second," and "fourth" claims now standing rejected as aforesaid, to wit, June 27th, 1859; also any and every invention and improvements set forth and described or mentioned in the specifications in the application of June 14th, 1859, and not covered by said third and unrejected claim. Each and every matter herein contained shall also apply to the heirs and assigns of the said Marcus P. Norton, the original and first inventor of the said invention and improvements.

F. G. RANSFORD.
P. LOW.

We have hereunto set our hands on this 20th day of July, 1859, in the presence of—

R. G. FOX.
THOMAS H. HARDMAN.

To the prejudice of the right of a private person, to wit, one Peter Low, and with intent to defraud the said Peter Low, he, the said Marcus P. Norton, at the time he so uttered, passed, and published as true the said last mentioned false, forged, and counterfeited paper writing as aforesaid, then and there well knowing the same to be false, forged, and 2727 counterfeited; against the form of the statute in such case made and provided, and against the peace and Government of the United States.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Marcus P. Norton afterwards, to wit, on the day in the year aforesaid, with force and arms, at the county and District aforesaid, feloniously did falsely make and forge a certain other paper writing, which said paper writing is as follows, that is to say:

An agreement concerning the application of Marcus P. Norton, of Troy, State of New York, for a patent upon "Post-office Postmarking Stamp," dated on or about the 14th day of June, 1859, and rejected June 27, 1859, by Commissioner of Patents, and now pending in the U. S. Patent Office under said rejection.

Whereas the above-named application has been rejected by the Commissioner of Patents upon a patent granted to T. J. W. Robertson, and dated on or about the 22d day of September, 1857, with the exception of the third claim, to which there now appears to be no objection to the granting of a patent, and which is for a cutting device to cancel postage-stamps by cutting the same; and whereas, before a patent can be granted upon the invention covered by the rejected claims aforesaid, to wit, the first, second, and fourth claims in said application, it will be necessary to have an interference case with said Roberston upon the patent of September 22d, 1857, and the said pending application of said Marcus P. Norton; and whereas we, the undersigned, are unwilling to undertake any further and additional expenditure of time and money which such an interference would be likely to demand or result in, and preferring not to incur or become in any way responsible for any expenses whatever beyond those now incurred in said application of June 14th, 1859, we give up and surrender to said Marcus P.
2728 Norton any and every claim we have, or may have by reason of our contract and agreement with him, to all the invention and improvements contained in said application, and not covered by said third claim; so as to allow him to make a new application for a patent upon the same, he having requested us so to do, or to go on and carry out our said agreement with him, all of which is to be done at his own expense; while he at the same time shall release us, and each of us, from our said contract and agreement with him, upon which the said application of June 14, 1859, was by him made to the Commissioner of Patents. And whereas the said Marcus P. Norton desires himself to separate and divide the said pending application, taking a patent upon the said "third claim" not now rejected, and thereafter to make an application for a patent upon the invention and improvements contained in said rejected claims, to wit, "first," "second," and "fourth," and thereafter have the same put into "interference" with said patent of September 22d, 1857, and granted to said Robertson as aforesaid, at his own cost, expense, and charges: We do therefore, and by reason of the premises aforesaid, hereby consent to such division as he, the said Marcus P. Norton, shall desire to make of the said pending application of June 14th, 1859, upon the conditions aforesaid; and for that purpose we agree and consent that two separate applications may be made out of said pending application as aforesaid. And we do hereby release and relinquish each and every claim we now have, or may have, in, to, and for the invention in "type dating wheels and printing device," and contained in the said rejected claims aforesaid, which the said Marcus P. Norton may at any time put into a new application for a patent, as his own invention and improvements, and for which we have no claim whatever on and after the signing of this paper by us, and for which any patent hereafter granted may issue to said Marcus P. Norton, the same as though we had made no previous contract and agree-
2729 ment with him concerning the obtaining of a patent upon the invention contained in said application of June 14th, 1859, and the introduction of the same into public and general use. And no cost or charges shall be make against us, or either of us, of any kind what-

ever, by said Marcus P. Norton, upon such division and such new application for a patent upon said invention covered by said rejected claims.

And we therefore hereby authorize and permit the said Marcus P. Norton so to amend the said pending application of June 14th, 1859, as that a patent shall issue upon the invention covered by said third claim, and known as the "cutters or knives," for cancelling the postage-stamps, by cutting the same, while the "first," "second," and "fourth claims," and the invention and improvements contained therein, may be erased therefrom, and from said application, and reserved for and put into another division or new application for a patent upon the same, at any time whenever said Norton may desire to do the same, without any expense to us, or either of us, and for which we now forever relinquish and surrender unto the said Marcus P. Norton any and every claim or right which we may now have, or ever did have thereto, in any manner or means whatsoever, hereby giving and granting a full release and acquittance to said Marcus P. Norton for the said invention and improvements contained in the said "first, "second," and "fourth" claims now standing rejected as aforesaid, to wit, June 27th, 1859; also, any and every invention and improvements set forth and described or mentioned in the specifications in said application of June 14th, 1859, and not covered by said third and unrejected claim. Each and every matter herein contained shall also apply to the heirs and assigns of the said Marcus P. Norton, the original and first inventor of the said invention and improvements.

F. G. RANSFORD.
P. LOW.

We have hereunto set our hands on this 20th day of July, 1859, in the presence of—

R. G. FOX.
THOMAS H. HARDMAN.

2730 To the prejudice of the right of Frederick G. Ransford and Peter Low, with intent to defraud the said Frederick G. Ransford and Peter Low, against the form of the statute in such case made and provided, and against the peace and Government of the United States.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That the said Marcus P. Norton afterwards, to wit, on the day in the year aforesaid, with force and arms, at the District aforesaid, feloniously did falsely pass, utter, and publish as true, a certain other false, forged, and counterfeited paper writing, which said last mentioned false, forged, and counterfeited paper writing is as follows, that is to say:

An agreement concerning the application of Marcus P. Norton, of Troy, State of New York, for a patent upon "post office postmarking stamp," dated on or about the 14th day of June, 1859, and rejected June 27th, 1859, by Commissioner of Pa ents, and now pending in the U. S. Patent Office under said rejection.

Whereas the above named application has been rejected by the Commissioner of Patents, upon a patent granted to T. J. W. Robertson, and dated on or about the 22d day of September, 1857, with the exception of the third claim, to which there now appears to be no objection to the granting of a patent, and which is for a cutting device to cancel postage stamps, by cutting the same; and whereas, before a patent can be granted upon the invention covered by the rejected claims aforesaid, to

wit, the first, second, and fourth claims in said application, it will be necessary to have an interference case with said Robertson upon the patent of September 22d, 1857, and the said pending application of said Marcus P. Norton; and whereas we, the undersigned, are unwilling to undertake any further and additional expenditure of time and
2731 money, which such an interference would be likely to demand or result in, and preferring not to incur or become in any way responsible for any expenses whatever beyond those now incurred in said application of June 14th, 1859, we give up and surrender to said Marcus P. Norton any and every claim we have, or may have, by reason of our contract and agreement with him, to all the invention and improvements contained in said application, and not covered by said third claim; so as to allow him to make a new application for a patent upon the same, he having requested us so to do, or go on, and carry out our said agreement with him, all of which is to be done at his own expense, while he, at the same time shall release us, and each of us, from our said contract and agreement with him, upon which the said application of June 14th, 1859, was by him made to the Commissioner of Patents; and whereas, the said Marcus P. Norton desires himself to separate and divide the said pending application, taking a patent upon the said "third claim" not now rejected, and thereafter to make an application for a patent upon the invention and improvements contained in said rejected claims, to wit, "first," "second," and "fourth," and thereafter have the same put into "interference" with said patent of September 22d, 1857, and granted to said Robertson, as aforesaid, at his own cost, expense, and charges: We do, therefore, by reason of the premises aforesaid, hereby consent to such division as he, the said Marcus P. Norton, shall desire to make of the said pending application of June 14th, 1859, upon the conditions aforesaid; and for that purpose we agree and consent that two separate applications may be made out of said pending application as aforesaid. And we do hereby release and relinquish each and every claim we now have, or may have, in, to, and for the invention in "type dating wheels and printing device," and contained in the said rejected claims aforesaid, which the said Marcus P. Norton may at any time put into a new application for a patent as his own
2732 invention and improvements, and for which we have no claim whatever on and after the signing of this paper by us, and for which any patent hereafter granted may issue to said Marcus P. Norton, the same as though we had made no previous contract and agreement with him concerning the obtaining of a patent upon the invention contained in said application of June 14th, 1859, and the introduction of the same into public and general use.

And no cost or charges shall be made against us, or either of us, of any kind whatever, by said Marcus P. Norton, upon such division and such new application for a patent upon said invention covered by said rejected claims.

And we therefore hereby authorize and permit the said Marcus P. Norton so to amend the said pending application of June 14th, 1859, as that a patent shall issue upon the invention covered by said third claim, and known as the "cutters or knives," for cancelling the postage stamp, by cutting the same, while the said "first," "second," and "fourth claims," and the invention and improvements contained therein, may be erased therefrom and put into another division or new application for a patent upon the same, at any time whenever say Norton may desire to do the same, without any expense to us, or either of us, and for which

we now and forever relinquish and surrender unto the said Marcus P. Norton any and every claim or right which we may now have, or ever did have thereto, in any manner or means whatsoever, hereby giving and granting a full release and acquittance to said Marcus P. Norton for the said invention and improvements contained in the said "first," "second," and "fourth" claims, now standing rejected as aforesaid, to' wit, June 27th, 1859; also, any and every invention and improvements set forth and described or mentioned in the specification in said application of June 14th, 1859, and not covered by said third and unrejected claim. Each and every matter herein contained shall also apply to
2733 the heirs and assigns of the said Marcus P. Norton, the original and first inventor of the said invention and improvements.

F. G. RANSFORD.
P. LOW.

We have hereunto set our hands on this 10th day of July, 1859, in the presence of—

R. G. FOX.
THOMAS H. HARDMAN.

To the prejudice of the right of Frederick G. Ransford and Peter Low, with intent to defraud the said Frederick G. Ransford and Peter Low, he, the said Marcus P. Norton, at the time he so passed, uttered, and published as true the said last-mentioned false, forged, and counterfeited paper writing as aforesaid, then and there well knowing the same to be false, forged and counterfeited, against the form of the statute in such case made and provided, and against the peace and Government of the United States.

GEO. P. FISHER,
U. S. Att'y, D. C.

A true copy. Test.

R. J. MEIGS, *Clerk.*
By L. T. WILLIAMS,
Assistant Clerk.

CLERK'S OFFICE,
Supreme Court of the District of Columbia, ss:

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate is a true copy of an original indictment on file and of record in this office, and that said indictment is still pending and undetermined.

Witness my hand and the seal of said court this sixth day of August, A. D. 1878.

[SEAL.]

R. J. MEIGS, *Clerk.*
By J. JAY CAMP,
Ass't Clerk.

2734 *Def't's Ex. Marcus P. Norton A.—I. B. ex'r, May* 18, 1878.

CANAAN, 4 CORNERS, N. Y.,
November 27th, 1876.

JACOB SHAVOR, Esq.:

DEAR SIR: Your letter of the 25th instant came to me this morning, and from Troy to-day.

I am up again and am getting better every day. I will be in Troy one week from to-day, and in the meantime will have the papers you

name prepared in good shape. I have twice written Mr. Secombe, since I sent his last letter to me to Mr. Eddy, and I am waiting his reply to each of them. I little care whether he signs the paper that I sent him or not, because he has utterly failed in his trust and the title revests, at least all the title he ever had. He took no absolute title but a title subject to a certain trust; whenever the trust fails then fails the title. He failed in that trust more than four years ago; and when called on for money to carry out the trust then he refused and has so refused three or four times, and I have it in writing. Still I have thought it best to have him make a reassignment. If he will do so, very well; and if not, then just as well. I have good letters from Attorney-General Williams, also from General Butler about my 1863 letters, patent dated April 14th of that year, and all the subsequent reissues, and they fully concur in my views and opinions about the title; use by the government; its great value and certainty of recovery under that patent for the past 13 years' use of that invention. And they are strongly in favor of the Court of Claims till No. S. 571, which you have.

I have also a letter from "Mr. Senator Wadleigh," who reported bill 571, dated the 24th instant, which I will let you three see when in Troy. I come to Troy to take proofs in a patent case, and will be there four days.

2735 The 21st Joint Rule of the Senate and House will not admit of one bill coming up until after six days from the commencement of next session which will be on next Monday. The "six days" will be upon the fol. Monday, to wit, December 11th, or two weeks from to-day. Congress convenes on Monday, one week from to-day.

If you, Corse, and Eddy will now take hold and push the 1863 invention on in line of S. bill 571 you will be pursuing the right course; and that which will certainly succeed and bring money to your entire satisfaction. It must not be encumbered with the 1859 patent. in any way of association or compromise; because such a course will bring with it certain defeat even of the 1863 patent. That patent must and will stand alone in the claim against the government for its use, and when put into Mr. Eddy as trustee it must be that in no way or manner shall it be coupled with the 1859 patent. I have very carefully examined the whole matter since I came from Washington last August, and my conclusions are stated in a few words just above. Mr. Butler and Williams both agree with me in this. I have now the evidence which will satisfy you about it. If the 1859 men have any claim for the use of that patent, let them put in a case on their own hook and then they can find out all about it. Congress, on the 14th day of July, 1870, expressly authorized the government, by the Postmaster-General, "to continue in use" the patent of April 14th, 1863, and its reissues, and that has been done and is being done to-day. Every report made in Congress without an exception have spoken of and confirmed the use of the April 14, 1863, patent and of its reissues. This has been done by giving the dates of that patent, and by describing the invention in the reports. The August 9th, 1859, patent is nowhere there mentioned. There is much more on these points, but enough now. You will please let Mr. Eddy and Corse see this letter.

Truly yours,

MARCUS P. NORTON.

2736 *Complainant's Exhibit A, Ransford.—I. B., ex'r, July 6th, 1878.*

Order of the Commissioner of Patents refusing to recognize Marcus P. Norton as a patent agent.

UNITED STATES PATENT OFFICE,
September 18, 1871.

The following charges were, on or about the day of their date, served upon Marcus P. Norton, of Troy, New York, a patent agent practicing before the United States Patent Office, to wit:

UNITED STATES PATENT OFFICE,
Washington, D. C., August 29, 1871.

To MARCUS P. NORTON, *Troy, N. Y.*:

SIR: You are hereby notified to appear before the Commissioner of Patents at his office in Washington, District of Columbia, on the 8th day of September, 1871, at 10 o'clock a. m., and show cause, if any exist, why the said Commissioner of Patents (by virtue of the authority conferred upon him by the seventeenth section of the act of Congress approved July 8, 1870, and entitled "An act to revise, consolidate, and amend the statutes relating to patents and copy rights") should not refuse longer to recognize you as a patent agent, it being alleged that you have been guilty of "gross misconduct," more particularly with reference to the matters hereafter named, viz.:

1st. That said Marcus P. Norton, having, on the 20th day of October, 1853, filed in the United States Patent Office a certain caveat dated "Troy Conference Academy, West Pawlney, Vermont, October 13, 1853," a copy of which is hereto attached and marked Exhibit A. That some time after filing said paper marked Exhibit A, he, the said Marcus P. Norton, surreptitiously conveyed to the files of this office a certain other paper, a copy of which is hereto attached and marked Exhibit B,
2737 as a subjoined description to said caveat, which said Exhibit B purports to have been written August 7, 1854, and the said Marcus P. Norton is herewith charged and accused of writing said paper marked Exhibit B at a much later date than the said August 7, 1854.

2d. That the said Marcus P. Norton is hereby charged and accused of gross misconduct for having, without authority from this office and without filing said paper Exhibit B, placed it among the files of this office with the intention to deceive and practice fraud upon this office.

3d. That the said Marcus P. Norton, acting for himself, and in behalf of his own interest in a certain case wherein he was interested, in letters patent upon a certain "Railroad Printing Press," did surreptitiously take and remove from the files in said case, in said Patent Office, a certain paper dated "Tinmouth, Vermont, August 21, 1855," a copy of which is hereto attached, and marked Exhibit C.

Said paper marked Exhibit C was received and filed in said Patent Office, as appears by indorsement August 25, 1855.

4th. That the said Marcus P. Norton is hereby charged with purloining from said files in said Patent Office said paper or letter marked Exhibit C, and attaching thereto a certain other paper, a copy of which is hereto attached and marked Exhibit D, intending thereby to deceive and practice gross fraud upon this office. That said paper, Exhibit D, purports to have been written and signed by Marcus P. Norton on the said 21st of August, 1855, which paper, marked Exhibit D, said Norton is hereby charged with writing and surreptitiously placing among the files

at a much later date than said August 25, 1855, while, in fact, said paper marked Exhibit D was never duly filed in this office, but was attached by said Marcus P. Norton to said letter or paper marked Exhibit C, said letter marked Exhibit C having been duly received and filed in the
2738 Patent Office, August 25, 1855, thus practicing gross fraud and deception upon this office and undertaking and intending to impress upon this office that said paper marked Exhibit D was duly filed August 25, 1855, in said Patent Office.

5th. That said Marcus P. Norton did, on the 15th day of August, 1871, file in this office a false and fraudulent paper, a copy of which is hereto attached and marked Exhibit E, in which he alleges that he never did make any assignment to F. G. Ransford and Peter Low, dated May 2, 1859, and that if any such is on file in this office, or has been recorded in liber G, page 73, of Transfer of Patents, "is in error," and is "a gross fraud and a forgery;" and that said paper was duly received and filed in this office on said 15th day of August, 1871, and sworn to by Marcus P. Norton, before T. C. Connolly, a justice of the peace of the city and county of Washington, D. C.

6th. That the said Marcus P. Norton, acting for himself and in his own behalf, and in order to defeat the rights of other parties, viz, F. G. Ransford and Peter Low, did write, utter, and publish a certain paper, a copy of which is hereunto attached and marked Exhibit F; that said paper purports to have been written July 20, 1859, and signed by F. G. Ransford and P. Low, and witnessed by R. G. Fox and Thomas H. Hardman; that said Marcus P. Norton is hereby charged (on or about July or August, 1871), with writing, publishing and forging said paper marked Exhibit F, and of forging the names of said F. G. Ransford and P. Low, the pretended assignors, as well as the names of R. G. Fox and Thomas H. Hardman, witnesses to said assignment.

7th. That said Marcus P. Norton filed in the United States Patent Office, in person, said paper, marked Exhibit F, as the original paper or assignment for record in said office on the 22d day of August, 1871, and claimed said paper marked Exhibit F was an original paper duly
2739 executed by said F. G. Ransford and P. Low, and duly witnessed by said R. G. Fox and Thomas H. Hardman, intending thereby to practice gross deception upon this office.

8th. That the said Marcus P. Norton is hereby charged with forging the signatures of F. G. Ransford and P. Low, the assignors, as well as with forging the name or signatures of R. G. Fox and Thomas H. Hardman, the witnesses to said paper or assignment marked Exhibit F, and presenting the same for record in said Patent Office, to wit, said paper marked Exhibit F, and presenting it as a genuine and true paper or assignment for record, on said August 22, 1871, all of which he did in defiance of the rights of said assignors, viz, F. G. Ransford and P. Low; and the said Marcus P. Norton was, and is, guilty of gross misconduct as a patent attorney or agent, and is unworthy of the confidence or respect of the United States Patent Office.

M. D. LEGGETT,
Commissioner.

(Copies of the exhibits were served on Mr. Norton, but being voluminous, are omitted here.)

By the request of the attorney of said Marcus P. Norton, the hearing in the matter of the above charges was postponed until September 14, at 10 o'clock a. m.

Understanding that Mr. Norton was fearful the Commmissioner would

not do him exact justice, he was informed that, if agreeable to his wishes, a commission of three gentlemen connected with the Patent Office would be appointed to hear and investigate the charges, and to report their findings to the Commissioner. He expressed his satisfaction with such arrangement, provided he might designate persons whom he did not want on the commission. He was granted such privilege, whereupon Examiners T. C. Connolly, Ellis Spear, and C. M. Parks were appointed such commission. At the time to which said case
2740 had been postponed, said Marcus P. Norton appeared before the commission, and was assisted in his defense by two able attorneys. He pleaded "not guilty" to all the charges. Over two days were occupied in the hearing. The report of the commission is as follows, to wit:

UNITED STATES PATENT OFFICE,
September 18, 1871.

SIR: We, the undersigned, having been appointed a commission to investigate certain charges made against Marcus P. Norton, a practicing attorney before the United States Patent Office, by order dated September 14, 1871, have carefully investigated said charges, examined the papers and witnesses in the case, and heard the arguments of counsel on both sides, and respectfully submit the following report:

We find that the accused, Marcus P. Norton, is—

Of the first charge, guilty.

Of the second charge, guilty.

Of the third charge, not guilty.

Of the fourth charge, guilty, except of the words "purloining from said files" * * * said papers, &c.

Of the fifth charge, guilty.

Of the sixth charge, guilty.

Of the seventh charge, guilty.

Of the eighth charge, guilty.

All of which is respectfully submitted.

T. C. CONNOLLY,
T. ELLIS SPEAR,
C. M. PARKS,
Commission.

HON. M. D. LEGGETT,
Commissioner of Patents.

It is therefore adjudged—

I. That said Marcus P. Norton has been guilty of such "gross misconduct" as to make it the duty of the Commissioner of Patents, to refuse longer to recognize him as a patent agent; and it is accord-
2741 ingly ordered, by virtue of the authority conferred upon the Commissioner of Patents, under the 17th section of the act approved July 8, 1870, that the said Marcus P. Norton, or any firm of which he shall be a continued member, after said firm shall have been notified of this order, be hereafter excluded from practicing before the Patent Office in any and all cases.

II. In view of the fact that said Marcus P. Norton is also an inventor, and frequently appears in his own behalf in prosecuting applications for patents, extensions, interferences, &c.; and whereas it having been clearly proved in this case that he is an unsuitable person to be trusted with the files in this office, it is further ordered that hereafter said Marcus P. Norton shall not be permitted to have personal access to any of the files, drawings, or models in the Patent Office, for any purpose

whatever. When necessary, in the transaction of business connected with his own personal interests, to know the contents of documents on file in the office, he must call for certified copies, or make examination by attorney.

III. The examiners and other employés of the Patent Office will take cognizance of and enforce the above orders.

M. D. LEGGETT,
Commissioner of Patents.

Approved:

C. DELANO,
Secretary of the Interior.

2742 *Complainant's Exhibit (Ransford).—I. B. Ex'r. July 6th, 1878.*

THE U. S. PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of testimony taken in behalf of T. J. W. Robertson, with notice for taking the same, in the matter of the application for extension of letters patent granted him, dated September 22d, 1857, No. 18249, for "Hand Stamp."

In testimony whereof, I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

[SEAL.] J. M. THACHER,
Acting Commissioner.

2743 [illegible] D. C., *August 22d*, 1871.

In the [illegible] for an extension [illegible] matter of the application of T. J. W. Robertson, [illegible] No. 18249. of his patent on hand stamps, dated Sept. 22, 1857, N[illegible]

To Marcus P. Norton:

SIR: You are hereby notified that on Friday, August 25th, 1871, [illegible] at ten a. m., at 37 Congress street, Troy, N. Y., I shall proceed to take the testimony of F. W. Rainsford, C. A. Sherwood, Jacob Shaver

Whitman, W. E. Hagan, James Burden and others, all of Troy, as witnesses in my behalf.

The examination will continue from day to day, until completed. You are invited to attend and cross-examine.

T. J. W. ROBERTSON.

T. J. W. Robertson's application for an extension of his patent on hand stamps.

Dated Sept. 22, 1857.

No. 18249.

Notice of taking testimony.

Service of the within is hereby acknowledged.

MARCUS P. NORTON.

2744 Before the Commissioner of Patents.

In the matter of the application of T. J. W. Robertson, for extension of letters patent, No. 18249, for improved hand stamp, dated Sept. 22, 1857.

Testimony taken in behalf of the applicant T. J. W. Robertson, on this 25th day of August, 1871, at 10 o'clock a. m., at the office of N. B. Sylvester, No. 37 Congress street, city of Troy, N. Y., under and in pursuance of the annexed notice, from which office the examination of witnesses was adjourned, at 11 a. m., to the office of Parmenter Brothers, No. 47 First street, corner of Congress, no one appearing to dissent to such adjournment, and a written notice thereof being left at the office of said Sylvester. F. H. Betts, esq., and A. J. Todd, esq. appeared for applicant. No one appeared on part of contestant.

FREDERICK G. RANSFORD, being by me duly sworn, says:

1. Q. What is your name, age, residence and occupation?

A. My name is Frederick G. Ransford; my age is fifty-six years; my place of residence is in Troy, N. Y.; I am a retired merchant.

2. Q. Do you know T. J. W. Robertson, the applicant in the present case, in person or by reputation; and if so, what connection in business have you had with him, if any?

2745 A. I know him by reputation; all the business I ever had with him is through Mr. Peter Low.

3. Q. Did you know of the assignment made by said Robertson to Mr. Low, on the 17th of April, 1861, of the invention in question in this case; if so, do you know how much said Robertson received for making said assignment?

A. I knew of said assignment; he received the sum of $100; said money went through my hands.

4. Q. Did you know whether or not said Robertson ever made any endeavor to introduce the invention referred to into post-office use; if so, how did you know of such endeavors?

A. In no other way than that I found the stamp in the possession of Postmaster Dix, in New York city; about the year '60 or '61, I went to the post office to show to Gen. Dix a blotter and cylinder canceling stamp for the purpose of getting it introduced, and he then showed me one of Robertson's, which he then had.

5. Q. Do you know Marcus P. Norton, formerly of Troy, and now at Washington; if so, how long have you known him?

A. I became acquainted with Mr. Norton in January, 1858.

6. Q. Were you ever interested with him in the business of making or introducing hand stamps, similar to Robertson's; if so, when?

A. I, in connection with Mr. Peter Low, bought an invention of that character—I in 1858, and Mr. Low and myself in 1859; Mr. Norton made an application in 1858, and it was withdrawn and renewed in 1859, and the patent granted to Ransford and Low the 9th of August, 1859.

7. Q. What knowledge have you of any hand stamps with dating cylinders having been made for Mr. Norton; if you know of any, please state when they were made and what was done with them?

A. I saw the first dating stamps in 1858; I saw two; it was between the months of April and May; the first one I saw, he took to
2746 Washington in company with me to try to introduce into the Post-Office Department; I went to Washington with him; he did not say anything about having made any prior application; from the conversation had at the Post-Office Department at that time, it appeared to them as a new thing and as having been then first presented to their notice; some time subsequent to this visit to Washington, I can't say how long, I took another of these stamps to North Adams, on the Troy and Boston road, for the purpose of getting it introduced as an experiment in that railroad office; Mr. Norton knew of my taking it there for that purpose, and he said nothing to me of ever having introduced any hand stamps on that road previously; I introduced it to Mr. Baker, superintendent of that road, and he gave me a pass to North Adams, to have the stamp experimented with there; he said nothing to the effect that he had ever seen anything of the kind before; I do not know of any more stamps of the kind having been made until some time after this.

8. Q. Did you know from Mr. Norton of Mr. Robertson's having obtained a patent for the stamp in question; if so, when did you first hear of it from Norton?

A. I heard, at the time that Norton made his application in 1858, that he had been rejected on Robertson's patent; I heard it from Norton himself.

9. Q. Did he at that time claim to have made his invention of a hand stamp, prior to Robertson's patent, or did he show any inclination, or give you any encouragement to go into an interference with Robertson?

A. He made no such claim at that time, and showed no disposition to go into any interference.

10. Q. Do you know Marcus P. Norton's general reputation and character for truth and veracity in this community; if so, what is it?

A. It is bad.

11. Q. Would you believe him under oath?

2747 A. I would not, where he was in any way interested.

12. Q. Do you know whether Mr. Low or Mr. Robertson's assignees ever realized anything from the original term of the patent in this case?

A. The assignees never realized a dollar; this has been occasioned by a disagreement among the owners, and for the same reason no suits have been instituted; the owners have been Peter Low, F. G. Ransford, Charles Eddy & Co. and W. B. Hatch.

13. Q. Have you any interest in this application?

A. I have none.

F. G. RANSFORD.

JACOB SHAVOR, being duly sworn, says:

1. Q. What is your name, age, residence and occupation?

A. My name is Jacob Shavor; my age is fifty-five years; I am now living in Troy; am a retired manufacturer.

2. Q. Do you know Marcus P. Norton's general character for truth and veracity in this community; if so, what is it, and how have you become acquainted with it?

A. I do know his character in that respect; it is bad; I have know' him since 1859, and I know his character and reputation from personal experience, and from a large circle of business men with whom he has had dealing, and there is but one opinion, which I have stated.

3. Q. Would you believe him under oath?

A. I would not.

JACOB SHAVOR.

JEREMIAH D. GREEN, being duly sworn, says:

1. Q. What is your name, age, residence and occupation?

2748 A. My name is Jeremiah D. Green; my age is fifty-nine years; my residence is Troy, N. Y.; and my occupation is that of architect, patern-maker and mechanical engineer.

2. Q. Do you know Marcus P. Norton, the contestant in this case? If so, how long have you known him?

A. I do know him, and have known him since about 1855.

3. Q. When did you first hear of his making any hand-stamps with dating cylinders?

A. I think in the year of 1857 or 1858.

4. Q. How did you come to hear about it?

A. By conversing with Mr. Norton and Mr. Ransford, and, I think, with Mr. Low.

5. Q. Did you at that time know from Mr. Norton of his having made any application for a patent for a hand-stamp similar to that of the applicant in this case, or did you hear of any such application of his having been rejected by reason of the patent of Mr. Robertson?

A. I can't say as to the precise date, but I learned from Mr. Norton and Mr. Ransford that the application for a patent on the revolving type was rejected by the Patent Office as being in conflict with Robertson's patent, of New York.

6. Q. Did Mr. Norton at that time make any claim to be able to anticipate Mr. Robertson's patent in the date of his (Norton's) invention?

A. Not at that time, nor for several years afterwards.

7. Q. Were your relations with Mr. Norton and Mr. Ransford such that you would have been likely to have heard of any such claim of Norton's, if he had made any such?

A I often met them; Mr. Norton frequently came to my place of business, and I saw Mr. Ransford nearly every day and frequently heard this subject discussed.

8. Q. Do you know Marcus P. Norton's character for truth and veracity in this community; if so, what is it, and what opportunities have you had for knowing it?

2749 A. His reputation for truth and veracity in this vicinity is very bad; I have learned of his business transactions for a number of years past, much of which was quite disreputable; I have lived here since 1831, and frequently heard his character discussed.

9. Q. With the knowledge which you possess of the man, would believe him under oath?

A If he was interested either directly or indirectly in the event, I would not believe him.

J. D. GREEN.

STATE OF NEW YORK,
County of Rensselaer, ss:

I, LEVI PHILLIPS, commissioner of deeds for said county, duly commissioned and qualified, do hereby certify that on this 25th day of August, 1871, before me came Frederick G. Ransford, Jacob Shavor and Jeremiah D. Green, who signed the foregoing depositions, and made solemn oath that the statements therein contained were the truth, the whole truth, and nothing but the truth.

The foregoing depositions were taken at the request of T. J. W. Robertson, the applicant above named, to be used upon the hearing in the above-entitled matter before the Commissioner of Patents, on the 6th day of September, 1871.

The contestant, Marcus P. Norton, was duly notified, as appears by notice and admission of service thereof hereto annexed, but did not attend, and was not represented at the taking of said depositions.

[L. S] LEVI PHILLIPS,
Com'r of Deeds, Troy, N. Y.

Ex'd.—L. P. H.

Depositions taken 25th day of August, 1871, in the matter of the application for extension of letters patent, &c.

2750 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

On the annexed stipulation, and on motion of George H. Williams, of counsel for the above-named complainant, it is ordered that the final hearing and argument of this cause, on pleadings and proofs, may be by and before Hoyt H. Wheeler, a United States judge in and for the district of Vermont, by his assent, and at such time and place as he may designate, under and according to the terms and conditions
2751 stated in the said stipulation, dated New York, June 4, 1879, and signed Stewart L. Woodford, U. S. attorney for defendant James, by S. B. C., assistant; George H. Williams, of counsel for complainant, Marcus P. Norton, solicitor for complainant, and Charles Eddy, defendant in person. And to this end, and for this purpose, let the clerk of this court send all the papers, exhibits and models on file in this cause in the clerk's office, to Judge Hoyt H. Wheeler, Brooks House, Brattleboro', Windham County, State of Vermont, in season to be used by counsel at the time and place stated in an order made by him on the 6th day of June, 1879, and hereto annexed. The said papers, exhibits and models to be returned to the files of this court, when no longer needed by him, Judge Hoyt H. Wheeler.

Dated New York, this 9th day of June, A. D. 1879.

SAMUEL BLATCHFORD,
Circuit Judge.

And it is herein further ordered that the papers, exhibits and models referred to in the foregoing order be sent to the Brooks House, Brattleboro', Vermont, for the use and purposes stated in said order, and as

stated in an order made by Judge Hoyt H. Wheeler, and dated June 6, 1879, hereto annexed, in the custody and care of Hamilton M. Keeffe, crier of this court, and who shall do such duty there as Judge
2752 Wheeler may desire, while hearing this cause, under the order and stipulation hereto annexed, on condition that complainant or his counsel pay all necessary expenses attending the same.

Dated this 9th day of June, 1879.

SAMUEL BLATCHFORD,
Circuit Judge.

A true copy of the original on file in this office.

JOHN I. DAVENPORT,
Clerk U. S. Circuit Court.

U. S. circuit court. Filed June 9, 1879.

JOHN I. DAVENPORT, *Clerk.*

2753 *Stipulation.—June* 4, 1879.

Circuit court of the United States, in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

Whereas the counsel for defendant James in this cause has signified his determination to move to amend the answer of said James, and to open the case for the purpose of offering herein additional evidence which he considers material; and whereas the said complainant, in order to expedite the hearing, and have a full and fair investigation of the facts touching the questions involved herein, consents to the introduction of such evidence; therefore, it is stipulated and agreed between the parties hereto that the final hearing of this cause shall be be-
2754 fore the Hon. Hoyt H. Wheeler, U. S. district judge for the district of Vermont, at such time and place as he may designate, after the 15th of June, 1879, and as soon thereafter as will suit his convenience, and with like force and effect in all respects as though said final hearing were before said Judge Wheeler, holding this court under a legal designation in the southern district of New York, and

It is further stipulated that the said defendant, at such hearing, shall have the right to introduce, by an oral examination then and there, any additional evidence that he may desire to introduce, touching the points of prior invention and prior use, or either of them; and all objections to the competency of such additional evidence, under the pleadings, and on account of the present condition of the case, are hereby waived, the complainant reserving the right to dispute the sufficiency or truthfulness of such additional evidence, and to offer evidence, if he chooses, at said hearing, tending to disprove such additional evidence as defendant may put in; but the defendant shall not be at liberty to put in any evidence of a prior invention or use by persons in respect to whom evidence has already been introduced into the case, and it is further stipulated, that nothing herein shall be construed to prejudice or impair in any respect the right of appeal of any party to this suit, and all orders that may be necessary to secure any such right of

2755 appeal may, at any time, be made by this court, or by the Supreme Court of the United States, and

It is further stipulated that an order in the terms of the annexed draft may be made by the court.

Dated New York, June 4, 1879.

STEWART L. WOODFORD,
U. S. Attorney for Def't James.
By S. B. C., *Assistant.*
GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.
MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.
CHARLES EDDY,
Defendant in person, Troy, N. Y.

A true copy of the original on file in this office.

JOHN I. DAVENPORT,
Clerk U. S. Circuit Court.

U. S. circuit court. Filed June 9, 1879.

JOHN I. DAVENPORT, *Clerk.*

2756 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

On the stipulation dated June 4th, 1879, and upon the order of this court, each of which are hereto annexed, and upon a letter signed George H. Williams, of counsel for complainant, and Stewart L. Woodford, United States attorney for the defendant Thomas L. James, dated New York, June 4th, 1879, and hereto annexed; and on motion of Marcus P. Norton, solicitor for complainant, it is ordered that the final hearing and argument of this cause be had at the Brooks House, at Brattleboro', county of Windham, district and State of Vermont, commencing on Tuesday, the 17th day of June, 1879, at 9 o'clock
2757 forenoon of that day, according to said stipulation and the terms thereof, hereto annexed; and under said order of this court, also hereto annexed, when the same shall have been signed by Judge Samuel Blatchford, circuit judge of the United States circuit court in and for the second circuit of the United States circuit courts.

And it is further ordered, that a copy of this order and the order of the said circuit court judge, and of the said stipulations hereto annexed, be each served upon each of said defendants or their solicitor or their counsel in this cause, at least five days befors the said 17th day of June, 1879, and after this order and each of said stipulations and the said circuit court order shall have been filed in this court, in the clerk's office in the city of New York.

Dated at Jamaica, Vt., this 6th day of June, 1879.

HOYT H. WHEELER.

A true copy of the original on file in this office.

JOHN I. DAVENPORT,
Clerk U. S. Circuit Court.

U. S. circuit court. Filed June 9, 1879.

JOHN I. DAVENPORT, *Clerk.*

2758 OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, June 4, 1879.

Hon. HOYT H. WHEELER,
Jamaica, Vt.:

SIR: We have entered into a stipulation for the final hearing of the case of Campbell vs. James, before you, on the 17th instant, or at such time and place as may suit your convenience after the 15th instant. Your letter to Mr. Norton indicated that you would be willing to hear the case at Brattleboro' on the 17th instant, and consequently we have fixed upon that day, and will be there at that time to argue the case, unless you notify us that you prefer some other day. It is proper to say that the defendant proposes to offer some additional evidence upon one or two points at the hearing, to which the complainant has consented, in order to obtain an early hearing, but it is understood that there is very little of the new evidence, and that the taking of it will consume but little time. We will furnish a stenographer to take it down as delivered. We hope you will allow us to do this, as it will be a great accommodation to the parties, and enable you to judge better of the value of the testimony.

We feel greatly obliged for your kindness in consenting to hear the case under the circumstance, and will try to make your labor in the matter as light as possible.

GEORGE H. WILLIAMS,
Of Counsel for Complainant.
STEWART L. WOODFORD,
U. S. Attorney for Def't James.
By S. B. C., *Assistant.*

2759 U. S. circuit court, southern district of New York.

CHRISTOPHER C. CAMPBELL
v.
THOMAS L. JAMES AND CHARLES EDDY.

Before Hon. Hoyt H. Wheeler.

BRATTLEBORO', VT., *June 17th*, 1879.

The following testimony on behalf of the defendant, put in before the court at the hearing, pursuant to stipulation dated June 4th, 1879, and the order thereon.

Complainant's counsel stipulates that, when written out by the stenographer, the same may be filed as a part of the record in this case.

JOHN P REES, called on behalf of the defendant, sworn:

By Mr. CLARK:

Q. Where do you reside?
A. At Philadelphia, Pa.
Q. What is your occupation?
A. I am at present employed at 904 Chestnut street, attending to their collections and banking business.
2760 Q. What is your age?
A. I am in my sixty-third year.
Q. Were you ever employed in the Philadelphia post-office?

A. I was. I was appointed there under Col. Page, in the early part of Gen. Jackson's term as President.

Q. Col. Page was postmaster?

A. Yes.

Q. How long did you continue in the post-office at that time?

A. I remained there until the appointment of Mr. White, under President Taylor.

Q. Did you go out immediately then?

A. No; I was there two or three years before I resigned. I think it was previous to 1851.

Q. You went out before a successor was appointed to Mr. White?

A. Yes, sir.

Q. When did Mr. White leave?

A. I don't know.

Q. What was your work in the office?

A. When I first went in, I was a general clerk. I worked around at the box windows, assisted in assorting letters, and after Dr. Lehman came in, I was appointed second clerk.

Q. What President appointed Dr. Lehman?

A. I can't say whether it was Pierce or Polk. He was appointed under a Democratic President.

Q. What did you do when you were general clerk?

A. I assisted in marking letters at the table where the letters were deposited, and did general duty all through the office.

Q. What did you do when you were second clerk?

A. Then I had charge of one of the sides. The employes were divided into two sets. The chief clerk had one part of the mail, and I the other, and we would come on on alternate days, and go off when the southern mail was received and assorted.

2761 Q. Can you tell us whether there was any instrument used in the office for putting the postmark on when you first went in there, when Gen. Jackson was President?

A. Yes; there was a large stamp used, with the words "Philadelphia, Pa." on it.

Q. It had no date?

A. No. My impression is it had no date and no year. That was a subsequent improvement.

Q. Look over these exhibits and see if you find any like the one used?

A. The stamp in use was something of that size, but with no date in it; it didn't have that attachment. (Referring to Defendant's Ex. 135 Powers, Feb. 14, 1878.)

Q. You say the instrument used for postmarking was the same as that, except there was no attachment?

A. Yes; just "Philadelphia, Pa."

Q. At that time, how did they indicate the amount of postage due?

A. They marked them with a pen and ink—25, 18¾, 12½, and 6¼ cents.

Q. Those were the rates at that time?

A. Yes, sir.

Q. Did the rating come to be done by a stamp at any time?

A. There was no change until a change was made in the rates of postage—from 25 to 20 and 15, 10 and 5 cents, instead of 18¾, 12½ and 6¼. I think that was in 1845.

Q. At that time there was that change in the rate of postage?

A. Yes, sir.

Q. You say there was a change made in the method of indicating the rate of postage?

A. Yes, sir.
Q. Describe that change?
A. To facilitate business we had an attachment made to that stamp that I speak of. It had a figure "5" screwed on here.
Q. Screwed on one side?
A. Yes.
Q. That is a block of metal, on whose face was a figure 5?
A. Yes, sir.

(Here follows diagram, marked page 2762.)

Q. Attached by a screw?
A. Yes; that was owing to the fact that there was a greater
2763 number of the 5-cent stamp postage than all the rest put together.
Q. More letters to be rated 5?
A. Yes, sir.
Q. That is when it was to be paid at the place of delivery?
A. Yes, sir.
Q. About what size was it?
A. That was about the size of the figure 5. (Referring to drawing.)

By Mr. WILLIAMS:
Q. Who made that drawing?
A. Mr. Platt.

By Mr. CLARK:
Q. Mr. Platt made this under your instruction?
A. Yes, sir.
Q. What does figure 1 represent?
A. The face of the stamp. This was the handle, and here is where the figure "5" was attached.
Q. In figure 2 what does A represent?
A. The piece screwed on with the figure "5" at the end.
Q. What does B represent?
A. The body of the stamp.
Q. On all those that were used as far back as Jackson's time, the handle was wood with a metal cylinder?
A. Yes, sir.
Q. What does C represent?
A. The handle.
Q. In figure 1, A represents what?
A. The acting face.
Q. B represents what?
A. The face of the postmark.
Defendant's counsel offers in evidence drawings, Figs. 1 and 2, marked Deft's Ex. 202, Rees, June 17, '79.
Q. This stamp having an attachment to the side with the figure "5" on its acting face, was made about the time of the reduction of postage?
A. Yes.
Q. You think that was about 1845?
A. Yes, sir.
2764 Q. Who did the work of having it done?
A. I did.
Q. Did you do the work?
A. I had it made. Mr. Binney made it, under my instruction.
Q. Who was he?
A. A die sinker, at the corner of 3d and Carter's alley.

Q. Is Mr. Binney living?
A. No, sir.
Q. How old was he at the time?
A. Sixty-five or 70 years old at that time.
Q. He made this thing according to instructions given by you?
A. Yes.
Q. You had that attachment put on there to save the labor of writing with a pen and ink?
A. Yes.
Q. Was that ever put into use in the office?
A. Yes.
Q. Used right along?
A. Yes.
Q. Did all the clerks have an opportunity to see it?
A. Yes.
Q. No concealment about it?
A. Not at all.
Q. Did you show it to the postmaster?
A. Yes; it was on the marking table, and was generally used.
Q. It lay on the table where the other stamps were used?
A. Yes, sir.
Q. Did there anything happen about that time which fixes this matter in your recollection?
A. There was a case being tried in Washington, called the Van Ness case, in January, 1849. I was subpœnaed as a witness. Mr. Henry D. Gilpin and Robert C. McMurphy were counsel. They got the information of a certain envelope or letter, which had the stamp on, which the plaintiff a leged was put into the post office at a certain time. Envelopes were not in general use at that time.
Q. They didn't always use envelopes, but folded the letter and sent it?
2765 A. Yes. We were talking the matter over, and I mentioned the fact of this alteration, and I told them if I could get a sight of the envelope, or if it had that figure "5" on it, we could establish the fact that it was not put in until a considerable length of time after they alleged it was. I had been sent to Washington four or five different times to see that envelope, but did not succeed. On January 2d, 1849, or previous to that, I got a letter stating that my wife was about being confined, and requested to go home. She was confined on the night of January 2d, 1849, and gave birth to a boy. Mr. Gilpin said, in case it was a boy, "I will take him in my office to study law when he is old enough." Mr. Gilpin died before he was old enough. The morning after I arrived, Mr. Brent came up, under the impression that I was in Washington. I am not positive whether the lady's name who was suing was O'Neil or O'Donall, but I think it was O'Neil. I was in the postmaster's office, and Mr. Brent came in, making some inquiries about some alteration that had been made. I was in there, and he pulled the back of this letter out, and the figure "5" was covered up with a blotch of ink. I remarked to Mr. Gilpin and McMurphy, at the time this alteration was made, that Mr. Binney let the stamp fall, which struck the foot of the vise and made a dent opposite to where the figure "5" was. I was satisfied that the letter had not been put in for a considerable length of time after they alleged it was. I saw McMurtrie that evening and told him. I went to Washington the next day. I was called on the stand, and Mr. Gilpin made mention of the facts, and while in court

they sent out and got some potash and put over the blotch of ink, and cleared it off, and there was the figure "5."

Q. Potash would remove the writing ink, but not the printing ink?

A. Yes.

Q. You fix this date accurately by the birth of your son?

A. Yes.

2766 Q. The transactions referred to related back to some years before 1849?

A. Yes. The case came on—she commenced her suit in 1849. I don't know how long the governor had been dead. We proved a fraud, or an attempted fraud, on their part, and the case went against them.

Q. The matter was in relation to an alleged marriage?

A. Yes, sir. This letter was said to be one making an appointment to meet the governor at a certain time before the marriage ceremony was performed.

Q. Some time before it could have been postmarked with the figure "5?"

A. Yes, sir.

Q. How long should you think that combination was used in that form in that office?

A. It was used until we commenced using postage stamps.

Q. What were their denominations?

A. Five and 10 cents. Then of course we had no further use for that, and we had stamps with a canceller. The stamp we used subsequently a date in it—not the year, merely the month.

Q. Was there any other form of stamp, except this one represented by Figure 1, which was used, and which would also print the figure "5"?

A. Not at the same time that was being used.

Q. But did any succeed it?

A. Yes.

Q. You saw that made?

A. Yes; this one. (Figs. 3 and 4 of the drawing.)

Exhibit 202, Rees, offered in evidence.

Q. B represents the iron part, the same as before, and C the handle?

A. Yes.

Q. Figure 3 represents an impression made by this stamp, Fig. 4?

A. Yes.

Q. The figure "5" was made inside?

A. Yes, sir.

Q. As there represented in Fig. 3?

A. Yes.

Q. Stamps in that form were furnished the office and used?

A. Yes.

2767 Q. In regard to figures 1 and 2, the stamps made in that form, who paid the expense of having that made?

A. It was paid by the Philadelphia office—by the postmaster.

Q. The stamp represented by Fig. 2, having an attachment on which the figure "5" was engraved, was used from the time that the rates were reduced to the time the postage stamps were introduced?

A. Yes.

Q. This stamp, having the figure "5" inside of the ring of the postmark, was used about that time?

A. Yes.

Q. And succeeded that?

A. Yes; some time previous to the introduction of the stamps.

Q. State whether before you left the post-office, while Mr. White was

postmaster, any instrument was used for the cancellation of the postage stamp.

A. We had a separate canceller.

Q. Do you see anything here that is about the size of it?

A. It was something of that size, but all iron. (Referring to Def'ts' Ex., No. 139, Zevely.) It was not attached, but a separate instrument.

Q. But the same shape of the postmark—wooden handle and metal cylinder?

A. Yes.

Q. That was used after postage stamps were introduced?

A. Yes, sir; at the time the postage-stamps were introduced, we had such an instrument as that. That was previous to 1851.

Q. State whether previous to 1851, at the time you left the post-office, there was any instrument in use which would postmark a letter apart from the postage stamp—to one side of it—and cancel the postage stamp at the same blow?

A. Yes; there was an attachment screwed on similar to this.

Q. You remember seeing that in use?

A. Yes, sir.

Q. You used it yourself?

A. Yes, sir.

2768 Q. Was there any concealment about the use of that instrument?

A. No.

Q. Was it publicly used in the office?

A. Yes. It laid on the marking table, a table as long as this, and at that end was a place where the letters were dropped in by the citizens, and on that side were boxes, and after they were marked they were thrown in, separated.

Q. Do you know Mr. William M. Ireland?

A. Yes, sir; he was appointed to a clerkship under White.

Q. Do you know whether he used that combined instrument or not?

A. Yes; he was the junior clerk, and I guess had more to do with rating letters than any other clerk.

Q. In regard to this attachment of the figure "5," was that attachment secure and strong?

A. Yes.

Q. Mr. Binney did his work well?

A. Yes.

Q. And the attachment of the canceller, was that secure?

A. Yes, sir.

Q. Can't you fix the date when you left the post-office—where did you go when you left?

A. I moved to Camden, N. J. Soon after I moved there, my wife gave birth to a boy, who is now in his 28th year.

Q. When was he born?

A. I don't remember. It was in 1851. I had left the office before that time.

Q. Had 3-cent postage-stamps been introduced before you left the Philadelphia office?

A. I think they had; I am not sure.

Q. You are sure it was before 1851, or at least not later than 1851, that you left?

A. Yes. My second son was born January 2d, 1849, while this trial was going on, and my third son was born after we moved to Camden.

2769 Q. You are perfectly clear about the recollection of these facts, about the birth of your children and about the Van Ness case?
A. Yes.

Cross-examination by Mr. WILLIAMS:

Q. You left the office when Mr. White became postmaster?
A. Not immediately. I was there some time after that. He was appointed the latter part of 1849, and I left in 1851.
Q. Can you state when White was appointed postmaster?
A. The latter part of 1849.
Q. Is that as definite as you can fix it?
A. Yes.
Q. When did Mr. Ireland come into the office?
A. He was one of his first appointments—I think in 1849.
Q. When was this instrument, with the canceller attached, introduced into that office?
A. That was after Mr. White's appointment.
Q. Specify the date.
A. I can't give the month. I know it was soon after White's appointment.
Q. Can you give the year?
A. It was the latter part of 1849, I think.
Q. Who made that?
A. I don't know. My impression is, Mr. Binney did it, from the fact that he had been doing all that work.
Q. Do you know who had it made?
A. No.
Q. How many of them were there in the post-office?
A. I don't recollect but one at that time.
Q. How was it made?
A. The attachment was screwed on similar to that, Fig. 2, except the stamp was round.
Q. Was there any impression on the face of the canceller?
A. Yes, sir.
Q. What was it?
A. I think they were crosses.
Q. What was it made of?
A. Iron or steel.
Q. Was that in the office when you left?
A. Yes.
2770 Q. Was it generally used?
A. Yes.
Q. Were all the letters stamped with the instrument in the office?
A. I can't say whether they were all stamped or not. I presume they were, the most of them.
Q. Were there other stamps in the office?
A. Yes.
Q. Were there separate cancellers in the office?
A. I think there was.
Q. Didn't the government furnish separate stamps, separate postmarkers, and separate cancellers for the use of the office?
A. I have no recollection whether they did at that time or not.
Q. You don't know whether the government did then or not?
A. No.
Q. What was your business there in 1851 and afterwards?
A. Previous to that I had been second clerk, but some time before I

left I was put on night duty in charge of the money packages that came in, and I remained there some time, and then I was put on the last part of night duty, in charge of the sealed bags, and soon after that I resigned and went into the drug and medicine business.

Q. You had nothing to do with the stamping of letters?

A. Not after I went on night duty, except in taking my packages over and stamping them, and it was then when I more particularly used this stamp with the attachment.

Q. After the canceller was attached, you had nothing to do with postmarking and stamping letters?

A. No, sir.

Q. How many clerks were there in the office at that time?

A. Fifteen or twenty. I am not positive of the number.

Q. How many were engaged in stamping letters?

A. Frequently all would take a hand. There was no particular one appointed for that business. When I was second clerk I used fre-
2771 quently to mark and stamp letters, and I think I have seen the chief clerk do the same thing.

Q. When did you first communicate this information, and to whom, that you have given here?

A. Mr. Brown asked me something about it some time ago; I don't recollect the time. He asked me if I had any recollection about the stamps.

Q. How long ago?

A. Two months or six weeks ago.

Q. Who is Mr. Brown?

A. He is employed in the Philadelphia office.

Q. Have you seen Mr. Parker, the special agent?

A. I saw him once.

Q. When did you see him?

A. Three or four weeks ago.

Q. He came to see you as to what you knew about this matter?

A. Yes, sir.

Q. Had this subject ever been before your mind since the time you mention in 1851 up to the time you were questioned about it particularly—I mean in reference to the attachment of the canceller?

A. No; I don't know that it was.

Q. The matter was never recalled to you?

A. I have no recollection of it ever having been. I recollect it particularly, because it was the first thing of the kind we ever used in the office.

Q. What did Mr. Brown say he wanted you to state in the case?

A. Nothing. He merely asked me if I had any information of it.

Q. Asked you if you recollected anything of an attachment at that time?

A. I don't know that he mentioned particularly about the canceller, but whether I had any recollection about the stamps that was used at that time.

Q. Did he mention the dates?

A. I don't know that he did.

2772 Q. Did Mr. Parker ask you anything about the dates?

A. I am not positive whether he did or not.

Q. Didn't he or Mr. Brown tell you it was necessary to prove that this canceller was attached before 1854 or 1853?

A. No, sir.

Q. Didn't you understand that?

A. No, sir. I don't think either of them said anything about the time it should be proved, or anything of the kind.

Q. Are there any other men in the office there who were in when you were there?

A. Mr. Brown and Mr. Stearns, but Mr. Stearns was employed principally in the newspaper department. He would not be where any of these were used.

Q. Any other clerk in the office who was there in 1851?

A. I don't think there is.

Q. Nobody but Brown and Stearns?

A. That is all. Whether Mr. Wonder was there in 1851, or not, I can't say.

Q. How old were you when you went into the post-office?

A. I was quite young. I don't think I was more than 13 or 14 years old.

Q. What did you do there then?

A. I was general clerk under Col. Page. I was principally employed at the box windows, but I took a hand in the general business. A portion of the time I copied the sheets of mails received.

Q. Do you know what became of that instrument with the canceller attached?

A. I do not.

Q. Do you know whether its use was continued in the post-office at Philadelphia from that time forward?

A. I do not.

Q. Don't you know that it was not?

A. No, sir; because I was not in the office after that time.

Q. You received letters from there and posted letters?

A. Sometimes.

Q. You know nothing about what took place in the office after you left?

A. No, sir; I had no occasion to go inside.

2773 Q. How do you fix the date of the attachment of the canceller, in what way do you fix it in your memory?

A. It was just previous to my leaving the office. It was in use then, or rather in 1849, after White had come in—between 1849 and 1850.

Q How do you fix the date in your mind as to the time it was introduced?

A. There were postage stamps used at that time.

Q. Postage stamps used when?

A. I think they were first used in 1847.

Q. How do you fix the date in your mind when this canceller was attached to the postmarker—is there any way that you fix the date?

A. Nothing further than this, that it was not used until after White came in the office. It was not used before.

Q. You are sure it was used after he came in, before you left?

A. Yes, because I recollect distinctly of using it myself.

Q. I understood you to say you did not use it?

A. Oh, yes, I did. When I was on night duty, stamping these packages of money. I remember that I used it then—money packages sent in by brokers.

Q. Had you any knowledge of any claim for this stamp, before this matter was brought to your attention by Mr. Brown?

A. No. I don't think that he even mentioned then anything about it.

Q. What did you tell Mr. Brown?

A. I told him that I had some recollection of the stamps, and I mentioned particularly about this alteration in Fig. 2. I supposed it referred particularly to that.

Q. You referred to that in your conversation with him?

A. Yes.

Q. Did you refer to the other in your conversation with him?

A. I don't know that we did.

Q. Did you in your conversation with Parker, the special agent, refer to that?

A. I am not positive whether I did.

2774 Q. What did Parker say to you when he came to see you about it?

A. He asked me if I had any recollection about the stamps, what kind we used.

Q. What did you tell him?

A. I mentioned the fact about these stamps, about the canceller. I think I mentioned about this canceller being used, but I am not positive about it.

Q. You don't know whether you did or not?

A. No, sir.

Q. You don't know whether you mentioned it to Brown or not?

A. No.

Q. Had you mentioned it to anybody before your testimony here today?

A. I don't think I had.

Q. Hadn't you and Ireland talked it over together?

A. No, sir.

Q. Had no conversation about it?

A. No, sir.

Q. One way or the other?

A. No, sir.

Q. Or with anybody else?

A. No, sir.

Q. Haven't talked with Mr. Clark about it?

A. No, sir.

Q. Nobody knew what you were going to testify to on that subject until you were called here this morning?

A. No, sir,

Q. You are positive of that?

A. Yes.

Q. Give the date of the time when this rating stamp was attached.

A. That was attached when the change took place in the rates of postage. I think that was in 1845.

Q. Do you know whether it was in 1845 or 1847?

A. It was previous to the introduction of postage-stamps, and the reason why that "5" was put there was because there were more of that denomination than any others.

Q. There were different rates of postage?

A. Yes, sir.

Q. And the figure "5" was made because there was more letters paying 5 cents than any other, and it was attached to the postmarker?

A. Yes.

Q. How was it attached?

2775 A. By a square piece, hollowed out a little to fit the stamp, and the figure "5" was at the bottom of that.

Q. That was all the stamp that was made?

A. That was all at that time.
Q. How many of them?
A. At that time there was but one.
Q. What became of that?
A. I don't know.
Q. Didn't you say it was worn out?
A. It was considerably worn.
Q. And thrown aside, wasn't it?
A. I presume it was.
Q. If after that single stamp, where the rater was attached to the postmarker—after that was worn out and used up—if separate raters and separate postmarkers were not used in the office?
A. Yes, sir.
Q. How long were they used after that was laid aside?
A. They were used up to the time that White came in.
Q. How long from the time that this was laid aside up to the time White came in?
A. It might have been a year, more or less, before White came in the office. I am not positive about the time.
Q. When was that made, with the rater attached?
A. In 1845, when the change took place in the rate of postage, from 6¼ to 5 cents.
Q. You are sure it was made after the rate of postage was changed from 6 to 5 cents—after that it was made?
A. Yes, it was made to be used after the rates of postage was changed.

By Mr. CLARK:

Q. Soon after, you say?
A. Yes. As soon after as we could have it done.

By Mr. WILLIAMS:

Q. Why was the rate attached?
A. As a matter of convenience, to save time. We had to make
2776 but one impression, whereas if we had two we had to strike twice. That is the reason why I had it done.
Q. You say you had it done?
A. Yes, it was made by my instructions.
Q. Were you engaged at that time in marking letters?
A. I assisted. I was second clerk at that time.
Q. It was not your business?
A. No, but we had no one appointed particularly at that time to rate letters.
Q. Did the government furnish separate raters at that time?
A. I don't recollect.
Q. Do you know where the postmarking stamps and the rate stamps were procured by the post-office at Philadelphia?
A. I do not.
Q. All the means you have of fixing that date in your mind is this alleged suit that took place?
A. Yes, and the fact of the change in the rates of postage, it was made then, on that account, to take the place of the 6 cents; it being rather an unhandy figure to make, we adopted that plan.
Q. Was that because more letters were posted after the postage was reduced?
A. Yes; there was not only more, but there was more of this rate than all the rest put together.
Q. How long after that stamp, with the rater attached, was discon-

tinued until the use of the stamp with the canceller attached—how long was that time?

A. I should think at least a year, if not more; I have no means of fixing it. I know this stamp, Figs. 3 and 4, was used after the other was discontinued. On this one we had no year or day of the month.

Q. That is the separate postmarker which you refer to?

A. Yes.

Q. Then there was a separate canceller used?

A. We had no occasion for a canceller until after the postage-stamps. We had a separate canceller to this one with the attachment.

2777 Q. After this with the rater attached was discontinued, didn't you use a separate canceller?

A. That is my impression.

Q. How long was that separate canceller used in the office?

A. I could not say how long; they were in use at the time that White was appointed postmaster.

Q. Then this stamp with the rater attached was discontinued before White became postmaster?

A. Yes.

Q. Then this separate stamp and the separate canceller were used how long after White came into the post-office?

A. I could not say how long.

Q. You have sworn, as I understand you, that nobody knew what you would state on this subject until you testified here to-day?

A. It was talked over. I don't know that anything special—I would not say positively that there was nothing said about it.

Q. Didn't you say positively that nobody knew what you would testify to on the subject of this attached canceller until you came in here as a witness?

A. I don't know; I may have said something to somebody.

Q. Do you know whether you did mention it to anybody or not?

A. The matter was talked over.

Q. Talked over with who; can you make any other answer to the question than you have made?

A. No, sir.

Q. When you instructed Mr. Platt, here, to make that drawing, was there anything said about your testimony—what you were going to state—that was done outside of the court-room?

A. Yes.

Q. When you instructed him how to make that, was there anything said about what your testimony would be on the subject?

A. I don't think there was. I was merely giving him my idea about the stamps.

2778 Q. Did you state on your direct examination that you remained in the office until White was appointed?

A. Yes, I was in the office when he was appointed.

Q. Did you convey the idea that you left when he was appointed?

A. I left sometime after he was appointed.

Q. You didn't leave at the time he was appointed?

A. No; I was in the office sometime after he was appointed.

Q. How long after?

A. I don't remember; I left there sometime previous to 1851.

Q. You left before 1851?

A. That is my impression.

Q. How long before 1851?

A. I could not say positively. I moved from there to Jersey, and

that enables me to fix the time. My son was born in Jersey, and he is now 28.

Q. You left before your son Thomas was born?

A. Yes. He was born soon after we moved into Jersey.

Q. How long before your son was born did you leave the office?

A. Three or four or five months.

Q. Then you left there pretty nearly 29 years ago?

A. Yes.

Q. I don't quite understand in reference to this suit. How did you refresh your recollection about this attachment of a rating stamp, in that suit?

A. My son Harry was born January 2d, 1849, and this attachment was not made until a change took place in the rate of postage. That is one of the reasons which enables me to recollect, and the time that this suit was going on.

Q. What was the question in that suit as to the letter?

A. They alleged that it had been put in the office some considerable time after it was—previous to when it was. The fact of this alteration established the fact that the letter was not put in until a con-
2779 siderable length of time after they alleged it was. They wanted to make it appear that it was put in a considerable time previous to its having been put in the office. Owing to this alteration, the fact was established that it was not put in until a considerable length of time afterwards.

Q. When did they allege it was put in the office?

A. I don't recollect the time. It was previous to the alteration being made; how long, I could not say.

Q Was the envelope procured in that case?

A. I am not positive whether it was an envelope or letter written on a sheet of paper; but I saw the back of the letter, with the dent that I spoke of as being made at the time the alteration was made, which was directly opposite the figure "5," which had been covered up with a blotch of ink.

Q. And that was uncovered, and you found the figure "5" there?

A. Yes.

Q. When did you make that discovery?

A. In Washington, some time during the month of January, 1849. That is my impression.

Q. When this blotch was removed, what was found there?

A. The figure "5."

Q. Subsequently, you say, the figure "5" was introduced into the body of the stamp.

A. Yes.

Q. When was that done?

A. I can't say positively. It was some time afterwards, owing to that stamp being worn out. It was used continuously, and the only one, right along; they were getting stamps every once in a while.

Q. When do you say you were appointed in the post-office?

A. Under Col. Page.

Q. What year?

A. In the early part of Jackson's administration; I am not positive what year.

By Mr. CLARK:

Q. I understood you to say that down to the time you left, about 1851, there was no regular stamping clerk?

A. No, sir.

2780 Q. Now one clerk would do it, and now another?

A. Yes.

Q. And you would do it off and on?

A. Yes. When there was a particular rush, I would take it the same as the rest.

Q. You did it down to the time you left?

A. The latter portion of my time I was on night duty 6 or 8 months.

Q. You say the stamp having the rater with the "5" attached was laid aside because it was worn?

A. The thing that succeeded it had the day of the month; the other had nothing.

Q. And the one that succeeded it also had the "5" inside of the circle?

A. Yes.

Q. Did you say that separate raters, with the "5" on, were used also, as well as that combined—did you use a separate rating stamp having a "5" engraved on it, independent of the combination?

A. I don't recollect that. I think there was, but I am not certain about that.

Q. Was the impression on the letter or envelope in the Van Ness case made by this combined rater and postmarker?

A. It was made by this one with a figure "5" attached on the outer rim of the stamp.

Q. Your second son was born during the progress of that trial?

A. Yes; on January 2d, 1849.

Q. You have stated that separate cancellers were used after the introduction of postage-stamps?

A. Yes, sir.

Q. As well as this combination?

A. Yes, sir.

Q. You had some conversation with me last night?

A. Yes.

Q. Did I ask you anything about your testimony, as testimony?

A. No.

Q. Did I ask you anything as to what was said in the office?

A. Yes. I had said nothing to anybody what I was going to testify to.

Q. My questions related to what was done in the post-office back of that time?

A. Yes.

2781 Q. Do you recollect whether I asked you anything in regard to whether a combined canceller and postmarker was used?

A. I don't recollect.

By Mr. WILLIAMS:

Q. Didn't you swear that you had told nobody what your testimony would be here before you testified here to-day?

A. I had not had any conversation with anybody as to what I was going to testify to.

Q. I asked you if you had communicated to anybody the substance of your testimony here to-day, and you denied that you had, didn't you?

A. I hadn't told anybody what I was going to testify to.

Q. What do you mean by that? Do you mean that you haven't told

anybody that you knew of the existence of this canceller attachment, or what do you mean?

A. Not in so many words. I didn't state to anybody what I was going to testify to.

Q. You stated positively that nobody knew what your testimony would be, on that subject, before you came on the stand here to-day?

A. I imagine not. I didn't say to anybody what I was going to testify to.

Q. And you never mentioned the subject to anybody?

A. We talked the matter over, but I didn't tell anybody what I was going to testify to. I mentioned to Mr. Brown what my recollection was in regard to stamps, more freely than to anybody else; but I didn't mention to him what I would testify to.

Q. You expected to testify, if you told him the truth, to testify to what you told him?

A. Of course.

Q. Didn't he inquire for the purpose of ascertaining whether you could be a witness or not in this case; didn't he come to you for information?

A. No; I was in the office, and he merely asked me if I had any recollection, knowing that I had been there longer than anybody else.

2782 Q. Where was this conversation with Brown?

A. In the Philadelphia post-office.

Q. Didn't you know that he asked you that question with a view of having you as a witnesss in some case?

A. There was nothing said at the time. I went there to see Mr. Brown on another matter, for the purpose of getting information of a party who wanted to purchase goods, and it was then that he asked me if I had any recollection of these stamps. There was nothing said about my being a witness, and I had no idea of anything of the kind until some time afterwards.

Q. When afterwards?

A. Two or three weeks afterwards.

Q. How did you come then to know you were to be a witness?

A. Somebody came up to the store.

Q. Who?

A. Mr. Bingham was one.

Q. Who is he?

A. Assistant postmaster in Philadelphia.

Q. Did you see Parker?

A. I really don't know the gentleman by name, but I saw a gentleman at the Philadelphia post office. Whether it was he or not, I don't know.

Q. Bingham and somebody came to see you about being a witness in this case?

A. I didn't see him. I was not in the store, and I went down to the post-office afterwards.

Q. You met them there and talked the matter over about being a witness?

A. No. I didn't know that I would be a witness until afterwards.

Q. When did you find out afterwards that you were going to be a witness?

A. Two or three days ago I was told that I would be wanted to come as a witness—not at the time I was there.

Q. What do you mean when you said that you didn't know you were

to to be a witness in this case until Bingham and somebody called on you?

A. They called on me, and I was not in, and I went down and saw them.

2783 Q. When you saw them at the post office, what was said and done there about this matter?

A. I think the gentleman I saw there remarked that I might be called on, but didn't say positively that I would, and I didn't know that I would until two or three days before I came.

Q. Who told you then, two or three days ago?

A. I don't recollect whether it was Mr. Bingham or the special agent.

Q. What did he say to you then?

A. That probably I would be called as a witness.

Q. When were you called on as a witness; how do you happen to be here?

A. I came here with those gentlemen.

Q. Who invited you to come?

A. Mr. Bingham and the special agent.

Q. That was two or three days ago?

A. Yes.

Q. What did they say about it?

A. Merely mentioned the fact that I would be called on as a witness.

Q. You were not subpœnaed?

A. There was no subpœna.

Q. They told you that they wanted you to come as a witness?

A. Yes.

Q. Do you say that was the first time you ever knew that you were going to be a witness?

A. Yes, because I hadn't been subpœnaed.

Q. You don't remember what was said between you and Bingham and the other gentleman, at the time you were at the post-office, about this matter?

A. Merely asked me if I had any recollection of the stamps used at that time.

Q. He repeated the same question to you that the first gentleman did?

A. Mr. Brown was the first one I had any conversation with, and I afterwards went to the office and saw Bingham, and I think the postmaster was in the office at the time. I was there but 4 or 5 minutes.

2784 Q. Who is the postmaster now?

A. Gen. Hartranft.

Q. Bingham has been postmaster there?

A. No; he is a brother of the postmaster.

Q. How long has this assistant postmaster been in the office?

A. He was appointed under Gen. Bingham.

Q. How long ago?

A. Ten or twelve years ago. I don't recollect whether Bingham was there 4 or 8 years.

Q. Have you been acquainted with Bingham long?

A. Only since he has been in the post office.

Q. How long ago was it Brown called on you about this?

A. He didn't call on me. I went to the office for some information. I can't say exactly the time—four or five weeks ago.

Q. You say Brown has been in the post office a long time?

A. Yes; he was there when I was there.

Q. He knew that you had been a clerk in the post-office?

A. Yes.

By Mr. CLARKE:

Q. In saying that Brown and Mr. Stearns are the only people who were there in 1849 and 1850, you mean they are the only ones you recollect?

A. They are the only ones I recollect.

WILLIAM M. IRELAND called on behalf of the defendant. Sworn.

By Mr. CLARKE:

Q. What is your age?

A. 45.

Q. Where do you reside?

A. Washington City at present.

2785 Q. Your occupation?

A. Pension and patent attorney, and secretary of two or three organizations.

Q. Have you been employed in the Philadelphia post-office?

A. Yes.

Q. When first?

A. In the spring of 1849 I was appointed. I don't know the date. I think about the 1st of May or the last of April.

Q. How long did you continue uninterruptedly?

A. I remained there until some time in the fall of 1855.

Q. Who appointed you?

A. Mr. White.

Q. He was appointed by President Taylor?

A. Yes.

Q. What sort of an instrument was used for postmarking letters at that time?

A. We had a stamp something like that, without the burr on the side (referring to Def't's Ex. 135 Powers). That was the general shape and size of it, and the material was metal of some kind. There was a mortise for the day and month, and there was a figure "5" down in the bottom, on the face of the postmarker, and we had one with a figure 10 in it, and one without any rate, which was used where there was high rates of postage. For the 5 cents letters we would use the "5"; if there was 15 or 20, whatever the high rates might be, we would put the plain one on, and have an extra stamp for those. I remember distinctly the 20 cent separate rater.

Q. Wasn't postage stamps used?

A. Yes, they were used then.

Q. When they were used you would not use these stamps with the figures?

A. There was no occasion for them unless there was extra postage due.

Q. Postage stamps that were used were of what denomination?

A. 5 and 10 cents.

2786 Q Do any of the figures in Ex. 202 Rees, correspond with the postmarkers then in use?

A. Figure 3 corresponds with the one that was in use, and 4 being the upright, and this the face of it. Then if you take the figure "5," in the centre, off, would correspond with another one. Without the attachment figure 1 would represent another one of the postmarkers, that being the plain one.

Q. Didn't that other one have a date?

A. Yes. It does not perfectly represent it—a general idea.

Q. Were there separate cancellers for the postage stamps which you say were used?

A. Yes.

Q. What was their construction?

A. It was very similar to the postmarking stamp, except smaller; it had a wooden handle with a piece of metal attached to it, about an inch long and about the size on the face of it of a 5 cent nickel—about the size of the canceller in Def't's Ex. 135. The face of it was exactly like that—barred.

Q. What were your duties?

A. General duties. In those days the office was organized entirely different from what it is now. We all would take a hand here and there and perform all kind of duties. There were four parties, two having charge of the day work and two night parties. One of the day parties was under the charge of the chief clerk, and the other was under the second clerk, and we had what was called long and short days. One set would go on duty at five o'clock in the morning and remain until breakfast, and the other party come on at eight and they would go off at three, and the other remain on until seven in the evening, and that is the way I fix the time by having to get up at five o'clock in the morning.

2787 Q. Did you do any stamping?

A. Every day, more or less.

Q. What did you do most?

A. I don't know but what I did more stamping for a short time after I went in than anything else. Subsequently I was transferred to different places to learn the different branches of the business so we could take one another's places when one was sick.

Q. State whether any instrument was used which would postmark an envelope and cancel a postage-stamp at the same blow.

A. There was one some time after I went in.

Q. How long after?

A. No great length of time, 5 or 6 months, I think it was in the fall of 1849, there was one made.

Q. How was it made?

A. It was one of the postmarkers with a canceller stamp, it being detached from the handle and then screwed on to the side, so that when it came down it would make the two blows.

Q. In stamping letters you always strike the ink pad and then the letter?

A. Yes, the usual method is to strike the pad every time.

Q. You say that combination was attached by screws?

A. Screws or rivets.

Q. Was it held tight and strong?

A. Yes, it did its work.

Q. Do you know who made that instrument?

A. No, I remember it was taken to a shop in some alley near the post-office, but I don't recollect the name of the party.

Q. Who had it done?

A. I had it done.

Q. It was done according to suggestions you gave?

A. I gave the man the idea of what I wanted done, and he fixed it up. I took the two pieces and told him I wanted to get the two fixed

2788 together in some way, and he put in the rivets or screws and fastened them together side by side.

Q. You took a separate canceller and a separate postmarker?

A. Yes.

Q. They were stamps that had been used in the office?

A. They were.

Q. Was that thing so put in use in the office?

A. Yes.

Q. No concealment about its use?

A. No, we would use it and throw it down.

Q. Where anybody could see it?

A. Yes. All the stamps were lying on the table, and sometimes on a little rack above the table, and whoever would go to the table would take that up or any other stamp and use it.

Q. While this was used, was the separate cancellers and separate postmarkers in use?

A. Yes, they were all lying around there.

Q. This you used when you were stamping?

A. Yes, sir, and have used the others. I have seen other clerks use that, and when I have gone to help stamp, I have picked up anything that was convenient.

Q. Was the postmarker ever used to cancel the postage-stamps?

A. Yes, I have seen it used.

Q. And the separate canceller also?

A. Do you mean at the time that this combination was in use?

Q. Yes.

A. No, not at that time, they didn't use this, but they used a separate canceller and a separate postmarker; they didn't put the name of the office over the postage stamp.

Q. Was there any rule against it?

A. I think there was a rule against it at that time; I so understood it. I was instructed not to do it.

Q. You saved yourself the trouble of striking twice, making this combination?

A. Yes.

Q. That combination was put into use there and used?

A. Yes.

(Here follows diagram marked page 2789.)

2790 Q. For how long?

A. I don't know.

Q. Was there any change made in it?

A. There was a change. The first one was close up against the postmarker—the cancelling part was close on to the side of the postmarker, and that was changed by inserting a little piece of metal between the two—a little piece of metal concave on both sides, so as to put the canceller a short distance from the postmarker—perhaps 1 8 or 1-4 of an inch apart.

Q. In that fashion?

A. Yes; figure 1 of the drawing shows it.

Q. Explain what figure 1 means.

A. That shows the acting face of the combined instrument after it had been altered.

Q. What is figure 2?

A. That is the upright view—the vertical section of the same instrument.

Q. What do the letters mean?

A. A represents the postmark device. B the cancelling device. C C C the three rivets or screws by which the two were united, and D a piece of metal separating the two.

Defendant's counsel offers paper in evidence, marked Def't's Ex. 203 Ireland, June 17, '79.

Q. Was that thing put in use—this second combination?

A. Yes.

Q. Did you use it?

A. Yes.

Q. Used publicly, like the other—in the office, openly?

A. It was openly done. I take it for granted it was used. I could not say that any particular clerk used it, but I used it.

Q. And at the same time were these separate cancellers also used?

A. Yes; they were all being used together.

Q. How long do you remember the existence of that instrument in that form?

A. I can't fix the time—it laid around there. I can say positively that I didn't see it after 1853.

Q. How do you fix that date?

2791 A. Because at that time I was put in charge of the registered-letter department, where I had no particular occasion to be at the stamping table.

Q. You don't remember to have seen it since that time?

A. No, sir.

Q. You say the first combination without an intervening piece was made some time in the fall of 1849?

A. I think so, as near as I can fix the date. It might have been along towards the winter of 1849 and '50.

Q. This second combination came right in and took the place of the other?

A. Yes.

Q. And did the other continue about the office until 1853?

A. I presume it did.

Q. How late did you use it any?

A. I could not say positively. I have no doubt I used it up to some time in 1853

Q. It was around there for use?

A. Yes.

Q. In regard to both of these combined instruments, was the work well done—did it postmark and cancel?

A. It did. I thought it did it first-rate.

Q. Did it do it as well as when you used the separate instruments?

A. Yes, sir.

Q. You say you left the post-office in 1855?

A. Yes.

Q. Were you employed there again?

A. Yes. I left on account of a severe spell of sickness that I had in 1855. In the spring of 1861 I was induced to go back to the office again by Postmaster Walborn, appointed by Mr. Lincoln.

Q. And continued there how long then?

A. Until they transferred me to the department in Washington, in

1864. I then went to the department in Washington, and in the winter of 1864 I went back again to the Philadelphia post-office.

Q. How did you find the postage stamps were cancelled when you went back into the office under Walborn?

A. About the same way as before—with the two instruments.

2792 Q. The separate instruments?

A. Yes; and frequently they were being cancelled then with the postmarker, in 1861. There was no combined instrument at that time.

Q. Was there any combined instrument made while you were there, between 1861 and 1864?

A. There was about the time they moved the post-office from one building to another. At that time I was the assistant chief clerk of the office, and we got up one very much like the first one—a little different manner of putting it together, but the idea was the same; the canceling-stamp was fixed to the side of the postmarking stamp. In talking to one of the clerks one day—Mr. M. C. Bogia—I told him I thought if he would get up something that I would describe to him he would save trouble and labor. I gave him the idea, and he went somewhere and had the instrument made, and I have seen that used.

Q. You told him what you had done?

A. Yes. I told him that I thought he could save himself a great deal of trouble and labor, and save his arm a great deal of wear and tear, if he would get up something I would describe to him. I then told him that I had made a thing years before, and told him just what it was, and suggested certain changes, and took a paper and made a rough sketch of what my idea was; and he took it away and brought back the stamp, made as I had told him, and that he used and others used—everybody used it, I guess—that was the only stamp that was used.

Q. Did the department begin to furnish combined stamps during Walborn's term of office?

A. Yes.

Q. How constructed?

A. That is the general shape; there was a handle and cross-bar and two pieces; it was a metal stamp. (Referring to Def't's Ex. No. 2, J. A. S., Ex'r.)

Q. It was like that, except the canceller was made of solid metal?

2793 Q. Yes; it didn't have that piece of rubber on it. These two pieces were fastened to the cross-bar by a screw on top.

Q. That was after you had described this matter to Bogia?

A. Yes.

Q. What difference was there between this, which was made in Walborn's term of office, and the one you made under Mr. White?

A. In the first one, the screws or rivets went all the way through the cancelling stamp, and on the other one there was a part of the cancelling stamp cut away, so to give a square surface to the head of the screw or rivet to go in.

Q. Were the screws in a line?

A. No; they were made in a triangle, two below and one above.

Q. Did those screws hold it tight and strong?

A. I believe they did.

Q. There was no trouble or difficulty about it?

A. I don't know of any.

Q. At the time that you described that one to Bogia, and he had this combination made, state whether you ever had seen or heard of any other combined postmarker and canceller.

A. I never had.

Q. Never seen or heard of one?

A. Never had seen or heard of anything of the kind, any other than my own.

Q. You got your idea from no other source?

Q. No, sir.

Q. You hadn't forgotten what you had done in Mr. White's term of office?

A. No.

Q. You remembered that stamp distinctly?

A. I remembered it because I made this one from it, and described it to Mr. Bogia.

Q. About what time was the removal of that post-office, by which you fix the date?

A. We moved in February, 1863. My impression is, it was about Washington's birthday.

2794 Q. Were the first combination that you speak of, and the second, with the additional piece between the canceller and the postmark, made before or after the 3-cent stamps came into use?

A. Long before. It was made during the time of White, when 5 and 10 cent stamps were used.

Q. Do you remember when the law was passed relating to 3-cent stamps?

A. I think it was in the winter of 1850 and '51. January, February, or March, 1851, they changed the rate from 5 and 10 and the multiples thereof to 3, 6 and 10 cents, and made prepayment compulsory.

Q. And it was before that that you made this combination, and about that you have no doubt?

A. I am as clear as I can be of anything, that I used that on the 5 and 10 cent stamps that went out of use in 1851.

Q. Do you recollect Mr. Rees being a clerk in the office when you were there?

A. Yes, he was there when I went there first.

Q. How do you fix the date when you went there—how old were you?

A. I was 15 in March, and I received the appointment shortly after that, and was sworn in. There was considerable talk about my being under age; 16 was the age for any one to be employed in the U. S. service, but I was a good-sized boy, and no one asked me my age. There was something in the newspapers about it afterwards.

Q. That fixes 1849, as the year you went in?

A. Yes.

Q. The third machine made under Walborn did its work?

A. Yes.

Q. As well as the separate instruments?

A. Yes.

Q. So far as you know, it did its work well?

A. Yes.

Q. Look at this piece of metal marked Def't's Ex. 204, Ireland, June 17, '79, and state what that is.

2795 A. That is one of the old postmarking stamps that was used in the Philadelphia office, and it is one that had that last attachment, to the best of my knowledge—at least, that is the way it shows. I don't recollect that particular thing, but that was the way that attachment was made, the canceller put on there and riveted on through those three holes. That is one of the postmark stamps of Philadelphia; there is no doubt about that.

Article offered in evidence and marked as above stated.

Cross examination by Mr. WILLIAMS:

Q. How do you know that is an old Philadelphia stamp?

A. From its general appearance. It certainly is fixed up just the way that I had that one—the holes show the way in which the holes were bored.

Q. You don't know when this was made, or when those holes were made. in this particular one?

A. No, I do not.

Q. Prior to 1851, it was optional with persons posting letters to pay postage in money or put on stamps?

A. Yes, or sending them unpaid—three ways. They could pay in money, put on a postage stamp, or send it unpaid.

Q. How long before 1851 did the people have that option?

A. They had it when I went into the office in 1849. In the office I was in before I went into the post office, I know I used to take letters down, and sometimes I would prepay them in money and sometimes I would send them unpaid.

Q. What proportion of the letters do you think were postage-paid with stamps prior to 1851?

A. I could not say.

2796 Q. How were the rates put on the letters when you went into the office?

A. If it was a letter only weighing the one rate, we used the stamp which I have described with the figure "5," corresponding with No. 3 on Ex. 202. If it was a 10-cent rate, we used a stamp similar to that, and in place of the figure "5" there, there was a "10." If it was above that, say 20 cents, or even up to 90 cents, we had the plain stamp without any figure in, and put on the figure with a separate stamp. That was the way we indicated how much postage was to be collected at the other end of the line.

Q. Were there any separate rating stamps in the post-office while you were there?

A. Yes, I remember distinctly a "5" and "10" cent one, and a "20" cent.

Q. Were they never used?

A. Frequently used.

Q. Then it is not correct to say that that was the way you indicated the rates of letters altogether?

A. If you put the word "altogether" in, it is not correct, but I didn't say that.

Q. I asked you how the rates of the letters were indicated in that post-office?

A. I went on and described two or three ways. I don't want to be understood as saying that was the only way, because we had a separate stamp—a "5," which we put on.

Q. Then there were separate rating stamps that were used at that time?

A. Yes, sir.

Q How long were those used, this one with the rate inside the stamp and the separate raters used, before there was another instrument introduced?

A. I suppose it was six or eight months—within a short time after I went into the office another instrument came into use.

Q. What instrument was that?

A. The one that I described with the cancelling instrument attached to the postmarker—the first one, where they came close together.

Q. That was to cancel postage-stamps?

A. Yes.

2797 Q. How were the rates indicated on the letters?

A. They were indicated with one of these loose stamps or one of those stamps with the rate. If a letter had a postage-stamp on it, and that stamp was sufficient to carry the letter to its destination, they didn't put the rate on, because the postage-stamp indicated the rate. This stamp that I speak of was only used where the postage-stamp was on the letter. The rates were indicated by these other stamps where there was no postage-stamp.

Q You say you caused that canceller to be attached to the postmarker?

A. Yes, sir. I took one of the postmarking stamps and one of the cancellers that had been used, took the handle off the canceller and had the two put together.

Q. Was that generally used in the office after you had it made in that way?

A. I presume so. I don't know what other clerks did: it was lying on the table.

Q. There was separate postmarkers and separate cancellers used at the same time?

A. Yes, they were all there; I would not say whether the separate ones were used or whether that was used altogether. I could not say what was done when I was not at the table.

Q. You only know that this was made and laid on the table?

A. Yes, and that I used it.

Q. Did you use it altogether, when you stamped letters?

A. I don't think I did; I have gone to the table and found somebody else using it and I would take up some other stamp and use it, because that was the only one there was.

Q. Was that continued in that way until 1855, when you left—what became of that one that you made?

A. I don't know.

Q. When did you last see it?

A. I hadn't seen it since 1853.

2798 Q. But you were in the office for two years after?

A. Yes; but I could not say positively having seen it after that time.

Q. You were in and about the stamping-room?

A. No; I was in the registered letter department. I had no occasion to go to the stamping table except when I would go to the table to stamp my letters.

Q. The duties of the office at that time had been devolved upon different clerks?

A. Yes.

Q. So there had been a change in the business?

A. Yes; there were changes constantly made.

Q. When did you return to the post-office?

A. In 1861.

Q. When you went back they were using separate postmarkers and separate cancellers?

A. They had, and they were using also just the plain postmarking stamp for cancelling the stamps.

Q. They used the postmarker for cancelling—that is, they impressed on the postage-stamp the name of the city and the date?

A. Yes.

Q. Wasn't that a common way of cancelling stamps at that time?

A. I would not like to say that it was or was not.

Q. Any stamps indicating the rates at that time?

A. If a letter was overweighted, they had a stamp "due 3" or 6, or whatever it might be.

Q. They had the rating stamps for other matter besides letters?

A. They used the old post-marking stamps; no printed matter could go until the postage was paid.

Q. How long did the practice continue that was in operation when you went back into the business in 1861?

A. Of cancelling the stamp with the postmarker; is that what you mean?

Q. With the separate canceller?

A. It continued until 1863, when we made this other arrangemet, but about half the time they were cancelling with the postmarker and didn't use the separate canceller at all. They were stamping the postmarker on the letter.

2799 Q. What time in 1863 was this made?

A. It was shortly after we moved; I can't fix the time; sometime after we got located in the new office; perhaps two months after; I called Mr. Bogia's attention to the matter and he had this one made.

Q. You had been there two years—from 1861 to 1863—and this idea of economy had never struck you until about February, 1863, I understand?

A. No, sir; don't understand me that way.

Q. You didn't suggest anything?

A. No; I didn't suggest anything. It was not because it didn't strike me at all. Perhaps there was a reason for that. Prior to removing the office, my desk, being the assistant chief clerk, was far removed from the marking table. When we got up to the other office the marking table was right in front of me, and I could not help seeing them.

Q. Did the government furnish postmarkers and cancellers in 1863 to the Philadelphia office?

A. I believe they did.

Q. Separate ones?

A. I believe they did. I have no recollection of our having any made ourselves.

Q. How long did the practice of cancelling the postage-stamp by the use of a postmarker continue in that office?

A. Up to about 1863. It prevailed right along, unless we got a wrap from the department about it, and then they would go for a while, and then take it up again.

Q. When did you leave the office the second time?

A. I was taken to Washington in the summer of 1864—I think in July.

Q. How long did you continue in Washington?

A. Until December, 1864, when I went back to the Philadelphia office.

Q. How long did you stay there then?

A. Until the latter part of 1866.

Q. Where did you go then?

A. I went outside and looked after my own business, and in 2800 1867 went to Washington again. They called me there as chief

clerk. I was chief clerk of the 3d Assistant Postmaster A. N. Zevely.

Q. When did you and to whom did you first communicate these facts that you have stated here to-day as to your making these instruments in 1849 and 1863?

A. The first one I communicated to Mr. Bogia. Of course I have no doubt I told the clerks and showed them the one I first made in 1849. I was proud of what I had done, and in 1863 I told it to Bogia. In 1867 I told it to Judge Norton in Washington, and laughed and joked with him about it. He made my acquaintance by coming into my room there.

Q. Anybody else?

A. I talked around in the department pretty generally—laughed and talked about it. I didn't make any concealment of it.

Q. Can you name anybody else?

A. No; I could not name any one. Zevely, I could name him.

Q. Do you remember the correspondence that took place between Zevely and Mr. Norton?

A. No, sir; I know there was correspondence, but I never saw it.

Q. Do you remember any correspondence that took place between Zevely and the postmaster in New York?

A. No; I know there was, but I never saw it.

Q. You knew that Mr. Norton was there in Washington while you were a chief clerk applying to the Postmaster-General for compensation for the use of this stamp, didn't you?

A. I understood so; I didn't know it.

Q. Didn't you know that?

A. No; I had no means of knowing it.

Q. Were you there when Mr. Cresswell was Postmaster-General?

A. Yes.

Q. Are you ignorant of the fact that there was an extended examination there before him?

A. No; I am not ignorant of the fact.

2801 Q. Didn't you know that Norton was there at that time applying to the Postmaster-General, and he was examining this case, under a resolution of Congress, in order to determine whether he was to have pay?

A. I believe it, and always did believe it; but I would not swear that I knew it to be so, because I didn't see the papers and was not present at the examination.

Q. You were in the Post-Office Department and knew of the pendency of this claim?

A. I knew there was an examination going on to determine something in connection with Mr. Norton's claim for this patent; what it was, I didn't know.

Q. Did you know of an application before Congress for that purpose?

A. I had heard of one.

Q. You knew there was such an application pending there for years?

A. I had heard of it.

Q. Didn't you know that Congress called upon the Postmaster-General for information and papers in relation to Norton's claim?

A. I didn't know it; I don't know that they did.

Q. Did you know anything about a suit in the court of claims, where the question came up as to compensation for the use of this stamp?

A. I didn't know anything about it. I heard there was either an application to allow the case to go the Court of Claims——

Q. You didn't know that the Postmaster-General and the Assistant Postmaster-General were witnesses in that case?

A. No, sir.

Q. Did you ever claim anywhere to be the inventor of this double-combined postmarking stamp?

A. I always claimed that I was one of the earliest that got it up, if not the earliest; but I didn't claim to be an inventor, because I never took a patent out.

Q. Did you inform the Postmaster-General, while this claim was pending there by Norton, that you had made this instrument
2802 long before his patent was issued?

A. I don't think I ever said a word to the Postmaster General on the subject. I never went to him unless I was sent for, and he never sent for me on that case. I think I told Zevely of it.

Q. Do you know whether you did or not?

A. I think more than likely I did.

Q. Haven't you told Mr. Norton, in Washington, more than once that he ought to have pay from the government for the use of this stamp, and didn't you assist him in trying to obtain papers and evidence for the purpose of establishing his claim?

A. No; I never assisted him. He came to me once to ask me to assist him, and I went to the Post-Office Department to introduce him to some of the clerks, and he said he wanted to employ me to assist him; but that was the last I ever saw of Mr. Norton. I was willing to be employed if it was necessary, but I was not employed, and I never did assist him.

Q. When was that?

A. About two years ago this summer.

Q. You didn't say to him, then, that you were satisfied that the Post-Office Department were trying to keep the papers away from him?

A. No, sir.

Q. Do you say you went and introduced him?

A. He came and asked me, and we went over there and I did introduce him to one gentleman he didn't know before.

Q. To whom?

A. Mr. Morton, my successor in office. I supposed he was the acting 3d assistant at the time.

Q. Referring back to the time when a claim was pending before the Post-Office Department for compensation for the use of this stamp by the government, did you then give Mr. Norton any encourage-
2803 ment or any assistance in procuring this claim?

A. I never gave him any assistance in prosecuting it.

Q. You didn't say to him you thought he ought to have pay from the government for the use of this stamp, or something to that effect?

A. I would not be surprised if I said, what I have always said, that whoever was the inventor of that stamp ought to have something, and I was out of it because I hadn't got any patent. In answer to your question in regard to compensation, I want to say that I never knew about the claim for compensation. It was a claim as to the ownership of the patent that I heard so much about. It was for that that they took testimony.

Q. When did you first hear of the pendency of the present suit?

A. I read it in the newspapers about the time it was started, I think.

Q. About two years ago?

A. About that time.

Q. Do you know Mr. Parker?

A. Yes; have known him for years.

Q. He is special agent of the Post Office Department?

A. He is a special agent.

Q. You know he is engaged in getting up this evidence that has been produced here to day?

A. I do not know it.

Q Did you ever have any communication with him upon the subject?

A. Yes.

Q. When?

A. Four or five weeks ago.

Q. How did that happen?

A. He met me one evening; I was sitting on my door-step and he passed, and after passing he turned around and came back and asked me if I knew anything about the stamp canceller, and I told him some little about it in general terms. We talked the matter over.

Q. Was he the first person to whom you spoke upon the subject since this suit was commenced?

2804 A. I think about the first time I read it I made comments about it to different people. I would be very apt to.

Q. You don't know whether you did or not?

A. I would not say that I did or did not.

Q. Have you had any communication with Parker on the subject since that conversation?

A Yes; several times, when I would meet him we would talk about it.

Q. You are here by his request?

A. He communicated to me personally—asked me if I would come. I presume he was sent to ask me to come.

Q. You don't know whether he was sent or not?

A. No.

Q. At any rate you are here by his request?

A. He was the means of communicating a desire to have me here.

Q. When was that?

A. Four or five days ago; since I saw you in Washington.

Q. Any arrangement between you and him about coming?

A. What do you mean about "arrangement"?

Q. Don't you understand what "arrangement" means?

A. He asked me whether I could come, and I fixed my business, and when I found I could come, I told him I would.

Q. That is all?

A. So far as the coming here was concerned?

Q. Who is to pay your expenses?

A. I presume the government will have to pay my expenses; nothing said about it yet.

Q. When you went from the post-office in Philadelphia to Washington, in 1864, what position did you take there then?

A. Chief clerk of the 3d Assistant Postmaster-General, Mr. Zevely.

Q. When Zevely retired, who took his place?

A. He was succeeded by Gen. Terrell.

Q. Did you continue to be his chief clerk.

A. Yes.

Q. Who succeeded him?

A. Mr. Barbour.

2805 Q. Did you continue in the same position?

A. Yes, up to the time I left the department, the last of October, 1876.

Q. Don't you know that Postmaster Creswell referred the examina-

tion of this case to Mr. Terrel at the time the matter was pending before him?

A. I do know that the Postmaster-General referred something in connection with the postmarking and cancelling stamp to Gen. Terrel for investigation, but what the specific object of the investigation was I don't know. I was not present at any of the interviews.

Q. You were not present?

A. No, sir; I was managing the business of the bureau while Terrel was taking this testimony.

Q. Did you write any of the letters that were written by Zevely or Terrel in reference to this stamp?

A. I may have done so. My duties as chief clerk might have required me to have written letters. The records of the department will show.

Q. You never before have been a witness anywhere in reference to this combined stamp, have you?

A. No.

Q. Do you know Mr. Wheeler, of Cleveland, who set up a claim to be an inventor?

A. Mr. Charles E. Wheeler? Yes, sir.

Q. You know he claimed to be an inventor?

A. So he told me.

Q. I wish to call your particular attention to the time when Mr. Norton was proceeding with the investigation before Postmaster-General Creswell, and ask you if you had any conversation with Mr. Norton at that time about the stamp?

A. I might have done so.

Q. Do you know whether you did or not?

A. I don't know whether I did or not.

Q. You have testified that you informed him that you had made this stamp, or something of the kind. Did you tell him when you had made it?

2806 A. Yes; but it was long before that time when I told Mr. Norton.

Q. Did you tell him, in the conversation you had with him, when you had made this instrument?

A. I think likely I did.

Q. Do you know whether you did or not?

A. I would not like to say positively whether I had told him the time.

Q. When did you have that conversation with Mr. Norton?

A. When I first got acquainted with him. I think just after I went to the department, in 1867, I made Mr. Norton's acquaintance.

Q. What was he doing there?

A. I never knew. He happened to come around Zevely's room, and I think he introduced me to him.

Q. Wasn't he there at that time on his business for obtaining compensation from the department for the use of his stamp?

A. Not to my knowledge.

Q. How did it happen that you and he had this conversation about the stamp, if he was not there for that?

A. I didn't say he was not there for that.

Q. How did you happen to make this communication to him at that time?

A. Mr. Wheeler was in my room, I think, at the time Mr. Norton came in, and he introduced the subject of stamps, and we all talked about the stamps, and I said to him then that I was one of the early

makers of that stamp, and he laughed about it and said, "Why didn't you"—or somebody asked why I didn't take a patent out; and my remark was, I was a boy, and didn't know enough about patents to do it.

Q. Did you state the year in which you made it?

A. I think I told him just as I have stated here to-day, as to the time I made it—1849, or thereabouts.

2807 Q. Did I understand you to say that in 1849 they were using separate instruments in cancellers in the post-office at Philadelphia?

A. I said that they had the separate instrument there, and used them.

Q. And continued to use it while you were there, more or less?

A. Yes.

Q. When that was used, where was the letter postmarked?

A. When the separate instrument was used for cancelling the stamp, we tried to put the postmark about the centre of the top.

Q. Separate and apart from the stamp?

A. Yes; that was when the separate instrument was used.

Q. When did the government commence to furnish this combined stamp to the office in Philadelphia?

A. I think it was in 1863, because it was after we moved up into the present location, and we moved there early in the spring of 1863, and it was after that that this double stamp came it.

Q. Can you fix the time?

A. I cannot fix the exact date.

Q. When can you fix the time when you suggested the construction of that stamp?

A. That was almost immediately. I think it was within a month.

Q. And it was soon after that that the government commenced furnishing them?

A. I don't say soon; it was some time after that.

Q. How long?

A. Six or eight months; but it was within that year I am confident, because in the summer of 1864 I left, and I know the stamps had been in use for some months before I went away.

Q. You say you never had seen or heard of any such combined stamp prior to the time you had that one constructed in 1863, except the one you had made in 1849?

A. The two that I had made in 1849—the first one and the second one—were the first and only ones I had ever seen or heard of until I made the one in 1863.

2808 Q. There never was one in the Philadelphia post-office?

A. I never saw one.

Q. Could there have been one there, and been used, without your knowledge?

A. I don't think it could, though it might have been.

Q. Do you remember anything about the order from the Postmaster-General as to the separate cancellation of the stamp, and postmark the letter at a different place—postmarking the letter off the stamp?

A. I remember that we were continually being reprimanded for cancelling the postage stamp with the postmark, and not using the canceller for that purpose. Some office would report the fact to the department, and we would be reprimanded.

Q. You don't remember any distinct order made by the Postmaster-General on the subject?

A. I can't recall any.

Q. Who was postmaster at Philadelphia when you left the post-office at the first time?

A. Mr. Miller, in 1855.

Q. Mr. White was postmaster when you went in?

A. Yes.

Q. Was Mr. Brown there at that time?

A. Yes, sir.

By Mr. CLARKE:

Q. In regard to Ex. 204, that is the postmarking part of an instrument such as you made during Mr. Walborn's term?

A. Yes.

Q. Judge Norton, you referred to on your cross-examination, is Marcus P. Norton?

A. Yes.

Q. Do you say that you told Col. Parker about what you had done years ago, before this suit?

2809 A. Yes, when I got acquainted with him first. It was at the time the army was in the neighborhood of Washington, I think, in 1864. He was mail carrier between the army and Washington, and we entrusted him with postage stamps to sell to the soldiers, and he used to come up, and we would give him $1,000 or $1,200 worth of stamps, and he would sell them and bring back the money, and that brought him into the office in which I was connected, we having charge of the postage stamps, and I talked with him then.

Q. Was that the reason that Colonel Parker spoke to you about it this last time?

A. Yes; he told me that was the reason.

Q. In regard to the first and second combined canceller and postmarker, made during White's term of office, what am I to understand as to the use by others than yourself, that you cannot identify any particular person, or that you don't know whether it was used by any one?

A. That I can't particularize any person that used it.

Q But as to whether other clerks did use it?

A. To the best of my knowledge and belief, they did.

Q. As to your conversations with Mr. Norton, how are we to understand as to whether you are sure as to telling him the date of making this?

A. I am pretty confident that I told him. I know I told Mr. Wheeler, because he was telling me about what he had done, and I recollect very distinctly the remark that Mr. Norton made in regard to the patent business, about my taking out a patent, and he used to often joke after that, and he would come into my room and talk a good deal about it.

Q. You say Mr. Norton made some proposition for employing you, at the time this suit began?

A. It was about two years ago, he came into my office and
2810 talked about the stamp case—I don't mean this particular suit—and he said he wanted copies of papers from the Post Office Department, and I understood him to say that they would not allow him to have them; but he thought I, having been there so long, and was so well acquainted, that I could get the copies for him. I don't mean surreptitiously; but he asked me to go over to the department, and I took him over and introduced him to my successor in office. I supposed all the papers were in his custody, and he said in the department, to this gentleman, that Mr. Ireland would perhaps come over and make some copies of papers for him. I understood that the department had agreed

to let him have the copies of the papers, but he must furnish somebody who was acceptable to them to make the copies, so they would not go outside of the department, and he said he wanted me to go there to do it. I held myself in readiness, but he didn't come back and I didn't do it.

By Mr. WILLIAMS:

Q. You know nothing about this Ex. 204, except that you see it here. Can you give to the court any reason, if there was a canceller riveted on to that instrument, why it should have been removed?

A. No; except on the general principle, after it was used, and the other stamps came in, it was thrown into the waste-box of old stamps. I had one of them myself, years after, and took it apart and had it in my room, and showed it to Mr. Norton—one exactly like this, with the canceller attached—one that I had made.

Q. Can you give any reason why the canceller is not now attached to this stamp?

A. No, sir.

Q. You don't know that any canceller was ever attached to that?

A. Not to that particular one. I know nothing about it.

2811 Q. What did you do with that stamp that you speak of exhibiting to Mr. Norton?

A. I didn't do anything with it. It disappeared out of my desk in the department. I kept it there in an open desk, and it was in one of those pigeon holes, and I kept it there as a matter of curiosity.

Q. When was that?

A. I had it after the double stamp came in, in 1863, and I took that, and it was one of those that I made in 1863 that I had with me. The face of it was pretty well worn out, and it disappeared from my desk.

Q. You didn't take the canceller off of that one, did you?

A. I have no recollection of having ever taken it apart.

Q. You say you exhibited that to Mr. Norton?

A. Yes.

Q. Did you exhibit it to anybody else?

A. Mr. Wheeler saw it.

Q. Anybody else?

A. Mr. Zevely saw it, and perhaps everybody that I talked to. It was no secret matter at all.

Q. You represented that you made that in 1863?

A. Yes.

Q. That was what you told Mr. Norton when you presented that to him?

A. Yes, sir.

Q. Wasn't that all you told him—did you tell him anything about the one you made in 1849?

A. Yes; I think I did.

Q. Are you sure?

A. I am as confident of it as I am sitting here, that I did, because I was showing that I went further back than Wheeler did, and he goes beyond that.

Q. Beyond what?

A. Beyond that 1863 one.

Q. Did you understand that he went back to 1853?

A. I don't know. I won't say that he went back to 1853, but I understood that he went back of 1863.

Q. You don't know how that was?

A. I could not say.

2812 MATTHEW C. BOGIA, called on behalf of the defendant, sworn.

By Mr. CLARKE:

Q. You reside in Philadelphia?
A. Yes.
Q. You are employed in the post office now?
A. Yes.
Q. What is your age?
A. Between 45 and 46.
Q. When were you first employed in the post office?
A. In the spring of 1861.
Q. Who was postmaster?
A. C. A. Walborn.
Q. Have you been there ever since?
A. No; I was out about 1865 or 1866.
Q. Between 1861 and 1865, you were there?
A. Yes, sir.
Q. What were your duties?
A. From the first or second month that I was in the office, up to the time that I went out, in Johnson's administration, I was in the stamping department.
Q. During those four years you were a stamper?
A. Yes.
Q. When you went in there what did they use for postmarking?
A. They used the single canceller and the single postmarker.
Q. The postmarker was like what?
A. The metal part of it was like "Ex. 204, Ireland"—about that size.
Q. And there was a separate canceller?
A. Yes.
Q. Of the same shape the other witnesses have testified to?
A. Yes.
Q. Was the postmarker sometimes used to cancel stamps?
A. As a general thing it was used in the department after the war commenced; about 1861, we had such a rush of letters that we had no other means to do it but stamp them over the face of the postage-stamp. This being of a given size, it was rarely you could not
2813 tell where it came from, with the postage stamp off. Part of the mark would be on the envelope and part on the stamp.
Q. And the reason for doing that was largely on account of the soldiers' mails?
A. Yes; and to get rid of the matter. About that time they began to put men on permanently in that position to stamp all the time.
Q. Was there any combined postmarker and canceller made?
A. I don't remember of seeing any until 1863.
Q. What part?
A. The spring of 1863, within from one or two months after we moved into the new office.
Q. You moved on Washington's birthday, was it?
A. I believe it was, as near as I can recollect.
Q. Explain about the circumstance of making that combination.
A. I was called up by Mr. Ireland, who gave me a diagram of a stamp that he wanted made. He wanted a cancellor fastened on the outside of the postmarker. He said, "I want you to understand that

this is mine." He asked me to get that made something in that order, in having the canceller fastened on to the day stamp, or what we call the post-office stamp; and he gave me the drawing, and I had it made similar to the drawing that he gave me, so as to get this canceller fastened on the postmarker, saying that it would do the work in one blow, of cancelling and marking the stamp where it came from. This stamp was carried out fully with what he had drawn out. It was not altered much. I didn't add any ideas to it further than lightening the stamp up. I had a man make it by the name of Louis Schaible. He kept his place in 2d street, between Chestnut and Walnut. He is now at 202 South 2d street. That was the first stamp I ever saw in
2814 use as a double canceller. I cannot tell how long we used them, but I know there were two on what they call the drop-table, where the letters are cancelled. They may have been used five months or seven months. I can't fix the date when we got the small double stamps from the department, as we supposed, and we were glad to get them, as they were lighter, and the handle being in the centre. The other was a heavy jar on the wrist. They were made very heavy. I had an iron shank put in there to suit an India-rubber handle that I invented, with a pin running up into it. I had to get them bored out and had a thread of a screw put in, as on Ex. 204. When the double stamp was brought in I had that altered before it was used. I had the old pin taken out and a new one inserted, which came up an inch and a half longer than the other one, and put on one of my rubber handles.

Q. Your rubber handle was an improvement?

A. Yes, to save the jar on the arm, and it made a better impression.

Q. You never knew or heard of any combined postmarker or canceller until Ireland gave you the information?

A. I never knew of anything of the kind. I thought it was a good idea, because we were pressed for hands, and the postmaster was distinct about our putting the postmark on the letter and not on the stamp. He wanted good work and clean work, and was going to have it.

Cross-examination by Mr. WILLIAMS:

Q. Do I understand you that the handle on the stamp, that was sent to you by the department in 1863, was on one end?

A. No, in the centre.

Q. The stamp that you made according to the direction of Mr.
2815 Ireland, the handle was right over the stamp, and the canceller was on one side, and when you struck down it turned?

A. Yes, unless you were practiced in it. I could stamp just as good with that as anything else; but this being of so heavy a nature it was twice as heavy as the stamp the department sent us. It had an iron body and the pin came up; and with an India-rubber handle it made it pretty heavy.

By Mr. CLARKE:

Q. Do you recognize Ex. 204 as a part of one of the combinations that were used?

A. I recognize this as one of the stamps, or in this style or shape.

Q. Can you say whether that Ex. 204 was one that was used in the combination?

A. I could not say. I see my own ideas and my own hand work in it, but I can't say that was the identical article.

Q. Is that another one of them?

A. That looks like one.

Offered in evidence, and marked Defendant's Ex. 205.

Q. You don't know whether that is one of them or not?
A. I have every reason to believe it is one of those.
Q. This piece that you screwed into the top is what you had bored out in order to lighten it?
A. Yes.
Q. And those screw-holes on the side is where the attachment was?
A. Yes, sir.

By Mr. WILLIAMS:

Q. Were those alterations, to which you have referred, made before the government furnished its stamps?
A. Yes.
2816 Q. After that you used the government stamps?
A. Yes, sir.

DUDLEY W. BURCHARD, called on behalf of the defendant, sworn.

By Mr. CLARKE:

Q. You are a clerk in the Philadelphia post-office?
A. Yes.
Q. How old are you?
A. Forty-three.
Q. How long have you been employed there?
A. Since the 1st of July, 1858.
Q. You are acquainted with Mr. Bogia and Mr. Ireland?
A. Yes.
Q. Do you recollect the introduction of the combined postmarker and canceller?
A. Yes.
Q. Look at Ex. 204 and 205, and state whether those are the postmarking parts of two of the combined instruments.
A. They are.
Q. You recognize them as being the identical postmarker parts?
A. Yes, sir.
Q. Explain how they came in their present condition, and how they came to be here.
A. I took them—I took three or four of our old stamps that was in the rubbish box, and took them home to make chucks for a small lathe I had. The others had no screw in here, in the end where the part is screwed in, in Ex. 205, and I had that bored out and tapped, and that fitted the screw in the lathe.
Q. You recognize those as having that attachment on the side?
A. Yes, I took the attachment off myself on Ex. 204 and 205.
Q. On Ex. 205 I notice a cut around what was the acting face before the lettering was removed. What is that ring?
A. That is a mark made with a graver tool, to see whether it is centered in the lathe.
2817 By Mr. WILLIAMS:
Q. These are the parts of the stamps that were made in 1863?
A. Yes; shortly after we moved the office.
Q. How many of them were there in the office?
A. I can't say; I am positive of three.
Q. These were the first stamps of the kind that you had seen?
A. Yes, sir.

MARCUS P. NORTON called by complainant and sworn.

By Mr. WILLIAMS:

Q. You may state when you first became acquainted with Mr. Ireland.

A. I think I first became acquainted with him in 1862 or 1863, in Washington, in the Post-Office Department. I am not positive about the year.

Q. It was after he became chief clerk that you met him?

A. Yes.

Q. State if you were at the Post-Office Department frequently, while he was there as chief clerk of the 3d assistant.

A. I was; from that year during every year for 10 or 12 years after that; sometimes several times during the year.

Q. Did you have any business with the department relative to the stamp in question; and, if so, what?

A. I did a good deal of business with the Post-Office Department, and particularly so with the branch of which he was chief clerk, known as the 3d assistant department.

Q. Did you ever have any conversation with him about the stamp in question?

A. A great many; how many I cannot tell.

Q. Do you know whether he was advised of your business there in the department?

A. He knew all about it. I have talked with him about it when
2818 there transacting business, and there were two or three hearings there that I positively know that he was present at. There was one in the winter of 1870 and 1871, under a special act of Congress, which by Mr. Creswell was referred to Mr. Terrel, then 3d assistant, to inquire into under that act. Mr. Ireland was then Mr. Terrel's chief clerk, and he was present several times during that trial, to my positive knowledge. It was held in Mr. Terrel's room, right opposite Mr. Ireland's, with a hall running between the two. That was an investigation that extended through three or four months' time; very thorough, and a very extensive one.

Q. State if any question as to this stamp was before Congress at any time, whether or not the Post-Office Department was called upon for any information or papers in relation to it.

A. It was before Congress in the years 1864, '5, '6, '7, '9, 1870, '1, '2, '4, and '5. Distinct reports were made by committees of Congress on this subject during those years.

Q. Whether during that time any call was made by any committee upon the Post Office Department?

A. Every one of those committees made calls upon the Post Office Department for information concerning this matter, made in writing, and also verbally. I went several times with the subcommittee, too.

Q. The petitions that were made to Congress were for compensation from the government for the use of this stamp by the government?

A. Yes, sir.

Q. Was there any question before the Post Office Department as to compensation for the use of this stamp?

A. Yes, sir.

Q. What was the object of the investigation before Mr. Creswell?

A. It was a matter authorizing the Postmaster General to continue to use in the postal service this invention, and to make compensation for it; and, also, to inquire into any other claim that might be made by any person.

2819 Q. State the nature of the claim before the Postmaster-General.

A. It was for compensation.

Q. Can you state whether or not Mr. Ireland knew the nature of this claim that was before the Postmaster-General?

A. Of my own personal knowledge, I can state that he did; that we talked it over together repeatedly; he knew all about it.

Q. Did he ever say anything to you, one way or the other, as to whether or not you or anybody else ought to have pay for the use of that stamp?

A. He told me more than once that the government ought to pay me for this invention, and that I most undoubtedly would be paid some time.

Q. State if he ever said anything to you about having anticipated your invention by making a stamp with a canceller attached.

A. He never did, in any form or manner whatever.

Q. State when you first heard that Mr. Ireland made such a claim.

A. The first I knew anything about a claim of that kind was in a letter that I received a few days ago from you.

Q. Do you remember of seeing a stamp that he had in the office, which he exhibited to you?

A. He never exhibited to me a stamp in the world, of any kind, of any form or shape, in the Post-Office Department, or anywhere else.

Q. Was your claim as an inventor to this instrument contested during these investigations in Congress and elsewhere?

A. It was contested in Congress before the committees in the Post-Office Department; in the circuit court of the United States in 1864, and in the Court of Claims in 1867 or '68.

Q. Did Mr. Ireland, during that time when these investigations and proceedings were going on, appear at any time as a contestant?

A. He never did, to my knowledge.

Q. Or as a witness?

A. Or as a witness.

2820 Cross-examination by Mr. CLARKE:

Q. You don't say that Mr. Ireland knew about your suit of Shavor & Corse against Hoole?

A. Mr. Ireland knew about that suit, and about the suit in the Court of Claims. I had to have certified copies of papers from his department, which were used in the suit.

Q. You mean that you told him; that is the way you know he knew it?

A. That is the only way.

Q. From the information you gave him?

A. Yes; I don't know whether he knew otherwise, or not.

Q. That you had told him about these things, and you think he knows from what you told him?

A. I should think he would be apt to know when we talked the matter over, and I was getting papers to use.

Q. Within two or three weeks, didn't you tell Judge Williams, after you were informed by us that we proposed to put in new evidence in relation to the Philadelphia office, didn't you say to him it probably had some connection with Mr. Ireland, and didn't you ask Judge Williams to see Mr. Ireland?

A. I said something to Mr. Williams, that it related to the Philadelphia post-office, and I had heard from somebody that you wanted to open the case in reference to that, and I asked him if he had not better

see Mr. Parker and Mr. Ireland in reference to it, because Mr. Ireland was chief clerk, and also the clerk in the Philadelphia office, and if it had been used in the Philadelphia office, I thought Mr. Ireland would be apt to know,

Q. Judge Williams' letter in regard to Ireland's knowledge was subsequent to this time that you say you never heard of Ireland making this statement until two or three days ago?

2821 A. Yes, sir; I think so; I knew that Ireland had been in the Philadelphia post-office, because he told me so, and I heard it was in relation to the Philadelphia office, and I said Mr. Ireland would be apt to know about it, and I asked Judge Williams to see Mr. Ireland—not that I knew that Mr. Ireland knew a thing about it, but I thought he, having been in the office, would be apt to know something about it.

Q. Mr. Ireland never showed you that stamp; you heard his testimony?

A. Not about that.

Q. He never showed you that combined stamp?

A. No, sir; never in the world.

Q. Do you know of any other source of knowledge that Ireland had of the nature of your claim and of the nature of the proceedings before the committees, etc., except what you told him?

A. Only from what he told me; from his conversations with me, I knew he must know.

Q. You are not sure that your first acquaintance with Ireland was in 1862 or '63—if he didn't go there until 1864, it was not until then?

A. It was not until after he became chief clerk of that department that I knew him, if I remember right. He was there two different times, I think, as chief clerk.

Q. Was it at the investigation before the 3d Assistant Postmaster-General Terrel that Mr. Ireland was present two or three times?

A. Yes.

Q. In what way was he present?

A. He was in the room.

Q. Listening?

A. I can't say that.

Q. What was he doing in the room?

A. I could not say.

Q. Was he attending to the case at all?

A. That I can't say.

Q. Was he sitting down?

A. I can't say that.

Q. You don't know that he knew what was going on?

A. I didn't ask him if he knew what was going on.

2822 Q. Can you say it was anything more than his passing through the room?

A. I had conversation with him in his office in reference to that transaction.

Q. I am referring now to the sessions of the investigation.

A. I don't say that he had any business in there to do with the case.

Q. Do you know that he knew what was going on before Mr. Terrel? Can you swear that Ireland knew what was going on?

A. We talked it over in his own room, what was taking place in that room, and I supposed from that that he must have known.

Q. You can't say how long he was in there—one minute or two?

A. I can't say anything about it. My recollection is of having seen him there several times while that investigation was in progress.

Q. Where was that investigation held?

A. In the 3d Assistant's room in the Post-Office Department—a little room adjoining his room.

Q. You mean the room that was labeled over the door 3d Assistant Postmaster-General?

A. I don't know how that is. It is in the corner of the Post-Office Department towards the Executive mansion on the Pennsylvania avenue side, in the second story.

Q. Were any sessions held in the 3d Assistant's main office?

A. Yes; in both rooms.

Q. Now in one and now in the other?

A. Yes.

Q. How many people were present there?

A. There was quite a number—6 or 8 persons sometimes.

Q. As to the question of compensation that was before the department, and it was not in reference to title?

2823 A. Yes; that was the main question, and also the question as to anybody's claim. That is in the resolution of Congress of July 14th, 1870.

Q. You say you told Mr. Ireland that the question was as to compensation?

A. We talked it over. I don't say that I told him using that word, but we talked the matter over and I think he must have known it was for compensation.

Q. Didn't you have disputes with the Green party, Ransford and Lowe, in reference to title?

A. Yes.

By Mr. WILLIAMS:

Q. Reference has been made to conversations between you and I. When it was announced in New York that this examination was to be in reference to the post-office in Philadelphia, did not you tell me that you believed that Mr. Ireland would prove that no such instrument was ever used in that office?

A. Yes, sir.

Q. That was what you suggested that Mr. Ireland, having been a clerk in the office in Philadelphia for a long time, would know the fact that there never was such an instrument used there?

A. Yes, sir; that the object of my asking you to see him.

WILLIAM M. IRELAND recalled:

By Mr. CLARKE:

Q. You have heard what Mr. Norton said about your being several times in the 3d Assistant Postmaster-General Terrel's room while the investigation was going on there. What can you say about that?

2824 A. When Gen. Terrell was conducting that investigation I had, as chief clerk, to attend to the business of the bureau, and it happened that I had gone into the room to get his signature to a paper—a requisition—walk in and ask him to sign it, and go out. I was not present at any time during the hearing of testimony, and I never heard one word of the testimony nor read it after it was taken down.

Q. Did you know what was going on before him at the time?

A. I knew there was some examination of witnesses; there were several lawyers there, and I guess it is more than likely I knew it was a

case in regard to Mr. Norton's stamp; but as to the precise nature of it, whether it was to give him a thousand dollars or whether it was for anything else, I can't say positively. I always believed, however, it was in regard to the question between the claimants as to the ownership of patents.

Q. Is it true that you never told Mr. Norton about your making those stamps?

A. It is not true.

Q. Is it true that you never showed to Mr. Norton the combined instrument which you say was made in 1863?

A. It is not true. I did show it to him because we laughed and joked about it time and again. It was in a friendly way that I did it.

Q. Has there ever been any quarrel between you?

A. No, sir.

Q. Have you any hard feelings against him?

A. Not in the least.

Q. Did you ever tell Mr. Norton that the government ought to pay him something?

A. I have said that the government ought to pay the owner of it, whoever he was.

Q. Did you ever tell Mr. Norton that the government ought to pay him?

2825 A. No; because I knew it was undecided as to who really was the proper owner of the stamp, and I always said, and I say now, that the government ought to pay somebody, whoever it is.

By Mr. WILLIAMS:

Q. You say you have believed that this matter of the stamp was referred to the Postmaster-General to determine the question of title?

A. I said I believed it was referred to the 3d Assistant Postmaster-General. I didn't know what was referred to the Postmaster-General, but I believed that Postmaster-General Creswell was to determine the question of title; that is, who really owned the patent.

Q. The question of title there was examined, was it not, for the purpose of ascertaining who was entitled to compensation from the government for the use of this stamp?

A. I presume it was, but not being present I don't know what the examination was.

Q. Upon what ground did you make the statement that you believed it related to title and not to compensation?

A. Naturally the first one was one of title, then the question of compensation. But when you ask me if it was referred to fix the amount of compensation I would say no; I didn't believe it was. My belief was that it was an investigation as to who was the proper owner of the patent.

Q. Another question was referred to Terrell?

A. That was as I understood it.

Q. You swear, do you, that you didn't know at that time that Mr. Norton was claiming compensation for the use of this stamp from the Postmaster-General? Do you swear that you did not know at that time that he was claiming from the government compensation for the use of this stamp?

A. Of my own knowledge? What do you mean by knowing?

2826 Q. I mean, whether you understood it to be so in any way?

A. I have heard it talked of that Mr. Norton wanted compensa-

tion for a stamp; but whether it was at that time, or previous or subsequent, I cannot answer.

Q. So you will not swear that you did not know at that time that he was claiming compensation?

A. No, sir.

Q. You never had any conversation with Terrell on that subject?

A. Not that I recall. I might have had, being his chief clerk, but I can't remember anything.

By Mr. CLARKE:

Q. Was there any reason why you did not tell broadly to Congress, and to the Postmaster-General and to the world, what you had done in 1849 and '50 in the way of combining post-markers and cancellers?

A. I don't know of any special reason. I didn't consider that I had any hooks on the thing. I made the thing for my own use. I didn't get a patent for it, and when this thing came up I knew that I could not interfere with any other person on that question.

By Mr. WILLIAMS:

Q. You did tell Mr. Parker, several years ago, about it?

A. We talked about it in a general way. There was the stamp lying right in my office, and I talked to Wheeler and Mr. Zevely the same way.

Q. Will you swear that you told 3d Assistant Postmaster-General that you had made an instrument that would postmark a letter and cancel a stamp at the same blow in 1849?

A. No; I won't swear that, because I might have told him only about the 1863 one.

2827 Q. You would not swear that you told Mr. Wheeler about the 1849 stamp?

A. Yes; I would. I will swear that I told Wheeler that I had made a machine in 1849 and also in 1863.

Q. When did you tell Wheeler that?

A. Some time during some of his visits in Washington.

Q. Didn't you know that Wheeler was contesting the claim as an inventor of this patent?

A. I never knew that he was contesting any claim. I knew that he claimed that he was an original inventor, but never had taken a patent out. I don't know at this time that Wheeler was a contestant.

Q. I don't mean contesting before the Patent Office, but that he was claiming publicly that he was the inventor and that Norton was not?

A. I knew that he was claiming to be an early inventor of it. I knew it from his lips; that is all the knowledge I had.

By Mr. CLARKE:

Q. When you told this to Parker he was not a special agent, he was connected with the Army?

A. That is as I recollect it.

JOHN P. REES recalled.

By Mr. WILLIAMS:

Q. When was Mr. Lehman appointed postmaster in Philadelphia?

A. I can't recollect the date. I recollect that he was appointed under a Democratic President, but whether it was Pierce or Polk, I can't recollect.

Q. Who was President when you were appointed?

A. Jackson.

2828 Q. You say you made this attachment of a rating stamp on the post-marker in 1845?

A. Somewhere along there, about the time the first alteration took place in the rates of postage.

Q. The first alteration in what?

A. A reduction from 6 to 5. I think it was in 1845.

Q. You state that you didn't attach that rating stamp to the post-marker until the postage was reduced to 5 cents?

A. That is my impression.

Q. Was the postage on all domestic letters reduced to 5 cents before you made that attachment?

A. I think the act was passed before—not on all letters.

Q. You know what I mean by domestic letters?

A. It was regulated by the distance. It was still 20, 18¾. I think the 12½ was reduced to 10. I am not clear when as to the year.

Q. Then the 5-cent postage related to what letters?

A. To a particular distance. That took the place of those that were previously marked 6¼ cents.

Q. Was it all the letters that were circulated in the same State?

A. My impression is, in the State and within a certain number of miles.

Q. Then there were other letters at the time that paid 10, or 18, or 20?

A. Yes. In regard to the "5," it was impressed on my mind because I had it made at the time.

Q. The party in that suit to which you referred claimed that the letter was put in the post-office before 1845?

A. Before this alteration was made, but I am not clear as to the date. It was previous to this alteration being made, and the suit was brought in 1849.

Q. Did the party in that suit claim that the letter was put into the post-office before 1845?

A. Before this alteration was made. I can't recollect the year, but it was sometime before January, 1849, but how long I can't say.

2829 Q. You don't know whether the party claimed, or not, that the letter was put into the office before 1845?

A. I have no recollection as to that.

By Mr. CLARKE:

Q. There is no doubt but what the woman in that case claimed that her letter had been mailed at a time before the reduction in the rates of postage?

A. They claimed to have put it in some considerable time before it was deposited.

Q. And the time must have been before the reduction of the rates of postage?

A. Yes, sir, whenever that was; but I don't recollect the year.

Testimony closed.

It was stipulated by the respective parties that the signing of the testimony by the witnesses be waived, and any disagreement that may arise in reference to the testimony shall be settled by counsel before the court.

2830 At Brattleboro', Vermont.

At a stated term of the circuit court of the United States of America

for the southern district of New York, in the second circuit, held at the United States court-rooms on Tuesday, the 17th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the Honorable Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust, &c.,
vs.
THOMAS L. JAMES, POSTMASTER AT NEW York, and Charles Eddy. } In equity.

The above cause coming on for final hearing upon pleadings and proofs—

Mr. Samuel B. Clark, assistant U. S. attorney, reads to the court certified copy of stipulation and order in regard to the admission of further oral testimony on part of the defendants.

Evidence for defendants:

John P. Rees ..... Affirmed.
William M. Ireland ..... "
Matthew C. Bogia ..... "
Dudley W. Burchard ..... "
William M. Ireland ..... Recalled.

Evidence for complainant:

Marcus P. Norton ..... Affirmed.
John P. Rees ..... "

Evidence closed.

Mr. George H. Williams opens the case on part of the complainant.

Court adjourned to 9 a. m. 18th instant.

2832 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms on Wednesday, the 18th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES & AL.

The above cause coming on for further hearing, pursuant to adjournment,

Mr. George H. Williams concludes his opening argument in behalf of compl't.

Mr. Samuel B. Clark is heard in behalf of defendants.

Court adjourned to 19th inst., at 9 a. m.

2833 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms on Thursday, the 19th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES & AL.

The above cause coming on for further hearing, pursuant to adjournment,

Mr. Clark continues his argument in behalf of the defendants.

Court adjourned to the 20th inst., at 9 a. m.

2834 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms on Friday, the 20th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES & AL.

The above cause coming on for further hearing, pursuant to adjournment,

M. Clark continues his argument in behalf of defendants.

Court adjourned to 21st inst., at 9 a. m.

2835 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms *in the*, on Saturday, the 21st day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hoyt H. Wheeler. judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES ET AL.

The argument in the above cause being resumed pursuant to adjournment,

Mr. Clark continues his argument in behalf of defendants.

Adjourned until the 23d inst., at 9 a. m.

2836 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms on Monday, the 23d day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES ET AL.

The hearing in the above cause being resumed pursuant to adjournment,

Mr. Clark concludes his argument in behalf of the defendants.

Mr. Williams is heard in behalf of the complainant, in reply.

Court adjourned to the 24th inst., at 9 a. m.

2837 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms on Tuesday, the 24th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES ET AL.

The above cause being still on hearing pursuant to adjournment, Mr. Williams concludes his argument in behalf of the complainant. Curia advisari vult.

2838 *Opinion of and decision by the court, Hon. Hoyt H. Wheeler, on final hearing.*

In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

APRIL TERM, 1879.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

WHEELER, J.:

This suit is brought for relief against alleged infringements of letters patent for an improvement in post-office, post-marking, and cancelling hand stamps, originally granted to Marcus P. Norton on the fourteenth day of April, 1863, and reissued to Jacob Shavor and Albert C. Corse on the twenty-third day of August, 1864, to Marcus P. Norton on the third day of August, 1869, and to Helen M. Ingalls on the fourth day of October, 1870, in "Division A," numbered 4143. The principal defences set up and relied upon are that Norton was not the first inventor; that there was no patentable invention involved; that it was in public use more than two years before the application, and with his consent and allowance; that the reissue in suit was not for the same invention; that the plaintiff has no title; that the defendant is a public officer, and that he does not infringe in fact.

2839 There is much controversy as to when, in fact, Norton first produced this invention. The application was made Jan. 5th, 1863; but that is not early enough to anticipate knowledge and use of the invention by others; therefore, it rests upon the complainant to establish prior invention by Norton. It clearly and satisfactorily appears from all the evidence that he produced it before May 4th, 1859. By letter dated that day, Horatio King, First Assistant Postmaster-General, authorized the postmaster at Troy, N. Y., to use for post-marking letters at that office, for the term of three months, one of Norton's improved stamps. Norton was an inventor of other improvements in such stamps; and there is a question as to whether the stamp referred to in that letter was this one, or some other. King's testimony and correspondence settle it that this is the one. After he went out of office he was employed by Shavor and Corse to assist them about obtaining com-

pensation for the use of his stamp, and was kept familiar with it all the while; and his testimony is, that this is the one.

General John A. Dix was appointed postmaster at New York early in 1860. In August of that year he wrote to King about a similar contrivance which he had got up, and in a reply directed by King was warned that there was a prior invention, which might subject that office to a heavy charge, if his contrivance was used. This enables King to testify, with positiveness that entitles it to credit, that he had correspondence with Norton about this stamp before that time. One form of this instrument had a canceller made of cork. Norton permitted it to be used at the New York office to test it. Its use commenced there soon after the correspondence of Dix with the department in 1860, and it was found there when Abram Wakeman became postmaster in 1861, or thereabouts, as is shown by his letter to the Third Assistant Postmaster General, dated Jan. 3, 1863. This correspondence, which does not depend upon mere memory for dates and circumstances, identifies
2840 this stamp very clearly. The complainant claims that the invention was made in 1853 or 1854, and described in an additional description of a caveat filed about Aug. 7th, 1854. This additional description produced from the caveat files does not appear to have ever been officially filed under the hand of any custodian of the records, and is admitted to be a copy made in 1868, said to have been put into the files by mistake, in place of the original, which is not produced. The defendant has put in evidence the record of proceedings by the Commissioners of Patents, disbarring Norton as solicitor of patents, and adjudging that copy to be no part of the files, and claims that this destroys the effect of it as evidence. No evidence on which the Commissioner acted, nor any showing the misconduct of Norton, is produced. Norton testifies that the original was duly filed and afterwards copied, and the copy returned to the files, by mistake, as he supposes. The plaintiff claims that the action of the Commissioner legitimately shows nothing on this question, and that Norton's testimony is all the evidence there is properly bearing upon the subject. The defendant has introduced a letter from Norton to Wakeman, postmaster at New York, dated Feb. 6th, 1864, when Norton was interested in this patent as part owner, stating that "the double cancelling stamp now used by you in your post office is my invention as far back as the year A. D. 1856, as I can most fully and satisfactorily prove. It was patented to me in the early part of the year 1863, upon an application made by me a long time before then. I had several such stamps made in 1858, as I can prove by the person who made them," for the purpose of impeaching the testimony of Norton as to the caveat. The caveat as such, long before the application for the patent, ceased to be operative, because not followed up. The only use the copy found can be is as a piece of evidence. The judgment of the Commissioner, as such, extended only to the exclusion of Norton as solicitor, and not to the effect of the paper as evidence en pais
2841 (act of July 8th, 1870, sect. 17, 16 U. S. Stat. at Large, 200; Rev. Stat. U. S., sect. 487), although its effect upon the instrument as a caveat of record might be greater. (Robertson v. Secombe Manufacturing Company, 10 Blatch. C. C. R., 489.) What the weight of the evidence produced, and legitimately bearing upon the question, as to whether there was, in fact, an original paper of which the one now in the files is a copy, is not now considered, because it does not appear to be material. This letter of Norton's and its connection is stated, however, because, in connection with the evidence before stated, as to when he actually produced the patented article, it does appear to be somewhat

material. It was introduced by the defendant as evidence. The part relied upon was that inconsistent with what Norton and the plaintiff now claim. But, when so put in, it was legitimate evidence, according to what should appear to be its just weight, as well as to those parts in favor of as to those against them. This is a well-settled rule in respect to evidence of admissions. (Stead v. Heaton, 4 T. R., 669; Davies v. Humphreys, 6 Mees & Welch, 153; 1 Green Ev., § 201; Wright v. Williams, 47 Vt., 222.) The letter tends to show that Norton actually had such stamps made in 1858. It was written before there was any controversy as to this fact, and is strongly corroborative of the correctness of the finding, that the invented and patented instrument was brought forward before May 4th, 1859.

The defendant has introduced evidence tending to show that what is claimed to be the same invention was made by various other persons, and put into use at several post-offices prior to that date even. The most prominent are at the Philadelphia office, by William M. Ireland, in 1851; at the New York office, by James J. Riley, in 1852; at the Cleveland office, by Charles E. Wheeler, in 1853; and, of these, that at the Cleveland office seems to be most confidently relied upon. If the question in respect to use at this office was to be determined upon a fair balance of proof, and upon the parol evidence alone, the bal-
2842 ance might turn in the defendant's favor; but the evidence to defeat the patent by showing an invention prior to a clearly established one of the patentee ought to be as clearly established, to the extent at least of removing all fair and reasonable doubts. There is in the case important written evidence up n this point, and the whole is to be weighed together. Wheeler himself, on the twenty-eighth day of November, 1863, wrote to A. N. Zevely, Assistant Postmaster-General, that he made the invention about the first of July, 1861, and that an order from the department then issued led to it. On the seventh day of May, 1864, E. Cowles, postmaster at Cleveland, by whom Wheeler was employed, at his instance, wrote to the Postmaster-General that the invention was made immediately upon the receipt of an order issued by Postmaster-General Holt. That order was issued at about the time of the invention stated by Wheeler in the letter, and could not have been issued long before. These deliberate statements, made by two persons separately, and at so near the time of the transaction in question, and giving circumstances accompanying it which in fact existed as they stated, and made with a claim of first invention which would interest them to state that the invention was made as early as the facts would warrant, and made in writing now produced, far outweigh in reliability statements made wholly from memory fifteen years later and farther from the transaction. Taking the whole into account, the defendant has not shown by the requisite measure of proof that Wheeler invented what he did before Norton did what he did.

The direct testimony as to what Riley invented is contradictory and unsatisfactory. Riley testifies that the instrument which he invented was made by Mr. Hoole, who is understood to be the manufacturer of stamps for the New York office. Hoole was sued by Shavor and Corse for infringing this patent, pleaded to the action, and a trial, verdict, and judgment against him were had. He did not show this in-
2843 vention of Riley, which, according to Riley, he must have known of, in that defence. This goes strongly to show that Riley's statements are not correct.

Ireland was a boy fifteen years old in the Philadelphia office in 1851. He was also there in the same employment in 1861. He doubtless did

do in 1861 what he says he did in 1851. At this distance of time he may have carried back in his mind what he did with the association of 1861, to the same associations existing in 1851. When he made it in 1861, he remarked to others that it was his, without stating that he had made it previously. It is manifestly difficult to distinguish occasions in memory after so great a lapse of time.

Prior to 1860, there was nothing to call the attention of those employed in post-offices, imperatively, to the necessity of such an invention; while, in the latter part of that year, the strict requirements of the department about cancelling postage stamps separately, and the increased use of the mails consequent upon the war in 1861, brought the subject sharply up. This brought out contrivances for the same purpose in post-offices in various parts of the country, and more probaby gave rise to those particularly mentioned, as well as to others about which evidence was given, but which have not been particularly discussed here.

There is another consideration bearing upon this branch of the case, which is, that none of the things produced by these persons, if they produced what they say they did, were the same as this patented invention; nor were any of them the equivalent of it in all material respects. The discovery was not that letters could be postmarked and the postage-stamps cancelled at one blow; and, if it had been, that mere idea would not have been patentable; and if that had been patentable to the first discoverer, it would have been anticipated by two prior patents—one of Aug. 9, 1859, and the other of Dec. 16, 1862, issued to Norton.

2844 But the patent is for a machine or instrument that will do both of these things at one blow; and the question is, whether the other machines were like it. In this the two faces which make impressions are connected by a cross-bar fixed in the middle to a brad-awl handle, on which both are balanced, so that a blow with it will bring both faces to the surface to be stamped, although not aimed so as to strike precisely perpendicularly; in those a cancelling face was added to the side of a stamp made to be used alone, with the handle all upon that, and nothing to bring the other face down, unless the blow should be so aimed as to bring it to its place. This difference is shown by the evidence to be, as it is plain it would be, quite material. The stamp of the patent of August 9th, 1859, was in form open to that objection, as well as to the objection that its canceller was a cutter, which made it undesirable. In the patent of Dec. 16, 1862, the postmarking and cancelling faces were balanced upon the handle, like those of the patent in suit; but the canceller there was a cutter, and the instrument could not be safely used. The invention in controversy combined the advantages of a safe and effective canceller, well balanced on the same handle with the postmarker, for the first time.

The nearest invention to this is Berri's English patent of April 24th, 1860, sealed Sept. 27th, 1860. That seems to embody all the material parts of this one, but was subsequent to it.

The patent of Ezra Miller, dated March 22, 1859, had the acting faces of the stamps balanced in the same way as this; but the handle was like that of a hammer, and the instrument, as a whole, quite different from this.

Upon the whole case, it appears that, in fact and in law, Norton was the original and first inventor of this patented invention.

That its production did involve the exercise of inventive faculties and skill is apparent from the various steps, trials, and tests by which it was reached, from the fact that so many other patents have been

2845 granted upon attempts approaching the same object without ac-

complishing it, and from the fact that the patent has sustained a suit for infringement of it against a party using the invention in fulfilment of a government contract.

This patent was granted while the act of 1836, and that of 1839, in respect to the defence of public use and sale of the invention were in force. By the provisions of the Act of July 4th, 1836, sect. 15 (5 U. S. Stat. at Large, 123), it was only public use, or being on sale, with the consent and allowance of the patentee, before the application for a patent that would defeat the patent. The 7th section of the act of March 3d, 1839 (*Id.*, 354), did not change the character of the public use, or being on sale, that would defeat a patent, but provided that no patent should be held invalid by reason of them, unless "such purchase, sale, or prior use, has been for more than two years prior to such application for a patent." (Andrews v. Carman, 13 Blatchf. C. C. R., 307; Elizabeth v. Pavement Co., 97 U. S., 126) No use shown, except at the New York office, was with the knowledge even of the patentee. The application was filed Jan. 5th, 1863, so that a sale or use to defeat the patent must have been prior to Jan. 5th, 1861, while General Dix was postmaster there. It is not very clear upon the evidence that this invention actually got into use there before that time; and this defence, like others of the same class, ought to be made out by clear proof. But whether it was so in use before that time or not, it is quite clear, from all the circumstances attending the use, whenever it was had, that it was not a public use within the meaning of the statute, but a private use for testing the invention, and informing the inventor as to its perfection and usefulness, with the design on his part, all the while, to procure a patent for it, if it should prove to be ripe for that purpose. (Elizabeth v. Pavement Co., 97 U. S., 126.) The correspondence between the inventor and the postmasters, and between them and the post-office departments, abundantly show this.

2846 If the reissues are for any other, or substantially any different, invention from that described in the original, they are unquestionably void. That the specifications or claims of the patent are different, the invention or discovery remaining the same, is of no consequence. The very object of the reissue is to correct the patent so as to make it conform to the invention. The principal objection to these reissues is the specification of a metal canceller in the combination, as well as cancellers of wood, cork, or other elastic material. If a metal canceller had not been mentioned nor alluded to, it might well be said that it did not enter into, nor form any part of, the conception of the inventor; but it was mentioned in the original. It was mentioned as not being so useful or desirable in the combination as an elastic one; but nevertheless it was mentioned as forming a part of an arrangement not patented or desired. The inventor or owner, when the reissues were applied for, desired it; the invention comprehended it; and the patent was made to cover it. The original patent also mentioned a canceller of any suitable material as a part of the combination.

It is said that the title to the reissue fails, because Norton did not own the patent when it was surrendered by, and reissued to, him on the third day of August, 1869. This fact is sought to be made out by showing that the instrument of reassignment from Shavor and Corse to him was forged by him, by placing it before, and attaching it to, the genuine execution by them of another and different instrument unknown to them. Much testimony and argument have been bestowed upon that question. Whether the instrument was so constructed or was genuine, it afterwards came to the knowledge of Shavor and Corse, and they

settled all their claims to the patent with those persons claiming title to it by virtue of that instrument upon the basis that the instrument should stand as if valid. This ratified and confirmed it, as to them, as good from the beginning, upon just and well-settled principles.
2847 But this was not done until after the reissue; and it is argued that the title at the time of the reissue had not become Norton's, and that the Patent Office had no jurisdiction to reissue it to him; and that the plaintiff cannot now be allowed to show title in that way because he has alleged title by force of the instrument itself, and not by ratification of it. It is doubtless true that a reissue of a patent to a person not the owner would not affect the title of the owner. The reissue and title should go together to make a good title to the reissue, or at least the reissue should be consented to by the true owner. Here the title followed the reissue, and became the same as if it had preceded it, and was consented to by the true owner, whether Shavor and Corse or Norton.

This would seem to make the title to the reissue good to Norton in any event. (Potter v. Holland, 4 Blatchf., C. C. R., 214.) This makes it unnecessary to determine that question of fact which involves a charge of the commission of a high crime, that cannot be well tried in this collateral way without danger of doing injustice.

As the instrument became as if good from the beginning, it was well set up and alleged as good, without stating in detail what made it so.

Norton conveyed this and other patents to Helen M. Ingalls. She, for a nominal consideration, conveyed the legal title to them to William W. Secombe in trust for herself, her sister, and her sister's children, with power of management and sale, the net proceeds to be divided, two-fifths to himself, and the remainder to be paid over to them, according to a declaration of trust referred to in the deed. Secombe was president of the Secombe Manufacturing Company, which in some way held title to some other of Norton's patents. The Secombe Manufacturing Company and Secombe, president, subsequently made conveyance of patents to Ingalls. The plaintiff derives title from her; and no other conveyance from Secombe to her is shown. The defend-
2848 ant claims that Secombe's title would not pass by that deed, and that if it would, the description of the patents conveyed does not include this one.

The deed recites the issuing of the patents, her desire to purchase, and that she has purchased of the Secombe Manufacturing Company, and of William W. Secombe, president, the patents, and declares that in consideration of one thousand dollars and other considerations, the said Secombe Manufacturing Company, and William W. Secombe, president, do sell, assign, and convey them to her; and it was executed by the signature of the Secombe Manufacturing Company with seal, and by William W. Secombe, president, and another seal. It is obvious that there were intended to be, and were, two grantors in that deed. One was the company, and the other was Secombe. The execution for the company in the name of the company was good for the conveyance of its interest. The execution by Secombe, although the addition to his name of "president" was made, was a good execution of the deed for himself, and good for that only, and not good to convey any interest for the company, even though that had been the intention. That execution made the instrument his deed, and it would carry whatever title he had in the subject of the conveyance. (Combes's case, 9 Co. Rep., 75; Clark v. Courtney, 5 Pet., 319; sham v. Bennington Iron Co., 19 Vt.,

230; Miller v. R. & W. R. R. Co., 36 Vt., 452; Brinley v. Mann., 2 Cush., 337.)

The description of the subjects of the conveyance is very general and broad in some of its parts. It commences by reciting that "at various times, and under several and different dates, letters patent were issued upon the application of Norton for 'improvements in hand printing and dating stamps, post office post-marking stamps, internal-revenue dating and cancelling stamps, and for other improvements not necessary here to name; among which were letters patent of the following date, to wit, Jan. 14, 1862, Dec. 16, 1862, Aug. 4, 1865,
2849 and also during the years 1870 and 1871." It then refers to the deeds of assignment from Norton to Ingalls, among others, for a more full description of the patents conveyed, and ends by adding, "Meaning to convey, and we do hereby convey, unto her, the said Helen M. Ingalls, each and every claim, right, title, and interest we now have or can or would have in any of said inventions, improvements and letters patent by means or reason of any contract between us or either of us, and said Marcus P. Norton and Helen M. Ingalls, or either of them, in, to, or for the said inventions and said letters patent or either of them," &c. The reference to the patent by stating the inventions covered includes this one, and it is quite obvious, from the sweeping character of the instrument, that this and all other patents upon those subjects were intended to be included.

It may be that as the conveyance was wholly in trust, upon the evidence carefully examined, such refusal to perform the trust would appear as to cause the title to revert, and it may be that the interposition of a court of equity would be necessary for that purpose. But that subject has not been examined here, for the reason that the reconveyance appears to be amply sufficient.

The defendant also objects that the plaintiff acquired no such right, by the deed to him from Ingalls, as authorizes him to maintain this suit. The conveyance was expressly in trust, upon condition that the plaintiff should have the sole management of the trust until a fair, just, and reasonable settlement should be had with the United States for the use of the invention in the postal service of the United States by the Post-Office Department. It is argued that the conveyance was for the purpose of such settlement and no other. The operative words of the conveyance include the whole legal title to the patent, and all claims for the past use of the invention in the postal service of the United States. The limitation is one of time upon the extent of the con-
2850 veyance in that direction, and not upon its purposes. No settlement has been made with the United States, and the limitation in that respect has not expired. She has no legal title to the patent now. The plaintiff's right is the only one being infringed. He holds this right in trust, and may be liable to account for the proceeds of his management; but whether he shall so account or how, is not the question here. The question is merely whether he has sufficient right to maintain the suit at all, and it appears that he has—certainly for the infringement since he has held the title; and the bill does not appear to be framed to cover anything else.

Probably Ingalls would be a proper party, plaintiff, with the orator in this suit in equity, and perhaps a necessary party, if there were any objection on account of that non-joinder; but no such objection has been made, and as she has been a witness, and testified that the suit is brought with her approval, there is no occasion for the court to interfere to secure to her an opportunity to assert her rights, as is sometimes

done in the discretion of courts to guard the rights of cestuis que trust, which it is the peculiar province of courts of equity to protect.

One ground upon which the defendant claims he does not infringe is, that, in all he has done, he has acted as the officer of the government in the performance of his duties for the benefit of the government, and that the monopoly granted, in granting the patent, did not extend to nor cover any use by the government. But the exclusive use of the invention granted to the patentee is property; and this property is now owned by the plaintiff. The grant saved nothing for the use of the government; it was exclusive absolutely throughout the United States. It was granted by express law of Congress, pursuant to the Constitution, without which it could not exist. But all property is upheld by law, either expressly or impliedly enacted or adopted, all of which is
2851 the law of the land, the same as the statutes upholding patents are. This property, like all other private property recognized by law, is exempt from being taken for public use without just compensation by the supreme law of the land (Cons. U. S. Am., Art. V.); nor can it be so taken by any officer, at will, in time of peace, leaving the owner to seek compensation. (Mitchell v. Harmony, 13 How., 115.) The property in a patented invention stands the same as other property in this respect. (United States v. Burns, 12 Wall., 246; Cammeyer v. Newton, 94 U. S., 225.)

The defendant also claims that he does not use the patented invention. The answer hardly denies that he does; but the plaintiff has so far treated it as being denied as to put in some evidence of infringement. The instruments shown by the evidence to have been used have the postmarking and cancelling faces connected by a cross-piece, and balanced upon a brad-awl handle, substantially like those of the patent. In one, the cross-bar is circular, and large enough to cover both stamps, and, in the other, the canceller is not tubed. But these things do not vary the principle of their action, nor affect their substantial identity with those patented.

This cause has been presented by counsel with great thoroughness of preparation, and faithfulness; and many points have been made that have not been specifically mentioned in what has been written, because none of them, in view of the facts upon which they rest, as found upon the evidence, or of the law as considered to be applicable, would be to a sufficient degree controlling of the conclusions reached upon the questions which have been mentioned, to warrant treatment of them in detail.

The complainant has expressly waived taking a decree for an injunction, and therefore a decree for that purpose is not to be entered.
2852 Let a decree be entered that the patent is valid, that the defendant has infringed it, and for an account of profits and damages with costs.

Marcus P. Norton and George H. Williams, for the plaintiff.

Stewart L. Woodford, district attorney, and Samuel B. Clarke, assistant district attorney, for the defendant James.

2853 *Decree by the court on final hearing.*

In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

This cause having been brought to a final hearing, and heard upon the bill of complaint herein and the answer thereto, the replication of the complainant to such answer, the exhibits and proofs upon the oral, documentary, and written evidence, each duly taken and filed in said cause, and the case having been duly argued before the court by counsel for the respective parties, namely, George H. Williams for complainant, and Samuel B. Clarke for said defendant Thomas L. James:

Now, therefore, in consideration thereof, it is ordered, adjudged, and decreed, and the court doth now and hereby order, adjudge, and decree, as follows:

First. That the letters patent, Division A, numbered 4143, and reissued to Helen M. Ingalls Oct. 4, A. D. 1870, being for letters patent numbered 38175, granted and issued on the fourteenth day of
2854 April, A. D. 1863, to Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, and conveyed to Jacob Shavor and Albert C. Corse, reissued to them, and numbered 1748, and dated Aug. 23, A. D. 1864, and by them reconveyed and reissued to said Marcus P. Norton, numbered 3386, and dated Aug. 3, A. D. 1869, are good and valid.

Second. That the said Marcus P. Norton was and is the original and first inventor and discoverer of the "new and useful improvement in post-office postmarking and cancelling hand stamps," described and claimed in said letters patent and in the several reissues thereof and the specifications thereto attached, as hereinbefore stated and set forth.

Third. That Christopher C. Campbell, the complainant herein, is the exclusive owner in trust of the said reissued letters patent numbered 4143, as hereinbefore described, and of the "new and useful improvement in post-office postmarking and cancelling hand stamps," described and claimed in the said reissued letters patent numbered 4143, subject to the rights of said Helen M. Ingalls and of Charles Eddy thereto, if any.

Fourth. That the said defendant Thomas L. James has infringed upon the said reissued letters patent numbered 4143, hereinbefore described, that is to say, by causing to be manufactured, and by using, and by causing others to use, the said "new and useful improvement in post office postmarking and cancelling hand stamps," as specified and charged in the said bill of complaint.

Fifth. That an account be taken of the profits, gains, and advantages which have in any wise been received or made, or which have arisen or accrued, on account of the infringements aforesaid, and also of the damages in addition thereto, if any, which the said complainant has sustained by reason of the infringements aforesaid.

Sixth. That the said complainant do recover of the said defendant, Thomas L James, his costs, charges, and disbursements to be taxed.

2855 Seventh. That it be referred, and the same is hereby referred,

to Kenneth G. White, of the city of New York, to ascertain and take and state and report to the court an account of the gains, profits, and advantages which the said defendant, Thomas L. James, has in any wise received or made, or which have arisen or accrued, on account of the infringements aforesaid, and also of the damages in addition thereto, which the said complainant has sustained by reason of said infringements.

Eighth. That the complainant on such accounting shall have the right to cause the said defendant, Thomas L. James, his agents, clerks, and employees, to be examined as witnesses; and also to require the production of the pertinent books, vouchers, and documents in said defendant's possession or under his control; and that said defendant Thomas L. James, his clerks, agents, and employees, and each of them, shall attend for such purpose before such master as he, the said master, may or shall require.

HOYT H. WHEELER.

Dated this first day of September, A. D. 1879.
Marcus P. Norton, solicitor for complainant, Troy, N. Y.
George H. Williams, of counsel for complainant, Washington, D. C.

(For defendant's solicitor, attorney, and counsel, see next page.)

2856 Stewart L. Woodford, United States attorney, and of counsel for defendant Thomas L. James, New York.
Samuel B. Clarke, assistant United States attorney, and of counsel for defendant Thomas L. James, New York.

Admission of service of this decree.

Personal service of the foregoing decree, dated the first day of September, A. D. 1879, is hereby admitted this second day of September, A. D. 1879, by a true and correct copy of the same, and by exhibiting to me this original decree at the same time of serving said copy by complainant's solicitor, Marcus P. Norton, on me.

STEWART L. WOODFORD,
U. S. Att'y for Def't James.
By S. B. C., *Ass't.*

2857 In the circuit court of the United States, in and for the southern district of New York. Second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT, and assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

Hearing before Hon. Kenneth G. White, master under decretal order dated September first, A. D. 1879.

COMPLAINANT'S TESTIMONY AND PROOFS UNDER THE ABOVE-NAMED DECRETAL ORDER.

N. Y., *October 23d*, 1879—11 a. m.

Appearances: Marcus P. Norton, solicitor for complainant; George H. Williams, of cousel for complainant; Mr. Samuel B. Clarke, assistant U. S. attorney, and of counsel for defendant, Thos. L. James.

2858 ANTHONY YEOMAN, a witness called on behalf of the complainant, being duly sworn and examined by Mr. WILLIAMS, counsel for complainant, testified as follows:

1. Q. State your age, residence, and occupation.

A. I am forty-seven years of age; am general superintendent of the third division of the New York post-office, and I reside in the city of New York, at No. 306 West Fifty-third street.

2. Q. How long have you been connected with the New York post-office?

A. I think about twenty-six years, sir.

3. Q. Have you at any time had direct connection with the business of postmarking and stamp cancelling?

A. Originally, I was a stamper in the New York post-office.

4. Q. When?

A. I think that was about in 1854 or 1855, may be 1853; the first year I was in the office I was a stamper.

5. Q. How long did you continue to be a stamper?

A. Perhaps a year.

6. Q. What position did you occupy after that time?

A. I then went as clerk on the South table; at that time we had it divided, South, North, East, and West; we have changed it very materially now; at that time I was at the South letter table.

7. Q. Did you subsequently become in any way directly or indirectly connected with the business of stamping in the office?

A. Yes, sir; ever since I was there I have been connected with it in some form.

8. Q. How are you now related to that business in the office?

A. I have general supervision of the whole of it now.

9. Q. How long have you had such general supervision?

2859 A. Well, I think ten years, perhaps.

10. Q. Can you state about how many clerks altogether are employed in the New York post-office?

A. Well, I could give you a general idea; do you mean the lower office or the whole city?

11. Q. I mean all the clerks in the post-office, including stations, subordinate as well as the main office.

A. You don't mean carriers?

12. Q. No, sir.

A. I should judge between four and five hundred; perhaps five hundred.

13. Q. Referring now exclusively to what is called the domestic department in the office?

A. Perhaps you mean the distributing department?

14. Q. I mean the department distinguished from the foreign; I was referring to what is known as the domestic department of the post-office. Can you make an estimate with any degree of accuracy as to the average number of letters that pass through that department in a day which are postmarked and the stamp cancelled in the office?

A. Well, I could give a rough estimate.

15. Q. I want your best judgment.

A. I should judge about two hundred and fifty thousand.

16. Q. Exclusive of foreign matter?

A. Yes, sir.

By Mr. CLARK:

17. Q. Does that include the stations?

A. Yes, sir; that includes all of them; about 250,000 I should judge.

Mr. WILLIAMS, resuming:

18. Q. State, if you can, how many clerks and employees in the post-office in New York, inclusive of stations, are engaged in and about the postmarking and cancelling of stamps?

2860 A. I could only give you one division, sir.

19. Q. What division?

A. That is the third division, of which I am general superintendent.

20. Q. Please explain what you mean by divisions.

A. I am general superintendent of the third division; the third division cancels all letters going out of town mailed in New York. Of course, as to the stations I don't know how many cancellers they have. That would be under Mr. Gayler's supervision. As far as the distribution is concerned I could give you some figures.

21. Q. I understand you to mean then that you know about the letters that are put into the main office and distributed from that office?

A. Yes, sir.

22. Q. And as well as those sent in the mails, also those distributed in the city?

A. I don't know anything about the city.

23. Q. Your knowledge is confined to those letters sent abroad from New York in the mails from the general post-office?

A. Yes, sir.

24. Q. How many divisions are there having connection with the stamping?

A. Well, there are two.

25. Q. What are they called?

A. Third and fourth divisions.

26. Q. You have charge of the third?

A. Yes, sir.

27. Q. Who has charge of the fourth?

A. Mr. Gayler.

28. Q. He is now a clerk?

A. He is general superintendent over there now.

29. Q. State then as to the number of clerks and employees that are connected with the stamping of letters and the cancelling of postage-stamps in your division?

A. I should judge there were twenty throughout the twenty-four hours.

2861 30. Q. Don't you know exactly?

A. Twenty; you see it is a business where we have to fetch in men not altogether doing that business; we can employ them at other business. At busy times we have to take men off other business and put them to stamping, and I should judge there are twenty men at work at that during the twenty four hours.

31. Q. Do you mean to be understood as saying that it takes the labor of twenty men twenty-four hours to do the stamping business in your division?

A. Yes, sir.

By Mr. CLARKE:

32. Q. You mean twenty men, each working the twenty-four hours?

A. Yes, sir.

33. Q. So that if they have relays of eight hours, it would require sixty men?

A. No, sir; I mean twenty men during the twenty-four hours.

Mr. WILLIAMS, resuming:

34. Q. Suppose you take the time from nine o'clock in the morning until twelve o'clock at noon of a certain day, how many men are ordinarily engaged in that business?

A. There is not over five.

35. Q. At one time?

A. Yes, sir.

36. Q. You mean to be understood as saying that there are only five at one time?

A. Yes, sir; at those hours you have just mentioned; the work of the New York post office is done at different hours.

37. Q. Well, then, from twelve o'clock to five?

A. There might be about ten.

38. Q. Then from five to twelve at night?

A. From five to seven to eight we have the whole twenty going full blast.

2862 39. Q. Then from that time forward during the night?

A. We would have a less number.

40. Q. You were there at the time the letters were stamped before the combined post-marker and stamp-canceller was used?

A. Yes, sir.

41. Q. Separate instruments were then used for post-marking and cancelling the postage-stamp?

A. No, sir; the post-marking stamp done the cancelling and put the date on.

42. Q. When it was put on the postage-stamp?

A. You asked me when I was there the original stamping——

43. Q. (Interrupting.) Subsequently to that time the practice was changed, and the post-mark was put on the letters apart from the postage-stamp and the postage-stamp cancelled separately?

A. Yes, sir.

44. Q. At that time there were two instruments used until a combined post-marker and stamp-canceller was used?

A. I think it was about one day in our office.

45. Q. Not longer than one day?

A. I don't think it was.

46. Q. Didn't you testify in this case that it was considerably longer? From the time an order was made by the Postmaster-General, to which reference has heretofore been made, up to the time that a combined post-marker and stamp-canceller was used, wasn't there more than one day?

A. I don't think there was more than one day; it might have been two.

47. Q. Do you remember the circumstances under which those separate instruments were used?

A. I don't exactly understand your question.

48. Q. Why were they used?

A. Why, it was to save time.

49. Q. I say, why was there two instruments used instead of one?

2863 (Objected to by defendant's counsel as irrelevant.)

50. Q. Do you remember that time?

A. Yes, sir.

51. Q. Do you remember why there were two instruments used instead of one?

A. On account of an order from the Postmaster-General ordering us to do it.

52. Q State how the letters were post-marked and the stamps cancelled after that order was issued, and before the combined stamp was used?

(Objected to.)

By Mr. WHITE. After the order was issued to use the combined stamp?

Mr. WILLIAMS. After the order was issued not to stamp the postage-stamp by putting the stamp, the post-marker, on the postage-stamp, some time in 1860. Prior to that time the postage stamp was cancelled by impressing upon it the name of the city, date, &c. An order was made by the Postmaster-General that that should not be done, but that the post marking should be on the letter, and that the postage-stamp should be otherwise cancelled, and now I inquire, after that was made, after the system was changed in pursuance to that order, how was the stamping done and how were the postage-stamps cancelled?

(Objection overruled. Exception taken.)

A. I think the first day we had a canceller soldered on to the side of the post-marking stamp, because we got that order, and we prepared for it, and before it went into effect we soldered a piece of iron to the post-marking stamp.

2864 53. Q. That is not an answer to my question. Before you soldered anything to that stamp and after the order was issued, I asked you how the letters were post marked and the postage-stamps cancelled—you say for a day or two the business was transacted without a combined stamp?

A. Because we did not obey the order right directly; we went on the old system.

54. Q. You have stated that for a day or two after that order was made and before the combined stamp was used the postage-stamp was cancelled separately from the post-mark on the letter?

A. You misunderstood me.

55. Q. How did you do it?

A. You stated when the order was issued we went on the old way. The first that was done was a piece of iron soldered.

56. Q. Do you mean to swear that there was no time in that post-office that the postage-stamp was cancelled by one instrument and the letter post-mark' by another instrument?

A. Yes, sir; to the best of my knowledge and belief I do say we never could have done it.

57. Q. Do you remember the letter that General Dix wrote to the department, which is in evidence here, that that was done, and that the letters were detained in consequence of that?

A. No, sir.

58. Q. Do you remember that you testified before in this case?

A. I do.

59. Q. That you testified that there was a time when the letters were post-marked by a separate instrument and the postage-stamp cancelled by a separate instrument?

A. I don't think I gave such testimony.

60. Q. You say it could not have been done; please state why.

A. They did not have the force to do it.

2865 61. Q. How much of a force would it have taken to post-mark the letter and cancel the postage-stamp?

A. At that time?

62. Q. Yes, sir.

(Objected to by Mr. Clarke as irrelevant.)

Mr. WILLIAMS. I simply ask him in reference to the answer he made to my other question; however, I waive the question and will ask him this:

63. Q. How many more men would it take to do the business of postmarking and postage cancelling, in your division, if separate instruments were used for that purpose, than is taken now by the use of the combined instrument?

A. I think it would take about nine, sir.

64. Q. That would make about twenty-nine men in all?

A. Yes, sir.

65. Q. Do you know what pay these clerks, who are engaged in stamping the postmarks and cancelling the postage stamps, receive?

A. Well, different salaries; we most generally put young boys at that work now. I suppose they would average, perhaps, seven hundred dollars a year.

66. Q. You are not informed particularly on that subject?

A. I could get you the record; that is my average; I think it would be a fair average—seven hundred dollars a year.

67. Q. Suppose the letters handled in your division were postmarked and the postage stamp cancelled by separate instruments, would there be any difference in the dispatching of the mails?

A. Yes, sir; I think we could not do it as quick as we do now; that is, at certain times of the day, because there would be perhaps the handling of letters and passing from one to another, which would make some little delay.

2866 68. Q. Do you not think that you can dispatch a given number of letters in your division—say two hundred and fifty thousand letters—twice as quick now as you could if your clerks were compelled to use separate instruments for postmarking and cancelling?

A. Not twice as quick.

69. Q. Could you do it very much quicker?

A. Yes, sir.

70. Q. Can you give an estimate of the time?

A. No, I could not, because I never saw it done—the amount of business we are doing to-day.

71. Q. Suppose that two instruments were used as I have suggested, would it be quicker to have those two instruments used by one clerk, or to have one clerk use one instrument and another clerk use the other instrument? I mean this, would it be quicker to have one clerk use the postmarker, one instrument, and then take and use the stamp canceller, another instrument, or would it be quicker to have one clerk postmark the letter and then pass it over to another clerk to cancel the postage-stamp?

A. Well, that would be about as broad as it is long. We could arrange our men so that it would not make a great deal of difference. This is my opinion of course. I am only giving you my opinions now on this matter. I would not like to give my opinion on that; I don't know.

72. Q. Suppose there were a thousand letters on the table, and they were to be postmarked and the postage-stamp cancelled by separate instruments, would it not take one man twice as long to do that work with these two separate instruments as it would take a man to do the work with the combined instrument now used?

A. No; because you can cancel a stamp much quicker than you can put a postmark on a letter. They have got to look whether the postmark is put on properly; but in cancelling they have just got to cancel the stamp, and for that reason it would only take nine men more
2867 than the twenty to put the postmark on, the same way we cancel our circulars where the postmark don't have to go on; but if you go to put the postmark on, you have got to put it on so that it can be read.

73. Q. Isn't the principal part of the time consumed, not in actually putting the stamp on, but in handling the letter; it would require two handlings if there were two separate instruments used, instead of one handling?

A. That would be a question. We would have to see which would be the best to do, whether the man would put the postmark on and then cancel, thus handling them twice for the same row of letters.

74. Q. How are these clerks, who are employed in postmarking and cancelling stamps on letters, arranged in the post-office, in your division?

A. How do you mean arranged?

75. Q. With reference to their situation to each other?

A. They are standing right in a row to a long table, about fourteen stamp blocks I think it is; fourteen, as near as I can recollect.

76. Q. How far are they apart?

A. Well, about three feet. I am only giving you a rough guess. It is just enough room for a man to stand at his block and stamp.

77. Q. That space would extend then forty or fifty feet long?

A. Yes, sir; I should judge it was a table about forty or fifty feet in length; it is quite a long table.

78. Q. Do these same clerks stamp circulars?

A. Sometimes; they do not, as a general rule. We have separate people for that—boys.

79. Q. Can you state how many persons are engaged in stamping circulars?

A. No, sir; we fetch them from almost any table, and get them to stamp circulars. We may have one or two men doing it all the time; but when we have a great quantity of that kind of matter,
2868 everybody goes in and stamps. Those stamps are merely killed with a cork; combination stamps are not used on them at all; we are not required to put postmarks on circulars.

80. Q. The combined postmarker and stamp-canceller has been used continuously since Mr. James became postmaster, up to the present time?

(Objected to by Mr. Clarke, on the ground that it is immaterial and irrelevant. The bill, as I understand it, is so framed to entitle them to recover only from the time of the assignment to Mr. Campbell, and that was in January, 1877; and on the ground that the complainant is not entitled to recover for any infringement prior to the time of the assignment to him. Objection overruled. Exception taken.)

A. Yes, sir.

81. Q. Subsequent to April 1st, 1873, when Mr. James admits that he became postmaster in New York, up to January, 1877, can you state generally what number of clerks were employed in your division in postmarking and cancelling postage-stamps?

A. I think it was just the same as I have already stated.

82. Q. So that you will make the answers that you have heretofore given apply to the entire time from 1873 down to the present time?

A. 1877, you said.

83. Q. No, 1873?

(Former question repeated.)

A. Well, I don't think there were more than fifteen.

84. Q. During that time?

A. Yes, sir; 1873 the business increased about fifteen, I should judge.

85. Q. In 1873?

A. Yes, sir.

2869 86. Q. Did that number increase any during that period up to 1877?

A. In 1877 I think they reached about the same as they do now.

87. Q. Suppose there were fifteen clerks employed in your division with the stamping, using the combined instrument, how many more than fifteen would it take to do the same work with a separate instrument to post-mark the letter and a separate instrument to cancel the stamp?

A. Well, I think about six.

88. Q. How many stations did you say there were in the city?

A. I think there are nineteen, sir.

89. Q. Are the city letters, which are deposited in these stations or collected at these stations, post-marked, and the postage stamp cancelled there?

A. Yes, sir; a great deal of it. As a general thing they cancel their own stamps.

90. Q. Do you understand that there is a clerk at each one of these stations for the purpose of post marking and cancelling stamps?

A. I don't know that there is any regular clerk; but I know there are clerks who do that business.

91. Q. But you are not able to state how much of the time it keeps them employed?

A. No, sir; I am not familiar with the station work, it not being in my division, and I don't want to state anything about it.

92. Q. I understand that in 1873 there were about fifteen men employed, and they increased from that time?

A. They had about fifteen up to 1877, I should judge.

93. Q. To be clear, your testimony is confined to your division of the domestic letters?

A. Domestic letters going out of town; yes, sir.

94. Q. You don't include the letters that are posted and distributed in the city?

A. No, sir.

95. Q. You don't include the foreign letters?

2870 A. No, sir.

96. Q. Will you be good enough to give me the name of the superintendent of the foreign stamping?

A. Mr. Dwight A. Lawrence.

97. Q. Who is the man who has charge of the city letter division?

A. Mr. James Gayler. He has charge of the fourth division of city matters both of the post-office and of the stations. Perhaps he would not have it as fine, but he has charge of that.

94. Q. If nine more clerks were employed in post-marking and stamp-cancelling in your division, the table would have to be about twenty-seven feet longer?

A. I don't know. We would have to see practically how that could be done; we might do it on the same table; we might arrange to do it on the other side.

99. Q. Is the table upon which this stamping is done an open table standing in the middle of the room?

A. Yes, sir. We could knock out spaces on the other side and have a man over there and pass the letters over, and that is the way I should do if I was going to do it to-morrow. Or on the other hand the same men might do it—have a canceller and do it right there.

100. Q. Are all the clerks now engaged in post-marking and stamp-cancelling arranged on one side of the table?

A. Yes, sir.

101. Q. Side by side?

A. Yes, sir.

102. Q. What is on the other side of the table?

A. If you know our arrangement over there—we have drops for each State, and we have pigeon-holes to throw these in alphabetically, arranged from Alabama to Wisconsin.

103. Q. It is then necessary for the transaction of business?

2871 A. No, sir. We started that way, but it did not work, so we could use that room for any other purpose if we wanted to. That system works very well for big cities.

104. Q. Do you use it now for that purpose for the other side of the table?

A. Yes, sir.

105. Q. You say it don't work well?

A. No, sir; for large cities it does; cities like Philadelphia, Boston and Baltimore, it works very nicely; but when you come to States it does not work well. That is what I had reference to.

106. Q. Still you have not adopted any other system?

A. No, sir.

107. Q. How long has that system been in vogue?

A. Ever since we have been up to the new office here.

Cross-examination by SAMUEL B. CLARKE, counsel for defendant:

108. X Q. Some of the clerks who do the stamping are paid as small a sum as thirty-five dollars a month, are they not?

A. Yes, sir.

109. X Q. Any of them more than sixty dollars a month?

A. I think we have some.

110. X Q. You don't know for sure?

A. No.

111. X Q. Who will be likely to know about that?

A. Our record will show that.

112. X Q. Who has charge of the squad of men who do the stamping?

A. We have three different men—eight hours each, you know—a man named Steel, Van Pelt, and Mays.

113. X Q. Do you know what about they receive?

A. I don't know with them, but we have a pay-roll; most of our stampers of late years have been young boys, who make the best stampers. Of course I have averaged it.

2872 114. X Q. Is that a large or small average?

A. It is a fair average.

115. X Q. Suppose that you had the nine additional men, and that the letters were post-marked and the postage stamps cancelled by separate instruments, do I understand you to say that the twenty-nine men cannot do the work with the two separate instruments as rapidly as the twenty men could do with the combined instrument?

A. Well, about the same; I put it down that it would take really nine additional men.

115½. X Q. To do the work up as promptly as it is now done?

A. Yes, sir; about nine men.

116. X Q. Could one man use the separate post-marker—use that instrument any more rapidly than one man could use the combined instrument?

A. It would be about the same. The impression has got to be put on, and he could do just about the same—well, not quite as fast. The cancel and stamp together I think he could post-mark a little more than with the combined instrument.

117. X Q. Owing to the greater weight there is a greater necessity of striking accurately?

A. Yes, sir.

118. X Q. When you cancel you cross them to make it strike into part of the letter?

A. Yes, sir.

119. X Q. If you didn't have to cancel you could put the post-mark anywhere on the envelope?

A. Yes, sir.

120. X Q. You say that some of these twenty men stamp circulars sometimes?

A. Yes, sir.

121. X Q. When there is not a great press of letters?

A. Yes, sir.

122. X Q. So that the whole twenty men are not at all times engaged?

A. No, sir; sometimes we take them off and have them boxing up letters.

2873 123. X Q. Is there other things they do?

A. Yes, sir; and there are certain hours of the day it will take the whole of them.

124. X Q. About how many hours out of the twenty-four?

A. I think from five to seven; at the time that everybody is mailing their letters. Mind you, we don't use the whole twenty at any one time.

125. X Q. But between the hours of five and seven you would have them all on?

A. No; we would have about fourteen. If I said twenty men at one time that is a mistake. I said from between five and seven we use the most of the men. We have not got room for them; we cannot use them. We only use about fourteen of the twenty men. What I have stated here is for the twenty-four hours.

126. X Q. Well, to make things clear, suppose that you go over the twenty-four hours and let us know how many men usually are employed during each hour; begin at 12 o'clock noon?

A. Twelve o'clock noon up to five I should judge about ten men. Then from five to seven o'clock I should judge about fourteen men. Then from seven to twelve at night I suppose there would be about twelve men; but they were the same men. Then from twelve to eight or nine the next morning there will be only about two or three men.

127. X Q. And from eight in the morning until twelve, how many?

A. I suppose we have got six men stamping.

128. X Q. These are general estimates?

A. Yes, sir.

129. X Q. I think you have stated that one man using two separate

stamps would not take twice as much time as the same man using the combined stamp?

A. Oh, no; because you can cancel much more rapidly.

2874 Redirect examination by Mr. WILLIAMS:

130. Re D. Q. Is it not true that a more accurate post-mark can be put upon a letter with this combined stamp than with a single stamp?

A. I don't know. No, I hardly think so. If a man only has got a postmark to look after I think he can do that as well. I don't think there is much difference. He has not got to look at the stamp.

131. Re D. Q. Isn't there more danger in striking a blow with a small surface, that you may strike one edge and so make a fainter impression, than there would be if there was a larger surface to bring down square on the paper?

A. No, sir; I don't think so.

132. Re D. Q. What is your opinion as to whether or not a postage-stamp is more effectually cancelled now than it was before the combined stamp was used? Going back to the time before the combined stamp was used and considering the manner in which you then cancelled a postage-stamp, and then considering the manner in which that stamp is cancelled now by the combined intstrument, is not the stamp more effectually cancelled now than it was then?

A. Yes, sir; decidedly so.

133. Re D. Q. What is considered in the post-office here an efficient day's work—how many hours—is there any rule on that subject?

A. Generally eight hours; still we have to hold them often over that time.

134. Re D. Q. Eight hours would be considered a day's work if a man was employed for a day's work. If a man was employed for a day in the post-office he would be regarded employed for eight hours?

A. Yes, sir.

135. Re D. Q. So if a man worked twenty-four hours he would be working officially three days?

A. Yes, sir.

2875 Recross-examination by Mr. CLARK:

136. Re X Q. The stampers are divided into three tours?

A. Yes, sir.

137. Re X Q. On an average there is six and two-thirds men on a tour?

A. Yes, sir.

138. Re X Q. That is the average as it is now run?

A. Yes, sir.

139. Re X Q. When you say that the postage-stamp now, when the combined instrument is used, is much more effectually cancelled than it was, what time do you mean?

A. Than when we put just the postmark on the postage-stamp.

140. Re X Q. How long ago was that?

A. 1860, I believe.

141. Re X Q. About nineteen years ago?

A. Yes, sir.

142. Re X Q. When you say that the postage-stamp is now more effectually cancelled than it was prior to nineteen years ago, what is that due to?

A. One thing is that the cancellation stamp we are now using has a cross-bar, numbers, &c., on it.

143. Re X Q. Is it due at all to the mere fact that the cancellor is combined to the marker?

A. No, sir.

144. Re X Q. So that the efficiency of the cancellation is not due to the combination?

A. No, sir; not a bit.

Redirect examination by Mr. WILLIAMS:

145. Re D. Q. That is all conjecture; you never tried that?

A. Yes, sir; this is all my opinion.

146. Re D. Q. I have asked you to make a comparison between what has actually been done in the office, and you state, as I understand you, that up to 1860, or about that time, the postage-stamp was can-
2876 celled by an instrument struck upon the postage-stamp. Then the combined stamp came into use, and you say since the combined stamp has come into use the postage-stamp has been more effectually cancelled?

A. Yes, sir.

147. Re D. Q. You mean by that, it is more difficult now than it was then to use the stamp a second time?

A. Yes, sir; I think so. I think it is harder to wash them or anything like that.

Mr. YOUMANS recalled and examined by Mr. WILLIAMS.

148. Re D. Q. Can you state from your knowledge of the business, about how many letters a competent man can handle, postmarking and cancelling the postage-stamps upon them, in a minute, half hour, or hour?

A. Before Mr. James came there we were not so careful about the postmark, and I have seen them do a hundred and sixty a minute, but since Mr. James has been there he has made a specialty of seeing that the postmarking is done properly, and I suppose they are doing now on an average one hundred and twenty-five.

149. Re D. Q. A minute?

A. Yes, sir. Now the postmark is better and distinguishable. It is sufficient cause for removal now if a man don't put it on plainly.

2877 JAMES GAYLER, being duly sworn on behalf of the complainants, and examined by Mr. WILLIAMS, t'stified as follows:

1. Q. State your age, residence, and occupation.

A. I am 51 years of age; I reside in Ridgewood, New Jersey, and my occupation is general supervision of the fourth division of the New York post-office.

2. Q. State, if you please, how long you have been officially connected with the post-office in New York.

A. With the New York post-office since 1872, the first of April. With the department some time longer. I have been connected with the Post-Office Department twenty-five years altogether.

3. Q. What has been your business since 1872 in the post-office?

A. General supervision of the delivery business of the city delivery. For one year it was confined to the carrier delivery, then I was superintendent of the carriers' department, as it was then called. In 1873 I was made general superintendent of the entire delivery, including the box delivery, the carrier delivery, down town, and entire delivery through the different stations throughout the city.

4. Q. State what letters are postmarked and the postage-stamps cancelled in your division.

A. All city letters for the city delivery which are deposited in the post-office building, or are brought in by the collectors from city boxes in that district which includes the city below Canal street, and the stations. All the letters are brought in by the collectors at those districts, and are stamped at those stations with the postmark of the station.

5. Q. Can you give an estimate of the average number of letters which are received in the post-office building which are postmarked or upon which the stamps are cancelled within your division?

2878 A. Yes, sir; I can give that—they run from thirty to forty thousand a day.

6. Q. Exclusive of stations?

A. Yes, sir; exclusive of stations; I am including letters and postal cards.

7. Q. How many clerks or employees in your division are c ncerned in postmarking and cancelling postage-stamps on letters?

A. There are three concerned in it, but they are not all engaged at it all the time. One is, however. I have one man who throughout the day does nothing else. He is assisted by a boy during part of the day, and at night there is a man who puts in three and a half or four hours' work of that kind.

8. Q. Has the combined postmark and stamp canceller that is now used, been used in that office since 1872, in your division?

(Objected to by Mr. Clarke as irrelevant and immaterial. Question allowed. Exception taken.)

A. My impression is that it has in some way or other either with the cork canceller or some other way—cork, rubber and various devices.

9. Q. Supposing that a letter was postmarked and the stamp cancelled by separate instruments, so far as the letters are concerned that are received in the post-office building in your division, how many more clerks would it take than there are now employed for that purpose?

A. Well, I think we can get along with one more clerk—three altogether.

10. Q. Making three altogether?

A. Yes, sir.

11. Q. I understood you to say you have three now.

A. Yes, making four altogether. I made a mistake. There is one man on regular all the time doing that. These other two are em-

2879 ployed at other duties throughout the day, and the other men might be more steadily employed than they are, but one more man, I think, might be able to fill the bill. It is a much more rapid process to cancel the stamps than to affix the postmark. There is not so much care required for that.

12. Q. Suppose there is a letter upon the table to be postmarked and upon which the stamp is to be cancelled. By the instrument now in use that can be done by a single blow, as quick as a man can strike the ink-pad and strike it on the letter, can it not?

A. Yes, sir, he can. It depends somewhat upon who the man is. If he is an expert stamper he can stamp it very fast and affix the postmark at the same time. Perhaps I don't understand your question.

(Former question repeated.)

A. Yes, sir; it can be done as quickly as that, but to make a distinct postmark it has got to be done with some little care. It requires a knack—a knack has got to be acquired to make a legible postmark to be affixed with the stamp.

13. Q. Cannot a man, assuming him to be competent to do the busi-

ness, take this combined stamp and strike it on the ink-pad and then strike it on the letter just as quick as he could take a separate canceller and strike it on the postage-stamp?

A. Yes, sir; he might do that, but in cancelling stamps it would not be necessary always to do that. A cancelling arrangement could be made, and has been made and used there, so you can take up enough ink on the cork to cancel half a dozen without taking more ink. You cannot do that with a steel cancelling die. You have got to take ink every time.

14. Q. Is that the usual way of stamping and cancelling the postage-stamps, to strike the canceller on several stamps with one inking?

A. Yes, sir; we cancel now what are known as the unpaid postage-stamp by means of a circular stamp, bearing several dies of the
2880 same sort, and circles, and they have been stamped in that way—matter which don't have to be postmarked.

15. Q That doesn't quite answer my question. Is it the usual practice in the office to cancel several postage-stamps on several different letters by one inking of the canceller?

A. Not on letters, sir.

16. Q. (By Mr. CLARKE.) Because the combined instruments are used?

A. Well, I don't know.

Mr. WILLIAMS. Isn't it desirable, particularly desirable in the post-office, to effectually cancel a postage-stamp so that it may not be used a second time?

A. Yes, sir.

17. Q. Could that be done, do you think, supposing the separate canceller to be used—by cancelling several stamps with one inking of the canceller?

A. Oh, yes.

18. Q. You think it could be done effectually?

A. Yes, sir.

19. Q. How many stamps do you think that separate canceller could destroy with one inking?

A. I don't know. I have not done any of that work myself or seen it done for some time.

20. Q. So you are simply relating your conjectures?

A. No; I have seen stamps cancelled before. I have seen it when the cork cancellers were used. I have seen three or more cancelled with one application of ink.

21. Q. That cannot be done with a steel canceller, you think?

A. No, sir; it would not absorb the ink.

22. Q. Has the steel canceller or metal canceller been adopted in place of cork because it is supposed to be better—a more effectual canceller?

A. I don't know that.

2881 23. Q. Can you state about how many times a man can use the combined instrument now in use in a minute or in an hour, supposing him to be a competent person?

A. No, sir; I am not prepared to give you the figures now. I have not as yet had but one man on that, and he is an extraordinary fast stamper. I have known how many he has stamped in a minute, but I don't remember now the best he has done. I know he can stamp very fast.

24. Q. You don't remember the number?

A. No; not at present.

25. Q. I would like to know that fact.

A. I will get it for you.

26. Q. Can you state how many letters upon an average on each day are postmarked with a postage-stamp canceller in the city stations?

A. I cannot give you those figures now, sir; I can procure them, however.

27. Q. Is there anything done with these letters in the post-office building after they receive them from the different stations, except to put them in the mails?

A. Yes, sir.

28. Q. What is it?

A. I am speaking now of the letters in my own division. I have nothing to do but with the city letters. The city letters received at the post-office from the stations are postmarked on the back with the hour of receiving them, except at the stations on the first morning mail. They have not then time; it is a heavy mail, but after that throughout the day and night all they receive they stamp on the back, denoting the hour at which they were received.

29. Q. Are letters postmarked with a stamp cancel' at each of these city stations?

A. Yes, sir.

30. Q. How many stations are there in the city?

A. There are nineteen now.

2882 31. Q. Are the letters postmarked and the postage-stamps cancelled in the same way in the stations as in the main post office?

A. Yes, sir.

32. Q. You say they are stamped in the same way as in the post-office?

A. Yes, sir.

33. Q. Can you state about how many letters are postmarked and the postage stamps canceled in any one of these stations? Take the one which receives the largest number of letters.

A. No, sir; I cannot now. I would not like to make an estimate.

34. Q. Do you know how many clerks are employed in these different stations in the aggregate or in each station? Can you state anything on that subject?

A. I know that in some of the stations—stations A, D, and E, there are twelve persons. All have a pretty good force of clerks for services.

35. Q. What pay does that regular rapid stamper in your office receive?

A. It is $1,080 a year.

36. Q. Is there any time during the day when you are crowded with this business of stamping and postmarking of letters?

A. Yes, sir; the latter part of the day merchants are beginning to post their letters, sending their boys with their city and other correspondence to the post-office, and they come in quite fast then.

Cross-examination by Mr. CLARK:

37. X Q. Can a combined postmarker and canceller be used as rapidly as a separate canceller?

A. No, sir; I think not.

38. X Q. Give the reasons; all that you think of.

A. Because a separate canceller can be arranged so as to cancel several stamps without going to the ink pad for fresh ink. No postmarker that could last could be used in that way.

2883 39. X Q. Can the combined postmarker and canceller be used as rapidly as a separate postmarker?

A. It can by an expert; yes, sir.

40. X Q. Doesn't it require some little time to adjust the aim when the combined stamp is used so as to make the canceller hit the postage-stamp, which would not be required if the separate instrument was used?

A. I cannot speak as an expert on that point. I never used it myself.

41. X Q. Separate cancellers are now used in the post-office for certain purposes, are they not?

A. Yes, sir.

42. X Q. Are they made of wood, metal, or cork?

A. I have seen them made of all sorts of things, rubber, cork, etc.

43 X Q. Rubber and cork is chiefly used now for separate cancellers?

A. I won't say what are chiefly used now. That I cannot speak of. I am speaking of what I have seen used in this post-office and other post-offices.

44. X Q. In your division is there any cancelling done with a separate instrument at all?

A. No, sir; not that I am aware of.

45. X Q. You don't cancel stamps on the circulars?

A. Yes, sir; there are some; on third class and fourth-class matter we have a separate canceller, which is made of roller composition—of glue and molasses.

46. X Q. I understand you roll that over several papers at a time?

A. I have not seen that used for several years. It is a canceller that bears a New York postmark—no number or letter indicating at which station it is used, to tell where the matter originated.

47. X Q. You say you pay $1,080 a year to the man who works on it all the time?

A. Yes, sir.

48. X Q. What does the boy get who helps him in the daytime?

A. $300.

2884 49. X Q. What does a man get who works three or four hour at stamping—not altogether?

A. He is employed for other purposes. I don't know what his salary is.

50. X Q. Who pays these men?

A. The postmaster.

51. X Q. Where does he get the money?

(Objected to by Mr. Williams, on the ground that it is a matter of no consequence where the man gets the money. It is immaterial where Mr. James gets the money, and in the second place it is impossible for the witness to know, except from hearsay, where the money does come from. If the witness personally knows where he gets the money, then he can give it subject to my objection.)

WITNESS. I know it from having seen the letters from the Postmaster General, awarding Mr. James a certain allowance for clerk hire. That is the closest knowledge I have in regard to it. You see that there is a certain annual allowance for clerk hire, and I have seen the letter making that allowance.

(Mr. Williams objects to the answer, on the ground that there is better evidence of the facts than this witness gives.)

Redirect examination by Mr. WILLIAMS:

52. Re D. Q. When I asked you if the combined stamp has been used

in 1872, you say it has, excepting as to rubber and cork, etc. You mean by that, as I understand, simply that the material of the canceller has been changed during that time from cork to rubber, metal, and so on?

A. Yes, sir.

53. Re D. Q. And so you mean?

A. Yes, sir.

2885 Recross-examination by Mr. CLARKE:

54. Re X Q. There have been other changes, too, haven't there?

A. In the stamp?

55. Re X Q. Yes, in the combined instrument?

A. Yes, sir, in the face of the cancellor—they are all uniform now—there have been changes of that kind in the impression they make on the stamp.

56. Q. They have been changed in other parts of the instrument also?

A. Yes, sir; changes in the manner of inserting the type, changing the dates. They are now put in form beneath instead of above, and kept in by a screw entering the side of the instrument.

57. Re X Q. There has been a cross-bar used and a cup?

A. Yes, sir; there had been, but now they are made of one piece of metal.

58. Re X Q. And that is screwed in a sort of a cup?

A. Yes, sir.

59. Re X Q. And that is screwed in the cross-bar?

A. Yes, sir.

Redirect examination by Mr. WILLIAMS:

60. Re D. Q. You speak of third and fourth class matter as stamped in your division—some stamping of that kind done there. Is there much of it done?

A. It has only been recently that that sort of marking I described has been affixed to them, and all the third and fourth class matter deposited in the stations, the stamps have been cancelled there always by separate instruments.

61. Re D. Q. Separate cancellers?

A. Yes, sir.

62. Re D. Q. They are not postmarked?

A. No, sir, they are not. This device that I speak of just now is not perhaps distinctly a postmark; it simply gives New York or
2886 M B O, or a number down at the office to show to the origin of the matter.

63. Re D. Q. Is that made by a two-faced instruments?

A. A single face.

64. Re D. Q. And that is put on the postage-stamp?

A. Yes, sir.

65. Re D. Q. Are these persons to whom you refer, those three persons who make those stamps or stamp those parcels?

A. No, they are the persons who stamp the letters and postal cards.

Mr. GAYLOR recalled.

By Mr. WILLIAMS:

66. Q. Mr. Gaylor, you proposed to inform the master as to the number of clerks that were employed in the different stations in the city for postmarking and cancelling all letters received at the stations, and will you give that information now?

A. (Producing a paper.) I have here a memorandum made by myself from reports received from all stations except two unimportant ones—Spuyten Duyvil and Kings Bridge. I have the average number of letters postmarked daily at each station. (Reading from paper.) I have the average number of letters, &c., postmarked daily at each station, the number of clerks employed at each, the time consumed daily in stamping and postmarking, and remarks as to the number of clerks employed in that duty, and the number of hours that are employed by each of them in that duty.

(Memorandum offered in evidence and marked Exhibit No. 1, K. G. W., Master, and of which the following is a copy:

2887 EXHIBIT No. 1.—*K. G. W., Master.*

Station.	Average No. of letters, &c., postmarked daily.	No. of clerks empl'd.	Time consumed daily in stamping.		Remarks.
A	75 to 80,000	14	30½		By 6 clerks in tours, average 5 h. 5 m. each.
B	15,822	8	8 hrs.	40 m.	1 clerk.
C	7,750	8	2		5 clerks employed in postmarking as required.
D	50 to 55,000	13	10	40	4 clerks, 2 h. 40 m. each.
E	40,000	10	12		2 men, 6 hours each.
F	15,382	9	4		4 clerks postmark, 1 hour each.
G	902	6	3		5 " " as may be required.
H	18,000	6	3		2 men, 1½ hours each.
K	3,510	2	4		1 man.
L	4,639	3	1	15	All clerks postmark as may be required.
M	350	0		45	All work performed by superintendent.
Morrisania	2,326	1	3		
Tremont	168	0		10	All work performed by superintendent.
Fordham	376	0		10	" " " "
Woodlawn	50	0		5	All work performed by superintendent.
Spuyten Duyvil					
Riverdale	175	0	About 1 hour		
Kings Bridge					
West Farms	85	0	About 30 min.		
			84 hrs. 45 min.		

2888 67. Q. You said you would ascertain how many letters that rapid clerk in your office could postmark and cancel in a minute; you spoke of him as an expert man. Have you ascertained that fact?

A. He can postmark from 180 to 200 when he is at his best.

68. Q. Using the combined stamp?

A. Yes, sir.

69. Q. How long has that skillful stamper in your office been in that business in the office?

A. Well, I remember him as such for seven years. Before that time I would not be likely to know whether he was stamping or not.

By Mr. CLARKE:

70. Q. In this exhibit the column headed "Number of clerks employed," means the whole number of clerks at all the duties of the office?

A. Yes, sir.

71. Q. And the column headed "Time consumed daily in stamping"?

A. Means whole time consumed.

72. Q. By all employed at stamping?

A. Yes, sir.

73. Q. And the column headed "Number of letters postmarked

daily," does that mean upon which a combined postmark and canceller are used?

A. Yes, sir; I would state that there might be one exception there, in the case of Woodlawn. I am not quite certain whether they use the combined stamp there or not. When it was a post office it had only an ordinary postmark, but when it was made a station I don't know whether they used the combined instrument. They may have done so, but I don't know.

By Mr. WILLIAMS:

74. Q. Take Station A; average daily receipt of letters, as you
2889 have stated here, is from seventy five to eighty thousand; number of clerks employed, fourteen; time consumed in each day in stamping, thirty hours and a half. Do you mean by that the aggregate number of hours?

A. I think you will find the explanation in the remarks.

75. Q. That, then, is the aggregate amount of time which all the clerks use?

A. Yes, sir; sometimes more than one are stamping, but it would make up the thirty hours.

76. Q. Suppose that this stamping in these different stations was done with one instrument, that is, the postmarking and the cancellation of the stamps done with another, so that two operations and two handlings of the letters was necessary, would you say or not that it would take more time?

A. Yes, sir; it would take more time.

77. Q. Well, how much more time do you think?

A. Well, take station A as an example of 30½ hours, it would take ten more hours more work in a day divided among the clerks.

78. Q. In a day of twenty four hours?

A. It would take ten additional hours.

79. Q. You mean by that, that instead of 30½ hours to dispose of the letters it would take 40½ hours?

A. Yes, sir.

80. Q. Then according to your estimate this stamping—this double stamping—only saves a third of the labor?

A. It might possibly take more than that; it might take twelve hours; but I am not very competent in my own opinion about that, because I don't have immediate supervision of any of that work.

81. Q. But don't you candidly think, Mr Gayler, that if it was necessary for two men to handle these letters, one using the separate instrument for postmarking these letters and the other using the cancelling instrument for cancelling the postage-stamp, it would take more than ten hours in addition to the 30½ hours now employed?

2890 A. I would not be positive about ten. The postmarking could be done more quickly with nothing but a postmark, and the cancelling could be done much more quicker with nothing but a canceller.

82. Q. You have a man in your office that you say can with the use of the combined stamp, postmark and cancel postage stamps on letters at the rate of 180 to 200 a minute. Now, I would like to have you state how many letters he could postmark, supposing he used nothing but a simple postmark.

A. I cannot say how many more, but he could stamp a considerable number more.

83. Q. Do you think so?

A. Yes, sir; in putting on a postmark alone, the only thing he is

obliged to give his attention to, is to see that he makes a postmark without obliterating the address, for he can strike it on any place of the envelope, whereas with the combined stamp he has got to put it in a place where the stamp will be cancelled at the same time.

84. Q. Now suppose he wants to use the cancelling instrument, doesn't he have to take care in the use of that—doesn't it take him just as much time to put that on the postage-stamp as it takes him now?

A. The double instrument on the letter? No, I think not.

85. Q. Why?

A. He has merely got to strike the stamp, and as long as he makes an effectual cancellation it don't matter. He does not have to see that the postmarker and canceller both give two impressions, but has to see to nothing but the canceller.

86. Q. But he has to watch his blow when he applies the canceller to the ink-pad and then applies it to the letter, it just takes as much time to watch the blow and see that the postmark goes on the letter as it takes now to see that the canceller goes on the postage-stamp, don't it?

A. Well, but he does not; in using the postmarker and canceller he has to see about both.

2891 87. Q. Well, then, it becomes, as I understand from the answer given, a matter of skill in applying the double instrument so as make a good postmark, and at the same time to effectually cancel the postage stamp?

A. Yes, sir; the stamps could be cancelled as well by various means. If I was obliged at the stations or any of the offices to do the cancellation separate, I should arrange myself to do it much more quickly, and in a great many cases where a good many letters come in together, I could have them done by a roller where a hundred could be done in a second.

88. Q. But you have to arrange the letters to apply the roller, and do you know that cancelling those stamps by means of a roller, without inking the roller frequently, would cancel letters as effectually as the present system?

A. Yes, sir. Same thing in case of circulars.

89. Q. But you don't know they are as effectually cancelled that way as now?

A. I have seen them as effectually cancelled. Of course the postmark is not as nice, but the cancellation is as effectual.

Cross-examination by Mr. CLARKE:

90. X Q. In saying that you should think that perhaps ten hours additional work would be required in station A to cover the separate cancelling and postmarking, and the arrangement of the letters, going over the letters twice, do you say that upon the theory that the letters would be faced up, drawn down by one man and postmarked, and then faced up again, and then drawn down by another man and cancelled?

A. Only one facing up for the two operations.

91. X Q. Facing up letters, arranging the letters so as to get as nearly as possible all the postage-stamps in one place?

A. Yes, sir. All, of course, faced up.

92. X Q. That is, with the superscription and the postage-stamp uppermost?

2892 A. Yes, sir. They don't undertake to face them so that the stamp is on the right-hand side. They just strike it and then go on.

93. X Q. So that the only difference in the use of two stamps would be that the bundle of letters already faced up would be first gone over

and passed over to another man, and he would draw them down again, they being already faced up, and cancel them?

A. Yes, sir.

94. X Q. Wouldn't it be feasible for a man to use a separate postmarker to cancel with, and then with another blow with the same instrument put the postmark off to one side?

A. It would be feasible, but it is forbidden by the regulation of the department.

95. X Q. The regulation forbids it?

A. Yes, sir.

96. X Q. But leaving that order out of account, it would be feasible?

A. Yes, sir.

97. X Q. Perfectly feasible?

A. Yes, sir.

98. X Q. Would that require ten additional hours if it was done in that way?

A. No.

99. X Q. All that a man would have to do in cancelling that way would be to strike two places on the envelope and one on the ink-pad?

A. Yes, sir.

100. X Q. Now he strikes two places, one on the ink-pad and one on the letter?

A. He would have to go a second time to the ink-pad after cancelling the stamp.

101. X Q. Four places in all?

A. Yes, sir; two on the ink-pad and two on the letter.

102. X Q. In that case there would not be any time lost in passing the letters along hand to hand, and that might be done if it was not for this order?

A. Yes, sir.

2893 103. X Q. I understand that a postmaker effectually cancels a stamp?

A. It could be made so.

Q. You do use on circulars a canceller that also has New York and the date on it?

A. Yes, sir.

105. X Q. Do you know of any complaints as to the efficiency of that cancellation?

A. No, sir; it has not been in use long enough.

Redirect examination by Mr. WILLIAMS:

106. Re D. Q. How many hours constitute a day's work?

A. Usually eight hours, although in some of the stations they are obliged to work longer for lack of sufficient force.

107. Re D. Q. When you hire a man as a clerk to do stamping or other business, it is understood that he hires to work eight hours out of twenty-four for the salary which he receives?

A. No, sir; there is no understanding. It is understood that he shall work as long as he may be required.

108. Re D. Q. You don't work any one more than twenty-four hours?

A. No, sir.

109. Re D. Q. Isn't that the common understanding?

A. Yes, sir; that is the rule at the lower office. There are three tours of eight hours each.

110. Re D. Q. When one set of men work eight hours they go off and another comes on, and so on?

A. Yes, sir; but the stations are not open all night.

111. Re D. Q. There are times I suppose in the Post-Office Department when a great many of the clerks are not employed for a little time of the day; portions of the day when the collecting clerks and distributing clerks are not employed all the time?

2894 A. I never saw, except at lunch time, when any of them appeared to be at leisure. They are pretty well worked.

2895 Mr. DWIGHT A. LAWRENCE, a witness called on behalf of the complainant, being duly sworn and examined by Mr. WILLIAMS, testified as follows:

1. Q. State your age, residence, and occupation.

A. My age is twenty-six; occupation, general superintendent of the foreign department of the New York post-office; residence, No. 127 West 20th street, New York City.

2. Q. How long have you been so occupied?

A. I have been general superintendent of the foreign department about three years, I should judge—going on three years; I guess three years this month.

3. Q. Who was your predecessor in office?

A. George F. Hopper,

4. Q. Where is he now?

A. He is night superintendent of the post-office now. I took his position, and he took mine. I was night superintendent before that; prior to that I was night superintendent.

5. Q. The question is: Prior to the time you became superintendent of the foreign division, had you any means of knowing about the stamping—

A. (Interrupting.) I was night superintendent, and I have occupied various positions.

6. Q. I want to know simply how long you have been there, to know about the stamping.

A. I have been there since 1873, and before that; but I resigned from the post-office.

7. Q. State, if you know, how many clerks were employed in he foreign department mails of the New York City post-office in and about the postmarking and stamp cancelling in 1872 and 1873.

A. I could not tell you, sir. I was not employed in the Post-Office Department in 1872; I had resigned then.

8. Q. To what period back does your knowledge of those facts, if you have such knowledge, extend?

2895 A. The last three years in the foreign department.

9. Q. State, then, if you please, the number of clerks that have been employed in and about postmarking and cancelling of postage-stamps upon letters in that department the last three years.

A. Well, for parts of the time in the day I will have one, sometimes two, and sometimes three clerks stamping. I have no men regularly employed stamping.

10. Q. Are there times when you have all three employed at the same time?

A. There are times, sir; but not during each day. It occurs sometimes just before the closing of a steamer. A steamer may go Tuesdays, Thursdays, and Saturdays, while there are none Mondays and Fridays.

11. Q. Can you make a statement of the average number of letters passing through your department daily?

A. I cannot.

12. Q. You cannot approximate with accuracy upon that subject?

A. No, sir; I cannot.

13. Q. You use in your department the combined postmarker and stamp-canceller?

A. Yes, sir; on the drop letters, that is, the letters dropped in the drop at this office, and those collected by the carriers and brought in. The letters that come from the stations have the postmark of the station is put on, and the order of this department is the stamps are cancelled with the canceller without the postmark. None on foreign letters.

14. Q. Then there is no postmark on a foreign letter?

A. Yes, sir. The station puts the mark of the station on it.

15. Q. And that is the only postmark that a letter has?

A. Yes, sir.

16. Q. You don't put on any mark in your office?

2897 A. It is not the rule to do it, just simply to obliterate the stamp.

17. Q. (By Mr. CLARKE.) You do obliterate the stamp at your office?

A. Yes, sir. The orders are not to do it at the stations.

18. Q. So that a letter directed to a foreign country comes from the station to your office with simply the station mark upon it, and the stamp is perfect?

A. Yes, sir; and the stamp is obliterated at our office as a general thing.

19. Q. And without any post-mark?

A. Yes, sir; as a general thing, that is the rule.

20. Q. But when they are dropped in here it is otherwise?

A. Yes, sir; because the clerks at the office may not know the various rates of foreign postage.

21. Q. Is the work in your department of the post-office done any quicker with the combined stamp than it would be if you used separate instruments for post-marking the letter and cancelling the postage stamp?

A. Oh, yes.

22. Q. How much quicker?

A. Well, that would be pretty difficult for me to tell. I have never seen the other tried, except that I have just seen men use the canceller, and they cancel very fast; but I have never seen them cancel and put the post-mark on separately. That is my recollection of it.

23. Q. Well, do you know of any reason why a man may not with this combined instrument post-mark a letter and cancel the stamp just as quick as he could post-mark the letter with an instrument simply adapted to that purpose, without canceling?

A. Well, I don't know why a man could not post-mark—an

2898 expert could not post-mark and cancel a letter about as quick as he could to post-mark it alone.

23. Q. Then if he could, all the time and labor that would be taken to make a separate cancellation of the post mark would be saved?

A. Yes, sir; except that they can cancel the postage stamps very quickly. I have seen a roller used, and appliances with a sponge, where they would rub along. That is on circular matter.

24. Q. You don't understand that that practice is adopted in the post-office for the purpose of canceling three-cent postage stamps?

A. Not on letters, no, sir.

25. Q. It is a very desirable object, as I understand, to so cancel stamps that they cannot be used a second time?

A. Yes, sir.

26. Q. Therefore the cancellation should be very decided and clear?

A. Yes, sir.

27. Q. Whenever these cancellations are made by rolling along from stamp to stamp, it is necessary before doing it to take time and arrange the letters so that the roller can be used?

A. Yes, sir, it would be necessary to do it very rapidly, so that the stamps would be on the same corner, and the letters so arranged that they could be rubbed down with the hand.

28. Q. But if the stamps are on different parts of the letter then it would be impracticable to use it?

A. No; I don't know that.

29. Q. Is it your opinion, that if you were using in your department separate cancellers and separate post-markers, that you would require another hand to help?

A. That would be a difficult thing to say. My department is a small department. I have only a small number of men anyway. I should hate to force the men up to any more than they are doing now,
2899 yet I suppose I could do it. I have only a small number of men—the smallest in the post office.

30. Q. You don't think, as I understand you, that your present force would be able to handle the letters?

A. I should say I should want one more man, and I should make the application for it.

31. Q. Have you any idea as to how much the persons who are engaged in post-marking and stamp cancelling are paid in your department?

A. I have no men in my department that are really assigned to duties as stampers as the other departments have.

32. Q. What are your clerks' range of salaries?

(Objected to by Mr. Clarke as immaterial.)

33. Q. Let me be understood. You have stated that you have three persons, more or less, concerned in post-marking and stamp cancelling in your department—do you know what salaries those three men receive?

A. I cannot answer that either. It is this way: As a general thing a clerk getting sixty dollars a month, or from that to seventy dollars, might be set to stamping; but it is just as liable to be one that is getting one hundred and ten dollars. One of these three men I speak of I borrow from Mr. Gayler's division.

34. Q. Then I misunderstood you, because you stated, as I understood you, that you had three men engaged more or less in this business. Now, take the twenty-four hours altogether, how many days' work of eight hours per day does the whole amount, the whole time occupied in post-marking and cancelling stamps upon the letters, aggregate?

A. I cannot answer that, sir.

35. Q. Can you give your opinion on that subject?

A. I cannot give you any opinion.

36. Q. All the time consumed would be more than the continuous labor of one man for twenty-four hours, wouldn't it?

2900 A. I don't think it would, sir; not for the whole twenty-four hours.

37. Q. Well, would it be equal to the continuous labor of one man for sixteen hours?

A. No, sir, I should not think it would be that. If you will allow me to explain. The work varies. Now you take it from four o'clock until half past six o'clock, the drop here might be quite heavy, and one man might be able to keep the drop up. But say, for instance, to-day a

steamer closes at 11:30; from 11 o'clock to a quarter of 12 I might require three men to get up that drop. Most of our letters come in just before the closing. The supplementary mail is a separate thing.

38. Q. I didn't know but what you might aggregate?

A. No, I cannot, because steamers close at all hours. It may close at five o'clock in the morning, and I may have to bring my whole force down then. It is a very small department in comparison with the others.

Cross-examination by Mr. CLARKE:

39. X Q. I understand you to say that three men are sometimes employed in stamping and cancelling. These are not any particular three men of the whole force in your department?

A. No, sir.

40. X Q. They are one and another out of the whole force?

A. Yes, sir.

41. X Q. Sometimes you borrow a man from the domestic department?

A. Yes, sir; and the city department. I may borrow men out of the three.

42. X Q. Is that department now pretty full or pretty scantily supplied with clerks?

A. I have got all I want. Of course, at times I need more, and sometimes I have not got work enough for what I have got.

2901 43. X Q. Did I understand you to say that in your opinion you think the postmarking and cancelling with the combined instrument can be done as rapidly as postmarking with the separate instrument?

A. By an expert I think it could.

44. X Q. Is not some time occupied in aiming at the stamp when the combined instrument is used that would not be required with the separate instrument?

A. No, sir; I don't think the killing portion.

45. X Q. But when the combined instrument is used, of course the whole instrument has got to be aimed pretty near the postage-stamp; but if a separate instrument is used, you can put the stamp on anywheres?

A. No, sir; I think the same care would have to be used then so as not to obliterate the address.

46. X Q. About what proportion do the foreign letters that come from the stations bear to the whole number sent off?

A. I cannot tell that; but I should say a small proportion; for most of them are dropped in at the general office.

47. X Q. Can postmarking and cancelling by a combined instrument be done as rapidly as cancelling a postage-stamp with a separate instrument?

A. Oh, no, sir.

Redirect examination by Mr. WILLIAMS:

48. Re D. Q. Why not?

A. For the same thing that Mr. Gayler has given. I have seen men take a roller and roll a lot of circulars; just give one rush of the arm; and I have seen men take a piece of sponge and fill it with ink and put it in a brass socket and sweep it along.

49. Re D. Q. Do you understand that it is necessary, and I think you have so expressed yourself, that postage-stamps should be effectually cancelled so that they cannot be used again?

2902 A. Yes, sir.

50. Re D. Q. I understand you to say that this practice, by which you say you have seen the stamps cancelled by rolling an instrument over them—I understand you to say that that is not applied in general practice to three-cent postage-stamps and higher postages on letters?

A. Not applied; no, sir.

51. Re D. Q. Now, let us suppose. Suppose you take a letter that bears upon it a postage mark of three five, or fifteen cents, and you want to postmark that letter and cancel the postage-stamp, you would not do that by the use of that roller; but if you were compelled to use separate instruments for the postmarking and cancelling, you would cancel the stamp with a separate instrument. Now, can a man use that separate instrument in cancelling that postage-stamp any quicker than he could with this combined instrument cancel and make a postmark at the same time?

A. In reference to my department, I think it could, sir. There are letters on my desk, sometimes a great number of five cent stamps, other stamps and other denominations, and a man can roller them across quicker than to take a killer.

52. Re D. Q. You say you don't stamp with a roller, you stamp with a separate canceller?

A. Yes, sir.

53. Re D. Q. Can a man use that separate canceller and cancel five-cent postage-stamps any quicker than he can make a blow with the combined stamper and canceller at the same time?

A. Yes, sir; he could.

54. Re D. Q. Why?

A. Because it does not require any care to use the canceller where it does in using the postmarker. A man is held to accountability in using the postmark.

55. ReD. Q. It is necessary that the operator should be accurate when he cancels the stamp; when he puts the cancellation on the stamp?

2903 A. Yes, sir; it is simply to destroy the stamp so that it cannot be used again.

Adjourned for half hour.

2904 Mr. SAMUEL P. KITTLE, being duly sworn on behalf of the complainant, and examined by Mr. WILLIAMS, testified as follows:

1. Q. State your age, residence, and occupation.

A. My age is 54 years; residence, Tremont, city of New York; occupation, manufacturer of spring mattrasses and bedding; and I also act as mechanical expert in patent cases.

2. Q. You have heretofore been examined as a witness in this case?

A. I have.

3. Q. Have you examined the patents and the exhibits and other matters in this case, which enabled you to give your opinion as an expert?

A. I have; and have given my opinions quite freely in the record of the case.

4. Q. You know what is understood by a separate postmarker, and a separate stamp canceller, and a combined postmarker and stamp-canceller, as heretofore referred to in this case?

A. I do.

5. Q. Have you seen among the exhibits in this case an instrument for postmarking a letter alone, and also one for cancelling postage-stamps, and also an instrument for postmarking and cancelling the stamps at the same time?

A. I have; I think several instruments where the postage-stamp canceller and the postmarker were combined.

6. Q. Supposing it takes twenty clerks to postmark and cancel the postage-stamps upon the letters received in the third division of the New York post-office in a day, with the combined postmarker and stamp-canceller as now used, how many clerks, in your opinion as an expert, would it take to do the same work, provided a separate postmarker and a separate stamp canceller were used for such purposes?

2905 (Mr. CLARKE. I object to that question on the ground that the witness is not shown competent to give an opinion on the subject; whereupon Mr. Williams offers so much of the deposition or depositions of the witness heretofore given in this case as relates to his qualifications as an expert, and upon that he insisted upon an answer. Question admitted. Exception taken.)

A. Just about as near double the number as you could imagine; there would be very little less than double the number, if any.

7. Q. You can give your reasons?

A. In the first place, if any care is required in the use of the combined instrument over the ordinary or separate instrument, it only has reference to the guiding of the cancelling face on to the postage-stamp, and I don't think there is any more care required for that than there would be in the guiding of the postmarker without the cancelling attachment. Indeed, I think there would be less care required in using the combined instrument, if there was any difference, than would be required in making two strokes with the separate instrument, for the location of the cancellation and the other location of the postmark. As regards the operation, I have been several times in the post-office since I was first called in this case, and witnessed the operation of marking and cancelling at one stroke, and whether the men worked at their usual speed or at an unusual speed, I cannot say; but I don't see how men could handle a single instrument much more rapidly than they did the combined instrument. It is my opinion that to produce and give clearness of imprint of the postmark, date, &c., carried in one side of this instrument, there is no more care required than there would be required with a separate instrument for that purpose, having no cancelling device attached. The effort is so little more to carry the combined
2906 instrument than it would be to carry the single instrument by the operator that it is not worth being mentioned.

8. Q. Referring to the times when you were in the post-office and saw the combined instrument there used, state how it was used and how the letters were handled upon which it was used.

A. The letters are placed with the postage-stamp uppermost, or all on one side in a pile together, and are carried down to a point where they are stamped and cancelled one after another by one hand of the operator; while the instrument is carried in the other hand, is struck upon the ink-pad for ink (illustrating). So that its face is inked by one blow, being directed so that the cancelling face of the device will strike upon the postage-stamp, and the postage-mark will be imprinted at the left of the postage stamp, and as rapidly as the operator is able to strike the face of the instrument on the ink pad and transfer the ink to the postage-stamp and the envelope, so rapidly is the operation of postmark-

ing and postage-stamp cancelling carried on, which I should judge would be at least one hundred to two hundred per minute.

9. Q. What did the stamper do with the letter after he used his stamp upon it?

A. The letters thus stamped, as they accumulated in front of the stamper, he, by lots, passed them off further to the left on the table.

10. Q. Suppose that at the times that you were in the post office and saw this operation, these letters had been taken in the first place by a man with a separate stamp cancelling instrument, and he had cancelled the postage-stamp, and had then passed the letter to another man for the purpose of putting on it the postmark with another instrument, and they were then disposed of as they disposed of the letters at the time you were in the office, would or not any time be consumed in that operation in addition to the actual time that it took the two men to put their stamps on these letters?

2907 (Same objection raised by Mr. Clarke as before, and also as immaterial and incompetent. Objection overruled, and exception taken.)

A. It certainly would take additional time.

11. Q. Have you any means of knowing how many persons are actually employed in postmarking and cancelling postage stamps in the third division of the New York post office, under the supervision of Mr. Youman; and, if you know, please state it.

A. That is, the general mail?

12. Q. Yes.

A. I have means of knowing by personal observation and by information given by the direction of Mr. James and his subordinates to me. I visited the post-office this morning for the purpose of ascertaining the number of tables used for the purpose of cancelling postage stamps and postmarking the letters at the same operation, and by actual count I found in one row on the Broadway side of the main room of the post-office, a long table, on which there are sixteen divisions, with sixteen ink-pads and sixteen places for postmarking and stamp cancelling devices, and where, I was informed, there were sixteen men employed every day.

Mr. CLARKE. I object to his information, and would like to cross-examine him before he goes on further on that point. Testimony admitted. Exception taken.)

The WITNESS. There, I was informed by Mr. Charles L. Steele, who told me he was in charge of that department——

(Mr. CLARKE. I object to what Mr. Steele informed him.)

13. Q. Did Mr. James in directing you to go into the post-office to make this examination, refer you to Mr. Steele for information on the subject?

2908 A. Yesterday Mr. Norton called with Mr. Campbell and myself on Mr. James, Norton having previously called on Mr. James, as I was informed, and told him that we were there now and would like to go down in the office and go through those examinations of which he had spoken. I supposed, and Mr. James made the reply that he had arranged for that this morning, and we said, "Very well, we will come in the morning." That ended that interview. This morning we presented ourselves, and Mr. James said in a moment he would arrange to send us down into the post-office, and told his colored servant to take these men down; and in pursuance with that, I was taken down and introduced to Mr. Charles L. Steele.

By Mr. CLARKE:

14. Q. Did Mr. James refer you to Mr. Charles L. Steele? Can you say that?

A. I cannot say that.

15. Q. He gave you permission to examine things there?

A. Yes, sir.

Mr. WILLIAMS resuming:

16. Q. To whom did you address yourself, and what did you say when you went into the post-office to make this examination?

A. I addressed myself to Charles L. Steele. I asked him if he would show me all the tables.

(Mr. CLARKE. I object to what the witness said as immaterial. Objection overruled. Exception taken.)

17. Q. Well, state what you said.

A. I said I wished him to show me all the tables on which the combined instrument for postmarking and postage-stamp cancelling was used in his department.

18. Q. I want what you said to him first, distinctly.

2909 A. I asked him if there were not other tables than the row which he pointed out to me, where that work was done.

19. Q. Did Mr. James understand that you went into the post office for the purpose of making an examination with reference to the subject matter of this suit?

Mr. CLARK. I object to what Mr. James understood. Let him state what he said.

(Objection overruled. Exception taken.)

20. Q. State what was said.

A. I have already stated that.

21. Q. Could you have made any satisfactory examination there in the post-office without some inquiries of persons in charge?

A. No; I should think not.

22. Q. State how you ascertained that fact, for what purposes these sixteen inking places and stands were used, of which you referred to.

A. Well, there was postmarking and postage stamp cancelling going on in some of the divisions of this long table while I was there. In the next place I saw the instrument for postmarking and postage-stamp cancelling in the place for them in each of the sixteen divisions of the table; and the ink pads; besides Mr. Steel informed me——

(Mr. CLARK raises the same objections to what he was informed. Testimony admitted and exception taken.)

Witness continuing: Mr. Steel told me that on that long table of sixteen divisions some part of each day sixteen men were employed in postmarking and postage-stamp cancelling of letters preparatory to making up a mail, and at other times a less number were employed. I asked him how many men he employed in that department regularly, and he said sometimes more and sometimes less. He had had as many

2910 as twenty-three men at work at postmarking and postage-stamp cancelling at one time; but this did not occur often, and in such cases he improvised tables, showing me where he placed his men at the tables not regularly used for that purpose; that he had employed less men in the early part of the day (I cannot remember the number) than he did in the latter part of the day, from three to seven o'clock, when his force was most busy, and that he worked his men also nights but not in so great a force. I cannot remember the number. I inquired of him if there was any other tables where they regularly used the com-

bined face postage-stamp canceller and postmarker. He said not in his department. I think I made that inquiry two or three times of him. I then measured the size of this table and ascertained the room it occupied and the room necessary for the men who operated upon it. He informed me the space was only sufficient for convenient working. The table from front to rear was five feet four inches. The space in front was two feet eight inches, and the back space two feet three inches. Between the table and something else. Each division of the table was about forty inches. It would average that with a little variation, and there were sixteen of these divisions, making the length of fifty three feet. Mr. Steel then took me around and introduced me to Mr. Richards, whom he said employed the postage marker and postage stamp canceller combined instrument in the city department. Mr. John Richards informed me and showed me a square table including a column with a space on two of its sides, six feet five inches on one side, six feet three inches on another side, and on two sides were ink pads and places containing the stamp canceller and postage marker combined instrument, and two men were at the table, one at work, and I think part of the time the other while I was in the office. I inquired of Mr. Richards if these were the only tables on which this work was done by this combined instrument, and he informed me that they were in his de-
2911 partment. He showed me other tables where single stamps were used for other purposes and Mr. Steel brought me a combined instrument for the reception of European mails. It was used on the back of the envelope; one side of the die bearing the name of the person using it, and the other side the steamer by which the mail came. I was informed by this gentleman I had seen all the tables where postage-stamps were cancelled and the post-office mark put upon the envelope at the same blow in operation by set of combined instruments in that office.

Mr. Richards informed me that he employed two or three men most of the time at the table last described, and that he worked them there at night. That he employed this force so as to have some of them present continuously, as I understood it, night and day—one or more of them. I made an estimate of the room occupied by these tables, and the room necessarily used by the operators or stampers, and I have allowed a little less than Mr. Steel gave me as the requisite and necessary room, and it amounts to, on both sides—the Broadway and Park Row sides—of the post office to six hundred square feet, seventy of which is for the Park Row side.

23. Q. Taking that long table as it was situated there, was it convenient or practicable for another row of stampers and cancellers to work on the other side of it?

(Objected to by Mr. Clarke, on the ground he is not shown to be competent on that point. Question admitted. Exception taken.)

A. No; I think not in the way it was constructed. I have given you the working side.

24. Q. How are the letters put upon this stamping table?

A. As I have before described them.

25. Q. Where from? How do they get on the table? Somebody must have brought them.

2912 A. Yes, sir; somebody brought them. The stampers themselves brought them in one case, and in another case it was not. They were brought and laid there by either the stampers or some other person.

26. Q. State the reason why, if you know, another row of stampers

could not work on the other side of the tables as conveniently as they do on the side where they are occupied?

A. Well, I would have to make a diagram to make it intelligible.

27. Q. Suppose that nine more clerks were employed in doing the work that was done on the long table than were now employed in that work, would it take more room and space in the post-office department than is now occupied by the sixteen?

A. It would increase the space nine-sixteenths of the present amount on the Broadway side.

28. Q. Suppose that sixteen were employed?

A. That is it, nine-sixteenths more than the present amount.

29. Q. And, of course, if it took sixteen more men than is now employed, it would take double the amount of space?

A. Certainly. That is to say, if I understand you. If I understand the necessity of the office, they actually require on the general mail department, or the Broadway side of the post-office, sixteen stampers several hours each day to do the work of the office at the present time. Now, if the office work increases, they have got to increase them at just that ratio. The room has got to be increased with a ratio of men. For instance, if they require twenty-five per cent. more work—twenty men, then they would require twenty-five per cent. more table room, or more tables.

Adjourned to October 24th, at 10 o'clock.

2913 N. Y., *October 24th*, 1879—10 a. m.

Present, counsel as before.

Direct examination of Mr. KITTLE continued by Mr. WILLIAMS:

30. Q. Give your judgment, if you have the means of forming one, as to the rental value of room in the post-office in this city.

(Objected to by defendant's counsel as immaterial and irrelevant, and on the ground that he is not shown to be competent to express an opinion on that subject. The master reserves his ruling as to the admissibility of the evidence until he makes his report.)

A. I have taken pains to ascertain the value of room immediately opposite the post-office on the west side of Broadway, and immediately opposite the post-office on the east side of Park Row. The first building on the east side of Broadway, below the post-office, to wit, the New York Herald building, I have seen the parties, and ascertained the rent they were paying in those different premises, and from the information obtained it is my opinion that the rental per square foot on the first floor of the post office building is worth about four dollars per annum, and on the estimate which I have made, that there were at least six hundred square feet employed on that floor for the postmarking and postage-stamp cancelling, that would amount to about twenty-four hundred dollars per annum. I have also taken the pains to ascertain the rental value of the first floor of a store opposite the old post office, in Nassau street, and the rental value of the corner of Nassau and Liberty streets, first floor, and the rental value of the premises on the south side of Cedar street, Liberty and Cedar streets being the bounding streets of the old post office, and I find that about the same valuation of rental per square foot would rule in the old post-office.

2914 31. Q. The old post-office is in the immediate neighborhood now occupied by the new post-office?

A. Oh, no; that is in Nassau street.

32. Q. How far is that from the new post-office?

A. Four or five blocks. It is two blocks from Wall street. I took that course to arrive at my conclusion in preference to another course, which I thought equally just, to wit, to ascertain the value of the ground and building of either of the post-offices, and to adopt the rule, which I believe to be very general, if not universal, of allowing one-half of the whole value to pertain to the first floor and basement as a rental value; that is, allowing ten per cent.

Cross-examination by Mr. CLARKE:

33. X Q. Mr. Kittle, did you ever buy or sell any real estate in the neighborhood of the new post-office building, on Broadway or Park Row?

A. No, sir.

34. X Q. Did you ever rent any real estate or buildings in that neighborhood?

A. No, sir.

35. X Q. Did you ever either rent or buy or sell any real estate or buildings in the vicinity of the old post-office building on Nassau street?

A. No, sir.

36. X Q. Your opinion as to the rental value in those neighborhoods was derived from what you were told on inquiries made for this special case in those neighborhoods?

A. Yes, sir. Some of the parties said they were willing to come here and testify to what they had said.

37. X Q. Were you ever a real estate broker or agent in this city, or in the lower part of the city?

A. No, sir.

2915 38. X Q. On your direct examination you gave certain figures as figures that you had obtained by measurement, or had been told by employees in the post-office. How do you recollect those figures?

A. I took them down.

39. X Q. You took a note of them?

A. I noted them down.

40. X Q. And you read them from your note-book?

A. Partly, and partly from recollection.

41. X Q. Did you take down the smaller figures or the larger figures?

A. What do you mean by larger or smaller?

42. X Q. Well, you said yesterday, as I understood you, that Mr. Steele, I think it was, told you that sometimes, but rarely, there were as many as twenty-three men employed at once at stamping, and another time a less number?

A. Yes, sir.

43. X Q. Did you take down that less number?

A. Yes, sir.

44. X Q. What was that less number?

A. Five; sometimes in the night, I believe, none at all at that work.

45. X Q. You were in the post-office yesterday making examinations you referred to on your direct testimony?

A. Yes, sir.

46. X Q. How long did you stay there at that time?

A. Well, I should say a half hour; may be three-quarters.

47. X Q. Did you ever before that examine the business as transacted in the New York post office?

A. I have examined the stamping business.

48. X Q. How many times before?

A. Two or three times.

49. X Q. How recently?

A. Last week once I was in the office.

50. X Q. When were the other occasions?

A. Some weeks ago; perhaps some months ago.

51. X Q. How long did you stay in the office to make your examination on those occasions?

A. Only a very little while.

52. X Q. A half hour?

2916 A. No; only about fifteen minutes.

53. X Q. Did you make any examinations at any other times except these two or three times?

A. No accurate examinations, only to see the stamping process.

54. X Q. Do you have any knowledge of the stamping process, except what you saw there, as it is practically carried on in the New York post-office?

A. Nothing more than observation.

55. X Q. At these times?

A. I think I have seen them stamping at other times, but have never paid any particular attention to it.

56. X Q. And you have no practical experience?

A. Not at all.

57. X Q. You have no practical knowledge from experience?

A. No, sir; I never acted as clerk, employee, or otherwise in the post-office. I never stamped any letters myself to my recollection and knowledge.

58. X Q. Your business is what, now?

A. Well, a large part of my business at the present time is acting as mechanical expert.

59. Q. What besides that?

A. Spring mattrass, bedding, etc.

60. X Q. You know of no particular connection between the business of mattrasses and bedding and the stamping of letters in the post-office?

A. Not at all, sir.

61. X Q. You say you found, I think, two stamping-tables in the post-office?

A. Yes, sir.

62. X Q. One of which, you said, was about six feet square on the Park Row side?

A. Yes, sir.

63. X Q. That had some ink-pads and stamping blocks on it?

A. Yes, sir.

64. X Q. How many?

A. Two.

65. X Q. You found sixteen on the other?

2917 A. Yes, sir. I also saw other stamping tables; not where the cancelling or postmarking was done, however. I was informed that the combined stamp of postmarking and cancelling was not done on those other tables. When speaking awhile ago in reference to the rental value of property, I meant this: Supposing a building to be worth twenty thousand dollars—the building and the land—then I would consider its rental value two thousand dollars, ten per cent., so that you may ascertain by the value of the property what its rental value would be.

66. X Q. From your observation of men who were stamping, could you tell how many letters were stamped in a minute?

A. Not accurately; only by guess.

67. X Q. Could you distinguish otherwise than by a guess between one hundred a minute and two hundred a minute?

A. Only by guess; I did not count.

68. X Q. Suppose that sixteen men are employed for stamping now, and the exigencies of the office, in case separate cancellers and markers be used, should require nine additional men for the twenty-four hours, I don't understand that unless all those nine men were at work at the same time, and the exigencies of the office should require it, that nine sixteenths more space would be needed; would there?

A. Yes, sir; as I understand, there are portions of every day in which the exigencies of the office require sixteen stampers at work. Now, if the increase should be such as to require nine-sixteenths addition to the force of men, I cannot see how nine-sixteenths additional room would not be required. I think the room and tables would be in the same proportion as the increase of men for hours when a full force are at work.

69. X Q. But it all depends upon the exigencies of the office, and in fact upon what number are required towork at a time by the exigencies of the office?

2918 A. Not necessarily.

70. X Q. It all depends upon the exigencies of the office requiring that these additional men should all work at once?

A. Yes, sir.

Adjourned for one hour, and subsequently adjourned to October 25th, 1879, at 10 a. m.

2919 N. Y., *Oct. 25th*, 1879—10 a. m.

Present, counsel as before.

CHARLES L. STEELE, a witness sworn in behalf of the complainant, and examined by Mr. WILLIAMS, testified as follows:

1. Q. State your age, residence, and occupation.

A. My age is twenty-nine; my residence, 50 Bergen avenue, Jersey City heights; occupation, assistant superintendent of the distributing department of New York post-office.

2. Q. Does your occupation in the post-office make you acquainted with the business of postmarking and postage-stamp cancelling?

A. Yes, sir.

3. Q. State, if you know, how many clerks are employed for that purpose in the main building of the New York post-office?

A. I could not answer that question any further than my own division, which includes all letters except New York City.

4. Q. Then state as to your division, that you know about.

A. Do you mean the number used about all the time, or those employed only at that purpose?

5. Q. Give me the highest number of clerks employed at any one time in that business in your division using the combined instrument?

A. Sixteen.

6. Q. Are there any times when business there requires the employment of an additional number in the stress of business at any time when you were compelled to employ any additional number with the combination stamp?

A. We have not the facilities to use any more.

7. Q. How often do you think sixteen men are employed at the same time; how much of the time?

A. Between five and seven in the afternoon, if busy, they use sixteen stampers, if they have men handy. It is absolutely necessary to
2920 do it for the first ten days of the month for the six or seven busy months, which would be from early fall to late spring.

8. Q. Are you acquainted with the salaries that are paid these clerks?

A. Pretty generally.

9. Q. What is their compensation?

A. Stampers running all the way from thirty dollars to seventy dollars. I think that is the highest a month—$360.00 to $840.00 a year.

10. Q. Are they hired by the month or year?

A. They are paid by the month, but the schedule is generally made out a yearly salary.

11. Q. How many letters will a man ordinarily handle in a minute with the use of this combined instrument?

A. An ordinary man? I have never tested that. I can only give you an approximate answer to that question. I should say somewheres in the neighborhood of eighty to ninety. There is a great difference in men. Some men won't do as much as that, and possibly some men may do more.

12. Q. Will you state briefly the process of postmarking and stamp cancelling as used with the combined instrument?

A. (Illustrating.) Supposing this to be the stamping block (pointing to one corner of the table); in the rear of it, immediately back of the man, there is another flat table. The letters, as they go into the drops or windows, are faced up and placed on the table in the rear, and on the stamp-block is another shelf for the lamp-post letters, and if the stamper desires to stamp collections, he takes them from in front of him, those that are on the shelf in front of him; and if it is the drop, he takes from a table behind him or from one of the drops. There is a table at each section of drops, and he places them in front of him on the rubber pad, covered by leather, and then he postmarks and dates them, and puts them in front of him on the shelf, and there a man takes them to put them out in circulation.

2921 13. Q. When the man who postmarks the letters and cancels the postage stamps with this instrument now in use, and applies it to the letters, does he ordinarily do it as quick as he can?

A. He is supposed to do so. Yes, sir.

14. Q. At times they are pushed harder than at other times?

A. Yes, sir.

15. Q. Suppose the instrument that he uses was simply a postmarker; that is, suppose its office was simply to put upon the letter the name of the post-office, date, etc., and not cancel the stamp, could he use that single instrument any quicker than he now uses the combined instrument?

A. I think he could.

16. Q. Why?

A. Because he does not have to direct his aim so carefully, and the instrument is lighter. There is only a circle to strike where now he has an oblong shape to hit; but how much quicker I cannot say; but I am satisfied that the man who stamps the single stamps stamps more rapidly than the double stampers. We use it on our transient matter now; but there are things that I have not tested.

17. Q. Suppose he would use a single stamp for the purpose of cancelling the postage-stamp, could he use that any quicker?

A. He could do that a great deal faster; there is no care required for that.

18. Q. You have just stated that the reason he did not use the double stamp so quick was that he has to direct it to the postage-stamp?

A. But he has got to pay no attention with regard to getting a good date.

19. Q. So when he applies the canceller to the postage-stamp he has to be particular about the date, and when he applies the date he has to be particular about the cancelling of the postage-stamp?

A. I don't understand that.

2922 20. Q. Well, I don't understand your answer. I should like to have you state how it is that a man holding a stamp in his hand with two faces cannot strike it on an ink pad and strike it on the letter just as quick as he can a single faced stamp?

A. I don't say he can stamp any faster with a single faced marking-stamp; but with the cancelling-stamp I say he can stamp considerably faster, and that is what I endeavored to state.

21. Q. What reason do you give why he can cancel quicker?

A. He does not have to make any printed impression; he does not have to make any clear type; it is merely blotting. When he postmarks he has to show an impression of the date, hour, and year.

22. Q. But in using a canceller he has to be particular to strike it on the stamp?

A. Yes, sir; hit the stamp.

Cross-examination by Mr. CLARKE:

23. X Q. Didn't you say that a separate postmarker could be used somewhat more rapidly than the combined instrument, for the reason that so much care in the aim is not required?

A. Because the operation is more simple and easier done.

24. X Q. That is, you can put the postmark, if the canceller is not attached, anywhere on the envelope as they are usually addressed, can't you?

A. I am not prepared to say they could do that part any quicker. I thought you referred to the canceler.

25. X Q. Wouldn't that make some difference in time?

A. I don't know that that would make a great deal of difference.

26. X Q. It would make some?

A. It might; my impression is we could do faster work with the single stamp; make a greater number of impressions in a given

2923 amount of time with the single than with a double stamp; but how great the difference would be with the postmarking-stamp I cannot say.

27. X Q. You say you do use for certain sorts of work separate cancellers?

A. Yes, sir.

28. X Q. And the work is done more rapidly?

A. Yes, sir.

29. X Q. That is a fact?

A. That is the way we look at it.

30. X Q. How many men are employed in your division for using a combined postmarker and canceller during the twenty-four hours, and who do nothing else in the office?

A. About ten men.

31. X Q. Then, as I understand you, there are six others who are sometimes put at stamping, and also work at other business?

A. More than that; somewheres in the neighborhood of twenty men who stamp part of the time.

32. X Q. During other parts of the day these men are working at other things?

A. Yes, sir.

33. X Q. Do you ever employ more than sixteen men at a time for cancelling postage-stamps and postmarking letters with the combined instrument?

A. No, sir; not to my knowledge.

34. X Q. Did you tell Mr. Kittle you sometimes, but rarely, employed as many as twenty-three for that purpose?

A. No, sir.

35. X Q. You never told him that?

A. No, sir; not with the combination stamp.

36. X Q. You say that the letters that come from the drop are arranged in one place, and letters brought in from the lamp posts in another; is any different stamp used to postmark and cancel these different sorts of letters?

A. Same kind of stamp, but with different numbers. The
2924 same stamper will have a drop stamp and a collection stamp; same instruments, but different numbers.

37. X Q. Those numbers indicate that the letter was a drop letter or a collection letter?

A. Yes, sir.

38. X Q. I think you stated, on your direct examination, you had not facilities now for more than sixteen stampers at work at one time?

A. We have sixteen stamping blocks or pads.

39. X Q. On the long table?

A. Yes, sir.

40. X Q. Suppose that nine or ten additional men, or sixteen additional men, were employed for stamping, could you accommodate them without increasing the amount of room that is assigned to your department?

A. I think we could.

41. X Q. Could you use the other side of that table without inconveniencing the business?

A. It would inconvenience the business some.

42. X Q. In what way?

A. It would make it bad for a man to have to reach over another; it would be better to extend the table.

43. X Q. Practically you would prefer the table longer, so that the men who carry away the letters that have been stamped and postmarked would not have to get in the way?

A. Yes, sir.

44. X Q. There is room to extend the table to accommodate as many more?

A. Not as many more. I think I could accommodate from ten to twelve more.

55. X Q. That would not inconvenience the business?

A. No, sir.

46. X Q. Suppose that it was required to postmark the letters and cancel the postage stamps with a separate instrument in the New York office; I suppose you could do the postmarking with your present force easily?

2925 A. The postmarking, yes, sir.

47. X Q. How many additional men should you think it would need to do the cancelling?

A. About eight or nine.

48. X Q. Not more than that?

A. No, sir; not more than that. I am speaking only of our division.

49. X Q. And how much would you have to pay men?

A. Well, their salaries run from thirty-five to seventy dollars a month.

50. X Q. Well, couldn't you hire men more cheaply to use the separate canceller?

A. It would not require as skilled labor, and I should prefer boys.

51. X Q. How cheap could you hire them?

A. Well, I have never employed any, but we have got them at thirty and thirty five dollars.

52. X Q. Can you state a sum by which you would be willing to take that contract to do that separate cancelling for a year?

(Objected to by Mr. Williams, whereupon the question was changed.)

53. X Q. Give us your opinion?

(Objected to by Mr. Williams. Consented by counsel that the answer go in, the master reserving his ruling until he makes his report.)

54. X Q. To pay the additional help that would be needed to cancel the postage stamps with a separate instrument effectually and without loss to yourself as contractor?

A. I should not hesitate to take it at five thousand a year.

By the MASTER:

55. X Q. Do you in your estimate take into consideration any
2926 bond or surety which you might be required to give on the part of such employees as you might employ, to the government?

A. No, sir; I would take them on the same plan as other clerks are taken; that is, merely sworn into the service, and give no surety for their honesty.

Redirect examination by Mr. WILLIAMS:

56. Re D. Q. What did you tell Mr. Kittle when he was there about having seen, when there was a pressure of the European mail, as to the number of clerks employed at one time?

A. I told him I had used myself more than the sixteen men when I had a steamer's mail; but they used a different stamp entirely.

57. Re D. Q. What number did you tell him?

A. I said there might be twenty or twenty-three busy. I don't know that I could cite a case when that occurred; but I think one or two years ago it happened. That is merely a dating stamp on the back.

Mr. CLARKE:

58. Re D. Q. But it is not a combined postmarker and canceller?

A. No, sir.

Mr. WILLIAMS, resuming:

59. Re D. Q. Now, sir, do you know whether or not it is desirable that a postage stamp should be effectually cancelled so that it may not be used a second time?

A. It certainly is.

60. Re D. Q. Very well; then I will ask you if inefficiency or carelessness or neglect in making an effectual cancellation of a postage-stamp is not injurious to the public service, by exposing the stamp to be used a second time?

A. Certainly.

61. Re D. Q. If that be so, can you give any reason why you prefer boys to men for that purpose?

2927 A. They are much quicker.

62. Re D. Q. Do you mean to swear here that the boys in your department do more work than the men who have been there for some time and have had experience and become skilled in the business?

A. I mean to swear that the boys there on the stamping blocks do more work, quicker and better than any man I have on the stamping block.

63. Re D. Q. What is the age of the boys?

A. Sixteen to twenty-two.

64. Re D. Q. And you call them boys? How long employed in the office?

A. Some two or three years.

65. Re D. Q. What do you have to pay those boys?

A. Thirty, thirty-five, forty, forty-five, and I think there are not any of them getting over fifty five.

66. Re D. Q. How long has a man got to be in the service to do less work than a boy; when does he cease to be a boy and become a man, so that his work is not as good as a boy's work?

A. I have stated that on the stamping blocks my boys were the quickest and the best.

67. Re D. Q. Well, I want to know at what age the men after working several years cease to be the quickest and the best.

A. I have not had enough experience to decide that question. The men that I have got on the stamping block were there when I came there.

68. Re D. Q. Do you wish the master to understand that experience, practice, and skill in the use of these stamps is of no advantage to a man?

A. No, sir; I do not wish him to understand anything of the sort, because when a boy comes in there it takes two or three weeks for him to become a good stamper. But sometimes you cannot make a first-class stamper of him at all; but if they turn stampers, they are in six or eight weeks, and he is as good as a man. The men have not got the quick motion that the boys have got with their hands and arms.

69. Re D. Q. Do you use a stamp yourself?

2928 A. No, sir.

70. Re D. Q. What is your business in supervising that?

A. I have general supervision of the entire operation the letter goes through, from the time it arrives in the wagon until it leaves the office.

69½. Q. What is your salary?

A. $1,800.00.

2929 WILLIAM H. WAREING, a witness, being duly sworn on behalf of the complainant, and being examined by Mr. WILLIAMS, testified as follows:

1. Q. State your age, residence, and occupation.

A. My age is forty-two; am assistant general superintendent of the third division of the New York post-office; my residence is Sixty-ninth street, near Tenth avenue.

2 Q. State, if you know, how many instruments there are now in the New York post-office, including the stations, by which a letter can be post-marked and the postage stamp thereon cancelled at the same blow?

A. There are ninety-two at present in use.

3. Q. Going back, say to 1872, has the number of those instruments increased in the post-office in proportion to the increase of business in the office?

A. Naturally there has been quite a number of changes, so that we used a good many more now than we did even two years ago.

4. Q. Is your knowledge upon the matter sufficient to enable you to state the exact number that were in the post-office, including the stations in the year 1872?

A. Well, I cannot say exactly; not from my own knowledge.

5. Q. Suppose you estimate?

A. I think there was about twenty-five in use in 1872, as near as I, can recollect.

6. Q. How many in 1873?

A. I don't think there was any change in 1873.

7. Q. In 1874?

A. I don't think there was any addition then; work was done about the same then. I don't think any in 1874.

8. Q. 1875?

A. In 1875 there was a change. The English stamps were introduced in the office in 1875.

9. Q. How many were added?

2930 A. There might be one or two; I don't think there was any material change in 1875. I think the English stamp was introduced, and then we had more of them.

10. Q. How many more?

A. Well, I think we had fifteen additional stamps.

11. Q. What was the reason that the number was increased in 1875, by the use of what you call the English stamp, from twenty-five to forty?

A. Then we had certain numbers to designate the drops from the collections.

12. Q. That was for that purpose that the number was added?

A. Yes, sir.

13. Q. Well, then, in 1876?

A. I don't think there was any material change in 1876.

14. Q. 1877?

A. There was a great change then. All the stations were put in the same category. Then they changed, and the up-town stations were added to the office of the city department. At first the drop stamp was only used by the distribution department, and all through the office and its branches were put under the same rules.

15. Q. Then the number was increased?

A. To about ninety or ninety-two.

16. Q. About the same number you have now?

A. Yes, sir.

Cross-examination by Mr. CLARKE:

17. X Q. I understand, Mr. Wearing, that you have now a different instrument for the letters that are dropped into the boxes at the post-office, and for the letters that come from the lamp-post boxes?

A. Yes, sir.

18. X Q. A different number?

A. A different number.

19. X Q. Imprints a different number?

A. Yes, sir.

2931 20. X Q. And that number tells whether the letter was a lamp-post letter or a drop letter in the main office?

A. That applies to the main office only.

21. X Q. Do you sometimes receive letters to be stamped from the stations?

A. Yes, sir; I believe there is one collection late at night.

22. X Q. Now do you have a separate set of instruments in the main office to distinguish the letters from the stations?

A. Yes, sir; they have the station letters with the bars running horizontal or perpendicular in the cancellation.

23. X Q. According to whether it is a drop letter or a collection letter?

A. Yes, sir.

24. X Q. The reason why so many stamps are needed is to indicate the different sources from which the letters are received?

A. Yes, sir.

Redirect examination by Mr. WILLIAMS:

25 Re D. Q. Take the sixteen stamping blocks in the third division; is not there more than one instrument on one of those blocks?

A. Yes, sir; there is always two.

26. Re D. Q. That would make thirty-two instruments there on the blocks?

A. Yes, when they are all in use.

Recross-examination by Mr. CLARKE:

27. Re X Q. Only one man can work at a block at a time?

A. Yes, sir.

28. Re X Q. And there are little racks at which there are at least two of these stamps?

A. Yes, sir.

28. Re X Q. And some have three or four in them?

A. Yes. sir.

30. Re X Q. But there are other stamps there?

A. Yes, sir.

2932 MARCUS P. NORTON, a witness called on behalf of the complainant, being duly sworn and examined by Mr. WILLIAMS, testified as follows:

1. Q. You are the Mr. Norton spoken of in the pleadings and papers in this case as the inventor of the combined post-marker and stamp canceller, are you?

A. I am.

2. Q. Do you know Helen M. Ingalls?

A. I do.

3. Q. Since 1870 where has she generally lived?

A. In my family.

4. Q. State if Miss Helen M. Ingalls, since the reissue of the patent in question to her in 1870, has ever sold any of these combined post-marking and stamp cancelling instruments; whether she has ever licensed anybody to use them, or whether or not she has ever fixed or received any royalties from any source for their use?

A. She has never sold any stamps of the kind you inquired of; she has never fixed or received any royalty for any, and never received a dollar from any source as compensation for the use of the stamp or otherwise.

5. Q. And licensed anybody?

A. Never granted any license to anybody.

Cross-examination by Mr. CLARKE:

6. X Q. How do you know this, Mr. Norton?

A. Well, I know it as well as I know anything. I know it to be a positive fact.

7. X Q. You are familiar with everything she has done during these years about this patent?

A. I am.

8. X Q. Did she consult you about having issue taken in the matter?

A. I consulted her, and she does nothing, and has done nothing, without consulting me.

9. X Q. You have been her attorney during these years with regard to the management of the patent?

A. Yes, sir; agent and attorney.

2933 CHRISTOPHER C. CAMPBELL, the complainant, being duly sworn in his behalf, and examined by Mr. WILLIAMS, testified as follows:

1. Q. Are you the complainant in this suit?

A. I am.

2. Q. Since the assignment of the patent to you by Miss Ingalls, you may state if you have ever sold any of these combined post-marker and stamp cancellers; ever granted license to anybody to use any, or ever fixed or received any royalty for their use?

A. I have never sold any; I have never received any royalty, and I have never granted any license to anybody.

Cross-examination by Mr. CLARKE:

3. X Q. Has Mr. Norton been your agent since the assignment of the patent?

A. He has been solicitor in this case.

4. X Q. Has he been your agent generally?

A. As solicitor he has been my agent.

5. X Q. And that is all?

A. Yes, sir.

6. X Q. He was authorized by you to begin this suit against Mr. James?

A. Yes, sir.

Mr. WILLIAMS. I understand by the reference of this case to the master that necessarily the pleadings and the evidence were before him; but if that be not so, I now offer the pleadings and the evidence to be considered by the master in determining the questions that arise upon this accounting, and I will endeavor now to refer to such portions of them as I think directly pertinent, and presume I shall not have occasion to refer to any other points. But I don't wish to be precluded by what I do now, if I deem it necessary, from referring to the other portions of the evidence. I wish to call the attention of the master, 2934 in the first place, to the pleadings in the case. Upon the question of profits and damages, I refer to page 23 of complainant's first proceedings (reading and proceedings), to show that there is a claim of $30,000 a year set up in the bill for the use of this combined instrument, and I would also refer you to page 26.

I call attention to these allegations, and I refer to the answer of Mr. James, which is found on pages 71 to 87 of the complainant's first volume, and shows that the defendant has in no way denied or questioned the amount of profits or damages as alleged in the bill, but has omitted to take any notice whatever of those allegations, and so on the pleadings in this case there is no issue made on that question at all by the defendant. He does not say that Mr. Campbell has not sustained $30,000 damages per year. He doesn't say anything whatever concerning it, and the master, in considering the case, will give whatever value he may choose to that state of the case.

I call your attention now to pages 168 to 175, including the testimony

of Mr. James, the defendant, Mr. Youman and Mr. Lawrence, for the purpose of showing that the Exhibits A and B, which are on file in this case, are the stamps, or post marking and stamp-cancelling instruments similar to Exhibits A and B, have been used in the New York post-office from the time Mr. James became postmaster down to the present time. Their testimony identifies the Exhibits A and B as the two post-marking and postage-stamp canceling instruments that have been in use in the post-office since Mr. James has been postmaster.

I don't know whether or not these papers which I now refer to are proper evidence before the master. They are in this case, and
2935 were before the court, but in what light he considered them, or what value he attached to them, I don't know, but I refer to documents found on page 96 of complainant's second volume, report of Mr. Ferry, committee on post-offices and post-roads of the House.

I next refer to page 106 Senate report of Mr. Ramsey on the subject. I then refer to page 116, which is a report from the Postmaster-General to Congress with reference to this stamp. I refer now to page 219, letter from First Assistant Postmaster St. John B. Skinner to the postmaster in New York. I refer to a letter from Abraham Wakeman, postmaster of New York, found on page 220. I refer to the letter on page 222, from Mr. Denison, Postmaster-General, to Callamer. I refer to page 226, letter from Alexander W. Randell, Postmaster-General, to Alexander Ramsey. As to the preceding letter, I don't care whether it is considered or not. This second is a repetition of that. I wish to direct the attention of the master to one point in connection with these papers, if he considers them as evidence, and that is this: they all uphold the doctrine that there was not and cannot be a perfect cancellation of the letters without the use of this instrument, and shows that the single cancellation about which they talk was an imperfect mode of doing business, and that it is much better accomplished by this combined instrument.

By the MASTER. As I understand you, Judge Williams, these papers you are now offering you offer as most of them, especially from Postmaster-Generals, as admissions upon the part of the government officials of the utility of this invention; but there is nothing in them which you claim shows the amount of profit which the government has actually derived from them.

2936 Mr. WILLIAMS. No; they only say generally that there is a great saving of labor. I offer them in this way. I understand that it is competent in any case between any parties, where the evidence is pertinent, to give in evidence a certified copy of any document that is on file in any of the departments of the general government; a certified copy of a letter on file in the Post Office Department of the United States; a copy certified to by the Postmaster-General, and offered in evidence, is always competent for any purpose for which the original would be admissible as evidence.

I refer to letter of General Dix, on page 217 of the second volume; letter of the 8th of August, addressed to Hon. Horatio King. I offer letter on page 217. I refer to document on page 101 of the second volume, a report of Van Winkle.

Mr. CLARKE. I object to all this as incompetent and immaterial, and on the same grounds stated when these several papers were offered in evidence.

Ruling of the master reserved in the same manner as above.

Complainant rests.

Adjourned to Monday, Nov. 3d, 1879, at 10 o'clock a. m.

2937 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

Hearing before Hon. Kenneth G. White, master under decretal order dated September first, A. D. 1879.

DEFENDANTS' TESTIMONY AND PROOFS UNDER THE ABOVE-NAMED DECRETAL ORDER.

NEW YORK, *Nov. 10th*, 1879.

Mr. Marcus P. Norton, for complainant.
Mr. Samuel B. Clarke, for defendant.

2938 Mr. THOMAS L. JAMES, the defendant, being duly sworn and examined by Mr. CLARKE, testifies as follows:

1. Q. You are the defendant in this case?

A. I am.

2. Q. State whether you have ever personally made or received any profits or advantages whatever from the manufacture or use of the combined instruments which have been used in the New York city post-office for postmarking letters and cancelling postage-stamps thereon, since you have been postmaster.

(Objected to by complainant's counsel as being immaterial, irrelevant and incompetent.)

A. I have not.

(Motion made by Mr. Norton to suppress the answer, and strike it from the record for the reasons given, as objections to the question.)

3. Q. You have made no personal profits whatever by the use of the combined instruments?

(Same objection as before, and also on the ground that neither the Government of the United States, nor its agent, the defendant, can pilfer away the secured and established rights and property of a citizen by any combination or conspiracy of the kind indicated by the question, under the patent laws and decisions of the courts.)

A. No, sir.

(Answer objected to, and same motion as before made to suppress it and strike it from the record, on the grounds stated as objections to the question.)

2939 4. Q. Did you ever use or manufacture, or cause to be manufactured, or use any combined postmarker or canceller except as postmaster of the United States?

(Objected to by Mr. Norton as immaterial and irrelevant.)

A. I have not.

(Same motion made, to strike out answer, on same grounds as before.)

5. Q. Who has paid for the combined stamps that have been used since you were postmaster?

(Objected to by Mr. Norton as incompetent and immaterial, whether they have been paid for or not; that is not a question to be considered here.)

A. The Post Office Department of the United States.

(Same objection as before, and motion made to suppress the answer and strike it from the record.)

6. Q. State the procedure by which new stamps are obtained, and where they are obtained, by the New York office.

(Same objection as before.)

A. We make a requisition for the desired stamp. The department authorizes us to secure it and pay for it, and upon that authority the account is audited.

7. Q. Who pays the salaries of the clerks who are employed at stamping in the New York post office?

(Same objections as before.)

2940 A. The Post-Office Department.

(Same motion, on the same grounds, to strike out answer.)

8. Q. If, say, twelve more men were necessary as clerks in the New York post-office, would any more room be needed to accommodate them?

A. No; there is plenty of room.

9. Q. Did you notify the Postmaster-General of the commencement of this suit at the time it began?

A. Yes, sir.

10. Q. At whose expense has the defense been conducted?

A. At the government's, I suppose; not at mine.

11. Q. When the subpœna to appear and answer was served upon you, who served it?

A. Mr. Norton.

12. Q. Mr. Norton was present at the time the subpœna was served?

A. He was.

13. Q. Did you have any conversation with him at the time in regard to the use of the combined postmarker and canceller in the New York post-office?

A. I did.

14. Q. State what was said.

(Objected to as immaterial.)

A. Mr. Norton said he had selected me to prosecute, but it was not a suit against me, but a suit against the department, and that was the reason he had selected me, for the reason I was postmaster of the largest office in the United States. I asked Mr. Norton if I should cease using the stamp, and he said no, go right ahead. Mr. Norton was extremely courteous and civil, as he always is.

2941 Cross-examination by Mr. NORTON:

15. X. Q. Do you mean to be understood as saying that I served upon you the writ of subpœna in this case, or a copy of the bill of complaint as filed?

A. You served the papers upon me.

16. X Q. What do you mean by papers?

A. The complaint.

17. X Q. You do not mean to be understood as saying that I served the writ of subpœna?

A. I can hardly distinguish between them, but I know a paper citing me to appear was served on me by the marshal.

18. X Q. Now, in reference to your interview, or my interview with you, of which you speak, in which you say that I said that you could go ahead, did I not also inform you in substance that the complainant did not wish to needlessly embarrass you in your official duties, or the government in the transaction of its business, but simply to assert and maintain his rights under the patent?

A. No; I don't remember you saying that, Mr. Norton.

19. X Q. Did you suppose for one moment that you were obtaining a right to use this invention, of which you had at that time been sued as an infringer?

A. I supposed, as you stated, that the suit was not brought against me at all, and you didn't wish me to cease using it. That it was brought against the government to force them to settle it, and you gave me license to use it, for I asked you explicitly, for I was a little alarmed to have a suit brought against me.

20. X Q. Now for what purpose did you suppose you were sued?

A. I just stated the reason, that you could sue me and you could not sue the Postmaster-General.

21. X Q. You have used in the New York post-office the invention, consisting of a postmarking device so arranged and combined with
2942 a postage-stamp cancelling device as to postmark the letter and cancel the postage-stamp at one blow of the instrument, have you not?

A. Well, I have some doubts myself whether I have or not used the instrument that you claim to be the patentee of, since we have used that English stamp, and I think that it is not a part or parcel of your invention.

22. X Q. Now which do you suppose knows the best about that, you or Judge Wheeler?

A. I think I do.

23. X Q. Now, I ask you to produce on this occasion a stamp of the kind you are now using and have used since you have been postmaster in the city of New York?

A. You can have that, of course, but I cannot produce that now.

24. X Q. Will you do so?

A. I have not got it with me.

25. X Q. [Handing witness two envelopes.] I now show you two envelopes addressed to Marcus P. Norton, number 7, Bowdoin square, Boston; look at them, and state whether those envelopes were postmarked and the postage-stamps cancelled in the New York City post-office.

A. I think they were.

26. X Q. Have you any doubts about it?

A. Not the slightest.

(Envelopes offered in evidence and marked respectively Exhibits 2 and 3, K. G. W., master.)

2943 27. X Q. Now were those done at one blow of the instrument?

A. Yes, sir.

28. X Q. And the instrument consisted of the postmarker, having the name of the office, the date and the year, and a postage-stamp canceller combined with it?

A. Yes, sir.

29. X Q. Designate the part there that is done by the cancelling device.

A. The postage-stamp.

30. X Q. Those two are combined together and do the work at one blow?

A. Yes, sir.

31. X Q. And that is the work you have been doing in the post-office since you have been postmaster?

A. Not with that stamp.

32. X Q. Is that the form substantially?

A. No; I don't remember you saying that, Mr. Norton.

19. X Q. Did you suppose for one moment that you were obtaining a right to use this invention, of which you had at that time been sued as an infringer?

A. I supposed, as you stated, that the suit was not brought against me at all, and you didn't wish me to cease using it. That it was brought against the government to force them to settle it, and you gave me license to use it, for I asked you explicitly, for I was a little alarmed to have a suit brought against me.

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2942 a postage-stamp cancelling device as to postmark the letter and cancel the postage-stamp at one blow of the instrument, have you not?

A. Well, I have some doubts myself whether I have or not used the instrument that you claim to be the patentee of, since we have used that English stamp, and I think that it is not a part or parcel of your invention.

22. X Q. Now which do you suppose knows the best about that, you or Judge Wheeler?

A. I think I do.

23. X Q. Now, I ask you to produce on this occasion a stamp of the kind you are now using and have used since you have been postmaster in the city of New York?

A. You can have that, of course, but I cannot produce that now.

24. X Q. Will you do so?

A. I have not got it with me.

25. X Q. [Handing witness two envelopes.] I now show you two envelopes addressed to Marcus P. Norton, number 7, Bowdoin square, Boston; look at them, and state whether those envelopes were postmarked and the postage-stamps cancelled in the New York City post-office.

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(Envelopes offered in evidence and marked respectively Exhibits 2 and 3, K. G. W., master.)

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A. Yes, sir.

29. X Q. Designate the part there that is done by the cancelling device.

A. The postage-stamp.

30. X Q. Those two are combined together and do the work at one blow?

A. Yes, sir.

31. X Q. And that is the work you have been doing in the post-office since you have been postmaster?

A. Not with that stamp.

32. X Q. Is that the form substantially?

A. No, sir; that canceller is not.

33. X Q. Now, in what respects, if any, do they differ; whether in form or in substance?

A. In form.

34. X Q. Is the substance substantially the same?

A. Substantially the same.

35. X Q. When you first went there you used cork for cancelling?

A. A cork on a bar and a postmark at the other end of the bar.

36. X Q. Now you use a steel canceller?

A. Yes, sir.

37. X Q. And ever since you have been postmaster you have postmarked letters and cancelled postage-stamps in the way substantially as shown by those envelopes exhibits, have you not?

A. Yes, sir.

38. X Q. Do you think it right and just that the government, through you as its agent, or you, as the agent of the government, should take the property of a citizen, convert it to your use or the use of the government without a just compensation?

2944 (Objected to by Mr. Clarke. Objection sustained.)

39. X Q. Mr. James, the railway postal system—is that connected with your post-office in any way?

A. Well, yes; but I have nothing to do with it; it is a separate branch of the service.

40. X Q. None of your clerks go out on the cars?

A. No, sir.

41. X Q. You said on your direct examination that you have not personally received any profits; what do you mean by that?

A. It is no benefit to me what stamp I use.

42. X Q. Somebody has been largely benefitted by its use, have they not?

(Objected to by Mr. Clarke.)

A. I don't know but very little about it. My duty is to see that letters are properly postmarked.

Redirect examination by Mr. CLARKE:

43. Re D. Q. The combined stamps that have been used since you have been postmaster are of the sorts that you presented when you were examined in the case originally, i. e., Exhibits A and B?

A. Yes, sir.

Recross-examination by Mr. NORTON:

44. Re X Q. And they are the same which the court has declared to be an infringement upon this patent in suit?

A. Yes, sir.

N. Y., *Nov.* 14*th*, 1879—11 a. m.

Present, plaintiff's counsel.

Adjourned to Nov. 15th, 1879, at 11 o'clock a. m.

2945 N. Y., *Nov.* 15*th*, 1879—11 a. m.

Present, respective counsel.

Mr. JAMES recalled by Mr. WILLIAMS.

45. Q. Mr. James, are perfection and clearness of impression in postmarking letters and cancelling postage-stamps valuable adjuncts to the transmission of the mails?

A. Yes, sir; they are very important.

46. Q. Is expedition in the handling of the letters in the post-office, also a valuable adjunct to the transmission of the mails?

A. It is.

47. Q. Are economy, saving of time and labor also valuable adjuncts?

A. Yes, sir; they are of vital importance.

48. Q. You became postmaster of the New York post-office, I think you say in your answer, on the first day of April, 1873?

A. Yes, sir.

49. Q. When you took possession of the office you found there certain instruments that had been used for postmarking the letters and cancelling the postage stamps, did you not?

A. I did, sir.

50. Q. You commenced at that time to use those instruments?

A. Continued to use them.

51. Q. Commenced to use them and continued to use them?

A. Yes, sir.

By Mr. CLARKE:

52. Q. You mean you continued their use in the office?

A. Yes, sir.

Mr. WILLIAMS, continuing:

53. Q. You hadn't received any instructions from the Postmaster-General prior to the time you became postmaster, had you?

2946 A. Yes, sir; I received instructions to receipt for all this property.

54 Q. Instructions to receipt for the property that came into your hands?

A. Yes, sir.

55. Q. How long did you continue to use the stamps of the form in which you found them in the post office?

A I think about two years.

56. Q. You then adopted what has been called by the witnesses here an English stamp?

A. The stamp in use in the London office.

57. Q. Called by the witnesses in their testimony the English stamp?

A. Yes, sir.

58. Q. How came that to be adopted here in the post-office?

(The witness gave a long explanation in reply to this question, requesting the stenographer not to take it down.)

59. Q. That was adopted here, as I understand, in place of the old stamp, in pursuance of your judgment that it was a preferable stamp?

A. Yes, sir.

60. Q. Where, and by whom, have the stamps by which the letters are postmarked and the postage stamps cancelled been manufactured since you have been postmaster?

A. I don't know who makes the stamps; the assistant postmaster can tell, or the auditor, or Mr. Yeomans; I don't know who the man is.

61. Q. Have you any idea as to the number of stamps that have been manufactured?

A. SINCE that time?

62. Q. Yes, sir.

A. I think Mr. Yeomans can answer that question definitely; I cannot.

63. Q. They were manufactured here in New York?

2947 A. Yes, sir.

64. Q. Have you any idea as to the amounts of money which you have paid for those stamps which have been used in the post-office?

Mr. CLARKE. I object to going into this part of the case. They rested their case, and if they are going on to show any advantage of cheapness in construction, it is opening a new case here.

(Objection overruled. Exception taken.)

A. No, sir.

65. Q. Is there anybody in the post-office who can furnish that information?

A. Oh, yes.

66. Q. Who?

A. I think Mr. Yeomans can, and also Mr. Waring, the general superintendent.

67. Q. Will you send them over when you go back to the office?

A. I think that that stamp costs eighteen dollars (referring to Complainant's Original Exhibit B—the English stamp).

68. Q. Mr. James, when did you first see an instrument like Master's Exhibit No. 4, which I now show you?

A. I don't remember that I have ever seen that before.

69. Q. Have you ever seen any instrument constructed like that Master's Exhibit No. 4 before this time.

A. I don't know that I have ever seen that before, or anything like that. I know all about the English stamp; but that I don't remember seeing. (Examining Master's Exhibit No. 4.) Yes, I did; I was down in the office one day, and they were stamping with a stamp like that.

70. Q You never had seen or heard of a stamp used in a post-office constructed like this Master's Exhibit No. 4 before this suit, had you?

2948 A. No, sir.

71. Q. You have referred to a conversation between yourself and Mr. Norton in your former examination. Suppose that Mr. Norton had stepped into your office and said to you, I command you not to use any longer in the post-office in New York a combined postmarker and stamp canceller, would you have obeyed him?

(Objected to by Mr. Clarke as immaterial.)

Mr. WILLIAMS. It is legitimate cross-examination. He has testified on his direct examination to a conversation he had with Mr. Norton, and has undertaken, as will be claimed, as I suppose, that there was some sort of a license given. Now, I want simply to know how much it amounted to; what was said at that time in respect to it.

(Question allowed. Exception taken.)

A. I should have instantly telegraphed to the Postmaster General for instructions, and should have followed those instructions, of course.

72. Q. You would not have acted upon Mr. Norton's say so about it or any other man's say so?

A. I should have referred the whole matter to the Postmaster-General, and would have done as he directed me to. I am required to do that by law.

73. Q. You had no facilities in the office for going on with the postmarking and stamp cancelling without the use of the combined postmarker and stamp-canceller?

A. I could have done it.

74. Q. By the use of single instruments?

A. Yes, sir; we have single instruments that we cancel circulars with, and I would have used those.

75. Q. Were they all prepared for letters?

A. All I would have to do would be to take the cork canceller off, and use it separately.

76. Q. And cancel and postmark with a separate instrument?

2949 A. Yes, sir.

77. Q. You could have done that?

A. Certainly I could.

78. Q. Suppose that an injunction had been obtained at any time during the progress of this suit, commanding you no longer to use a combined postmarker and stamp-canceller, what would you have done in that case?

A. I should have notified the Postmaster-General and obeyed his instructions.

79. Q. You don't mean to say, I presume, that you would have disobeyed the injunction of the court in order to obey the instructions of the Postmaster-General?

A. No, sir.

80. Q. Suppose that on the first day of last September an injunction had been served upon you at that time, commanding you not to use any longer, in New York post-office, a combined post marker and stamp-canceller; I ask you if that injunction would not have produced disarrangement, confusion and delay in your office?

A. Most assuredly—more or less delay.

81. Q. If you had been compelled to separate these instruments, and use the post-marker by itself and the postage-stamp canceller by itself, it, of course, would have required additional labor?

A. Certainly.

82. Q. Have you examined the subject sufficiently to form an estimate as to the amount of saving in labor, in the New York post-office, by the use of the combined post-marker and stamp-canceller in place of a separate stamp-canceller?

A. Yes, sir; I have thought the thing over.

83. Q. You can state it, if you please.

A. I think I have stated that in my direct examination.

84. Q. No, sir; you did not state that.

2950 A. It would cost from seven to nine thousand dollars more a year to cancel separately and post-mark separately.

85. Q. You expect, Mr. James, that if a judgment is recovered in this case that the United States will pay it, don't you? You hope or expect it?

A. They undoubtedly will, if there is any judgment collected.

86. Q. I say, if there is a judgment recovered?

A. Yes, sir; most assuredly.

87. Q. Then, if the United States Government should pay the judgment which is recovered here, the profits upon the use of this instrument would be paid by the party who receives the profits?

Mr. CLARKE. I object to assuming that there are any profits.

Mr. WILLIAMS. I don't assume there are, if there is any judgment.

A. If there has been any saving, at the present time, I am estimating it at between seven and nine thousand dollars. Six years ago it would have been done cheaper, because the work in the office now is almost double.

88. Q. You stated that you expected or thought if a judgment was recovered here it would be paid by the United States. I understand you to state that the profits, or if there was any profits, they did not come directly to you, but to the United States; then if the United States

pays the judgment, the parties who receive the profits are to pay the profits?

(Objected to by Mr. Clarke.)

A. There are no profits in the matter; it is entirely a saving to the government.

89. Q. That is always called profits.

2951 Redirect examination by Mr. CLARKE:

90. Re D. Q. You say, Mr. James, that the English stamp was adopted because, in your judgment, it was preferable to the old one?

A. Yes, sir.

91. Re D. Q. Where did you get the stamps that you used down to the introduction of this?

A. I presume it was the same man who made this stamp.

92. Re D. Q. Didn't the department furnish you with stamps?

A. We write to the department for a requisition for the stamp, and they order us to procure it, and then that order accompanies the voucher for the stamp.

93. Re D. Q. That was the same before and after the introduction?

A. Yes, sir.

94. Re D. Q. If an injunction had issued against you, wouldn't you have used stamps constructed on the principle shown in Master's Exhibit No. 4, if you had been advised by counsel that that did not come within the judgment?

A. I don't like that stamp; I don't think I would. So far as this attachment is concerned, it is well; but that thumb-screw don't amount to anything.

95. Re D. Q. When I say on that principle, I mean constructed on this principle, with a handle that is not balanced on the post-marker and canceller, if you were advised that that did not come within the injunction?

A. Yes, sir; I would have used such stamps.

2952 DUDLEY W. BURCHARD, a witness called on behalf of the defendant, being duly sworn and examined by Mr. CLARK, testifies as follows:

1. Q. Tell us your age, residence, and occupation?

A. I am very nearly forty-four years of age; I reside in Philadelphia, and am a clerk in the Philadelphia post-office.

2. Q. You were examined before in this case?

A. Yes, sir; I was examined in Brattleboro', before Judge Wheeler, at the final hearing of the case.

3. Q. With reference to the combined post-markers and cancellers, in which the canceller was attached to one side of the post-marker and the handle directly over the post-marker, which instruments were used in the Philadelphia office before the introduction by the department of the cross barred instruments; state whether those instruments made as perfect impressions for the post-mark and cancellation mark as the cross-barred instrument after it was introduced.

(Objected to by Mr. Norton as immaterial and irrelevant. Objection overruled. Exception taken.)

A. Yes, sir.

4. Q. In regard to the cross barred instruments, the handle, I understand, was midway between the canceller and post-marker, so that they were balanced?

A. Yes, sir.

5. Q. After the introduction of the cross-barred instruments, were any fewer men used to cancel and post-mark letters than were employed when the instrument having the canceller on one side was used?

A. No.

6. Q. Then I understand that the instrument having the canceller on one side made as perfect impressions, and the work was done with
2953 substantially the same rapidity as with the cross barred instrument, where the canceller and post-marker were balanced on the handle?

A. Yes, sir.

7. Q. You are a stamper in the Philadelphia office?

A. I have been a stamper. I do a good deal now.

8. Q. How long a time were you a stamper?

A. Well, I was never regularly employed at stamping; but I took my turn at stamping.

9. Q Covering what period?

A. From 1858 to 1864; and I very frequently go there now and do it.

10. Q. And since that time you have done considerable stamping?

A. I do a good deal of stamping in my own department now—the foreign department.

11. Q. Suppose that the balanced combined instrument now used in the Philadelphia office were substituted by an instrument having the canceller on one side of the postmarker and the handle directly over the postmarker, what is your opinion as to whether any more clerks would be needed to do the cancelling and postmarking which is now done there?

A. Need no more.

12. Q. Do you say that generally—in regard to any post-office?

A. I say it with regard to our office, and I presume the same rule would work in any other office.

13. Q. That is your opinion?

A. Yes, sir.

Cross-examination by Mr. NORTON:

14. X Q. Are you employed in the New York post-office?

A. No, sir.

15. X Q. Are you employed in the Philadelphia post-office?

A. Yes, sir.

2954 16. X Q. What is your salary there?

A. At the present time $1,500 a year.

17. X Q. How has it averaged for the last eight years?

A. It was $1,300 in 1871.

18. X Q. And it has averaged about how much during this time?

A. Just before Col. Snowden, our postmaster, went out; since then I have been getting two hundred dollars more. It was thirteen hundred dollars from 1869 to 1878.

19. X Q. And now how much is it?

A. $1,500.

By the MASTER:

20. X Q. Why was it that this combined postmarker and stamp-canceller was substituted in the Philadelphia office in place of the one you speak of?

A. That I don't know, only that the department sent it to us.

21. X Q. Was it by direction of the Post Office Department?

A. That is my impression. The other one was our own manufacture.

By Mr. CLARKE:

22. X Q. Made at the expense of the office?

A. Yes, sir.

23. X Q. And these others were sent by the department, taking nothing out of the allowance of the office?

A. Taking nothing out of the allowance.

Continuation of the cross-examination:

24. X Q. Now I show you two envelopes (master's Exhibits Nos. 2 and 3) having a postmark on the envelope and a postage-stamp cancelled, as there shown. Suppose the postmarking was required
2955 to be done separately and the cancellation done separately, would it not require just twice the amount of work to do it?

(Objected to by Mr. Clarke as not within the scope of the direct examination. Question admitted. Exception taken by Mr. Clarke.)

A. Well, it would require twice the amount of work, but not twice the amount of time to do it in.

25. X Q. Now, if it requires in the post-office twice the amount of work to perform the postmarking and cancelling of postage-stamps, in case it were done separately, it would require twice the amount of room to do it?

A. No, sir.

26. X Q. Can two men stand in the same place at the same time doing different kinds of work?

A. No; I suppose not.

Redirect examination by Mr. CLARKE:

27. ReD. Q. If a separate canceller were used, would it take as much time to cancel the postage-stamps on a given number of letters as it would to cancel those stamps and put the postmark on with the combined instrument?

A. No, sir.

28. ReD. Q. If a separate postmarker was used, would it take less time to postmark than to put the cancellation mark on the stamp with a separate canceller?

A. No, sir.

By the MASTER:

29. ReD. Q. What would be the difference, in your judgment?

A. It would not require more than half as many more men.

2956 Recross-examination by Mr. NORTON:

30. Re X Q. Now, this combined instrument can be used just as rapidly as though it were a separate instrument, can it not?

A. Not to make a good impression, it cannot.

31. Re X Q. Now, why not?

A. In using the united day and cancelling stamp, you have to be more particular in stamping. You have got to strike the letter so that the canceller will strike the stamp and at the same time make an impression with the day-stamp; but with the stamp already cancelled, then you can stamp the letters anywhere with the day-stamp. When they are together, you have to strike in one particular place, so as to cover both at once.

32. Re X Q. Your point, then, is that there is some time occupied in directing the stamp towards the postage-stamp?

A. Yes, sir.

33. Re X Q. How much time is occupied in that, for you say it re-

quires time to direct your eye to the postage-stamp in the cancellation of it. Now, how much time is needed for that?

A. I could not measure it, but it counts in the aggregate.

34. Re X Q. Suppose you were to cancel the postage-stamp without the postmarker, would you require anything to guide your eye to that?

A. Not as a rule, because the majority of postage stamps were right along in the same place.

35. Re X Q. Are the letters arranged any differently now for the use of this combined instrument than they were when a single one was used; are they not arranged substantially the same?

A. I think so.

36. Re X Q. No difference in that respect?

A. I don't know of any.

37. Re X Q. Now, a postage-stamp is of the size sufficiently to be readily seen?

A. Yes, sir.

2957 38. Re X Q. It does not require much tact or talent to direct a blow to the postage-stamp?

A. No, sir.

39. Re X *R*. It don't require much time to do it?

A. Some.

40. Re X Q. About as much time as it would to look at the sun?

A. I don't know how long it takes to look at the sun. I only know by my own experience it takes longer to do it.

Mr. BURCHARD recalled by Mr. CLARKE:

41. Q. I understand you to say, Mr. Burchard, that from your own experience you know that separate post-markers and separate cancellers can be used more rapidly than a combined post-marker and canceller. Am I right? Do you mean to do the same amount of work in less time?

A. Yes, sir; certainly.

Cross-examination:

42. Q. You mean to say that when a man uses the post-marking and cancelling device combined in one, it takes him as long to do the work as it would if he used separate instruments?

A. No, sir.

43. Q. Which can you do it the quicker with, the two single instruments or the combined instrument?

A. The combined instrument.

(Recess of an hour.)

2958 MATHEW C. BOGIA, a witness, being duly sworn on behalf of the defendant, and examined by Mr. Clarke, testifies as follows:

1. Q. Give your name, age, residence, and occupation.

A. Was born in Philadelphia; am between forty-six and forty-seven years of age. My occupation is chief clerk of the Philadelphia post-office, and have been there since 1861; went there during the administration of Abraham Lincoln.

2. Q. You have done some stamping since you have been there?

A. Yes, sir; I was a stamp clerk—part of my early career as clerk.

3. Q. And you do some stamping now?

A. Once in a while; not of any account; only to test the thing.

4. Q. You were examined at the final hearing before Judge Wheeler, at Brattleboro', Vermont, in this case?

A. I was.

5. Q. With reference to the instrument having a canceller fastened to one side of the post-marker, and the handle over the post-marker, which was used in the Philadelphia post-office before the introduction by the department of the combined instrument having a cross-bar? State whether the impressions of the post-mark and the cancellation mark made by that prior instrument were as perfect and good as those made by the cross barred instrument?

(Objected to by Mr. Norton as immaterial, incompetent and irrelevant; and further, that the patent in this suit covers the identical arrangement suggested in the question, and the court has declared the patent to be good and valid.)

A. They were as good as are made at the present day. They could not be any better.

2959 6. Q. And those cross-barred instruments had a handle in the middle of the cross-bar, and the canceller and the post-mark balanced?

(Same objection raised as before by Mr. Norton.)

A. Yes, sir.

7. Q. After the introduction of the cross barred instruments having the handle so balanced, were any fewer men employed for stamping?

A. There were not.

8. Q. So substantially the work was done as rapidly with the instrument having the canceller on one side?

A. The same.

9. Q. Suppose that in place of the instrument having the canceller and post-marker balanced on the handle, an instrument was introduced having a canceller on one side and the handle over the post-marker, is it your opinion that in any office any more men would have to be employed in stamping?

(Same objection.)

A. *A.* I do not think so.

Cross-examination by Mr. NORTON:

10. X Q. Are you in the Philadelphia post-office at this time?

A. I am.

11. X Q. Are you the stamper there?

A. No, sir; I am night superintendent.

12. X Q. Have you ever been stamper there?

A. Yes, sir; I took great interest in it.

13. X Q. When?

A. In 1863, '64 and '65.

14. X Q. What salary did you have at that time for that business?

(Objected to as immaterial,)

2960 A. I think from eight to nine hundred dollars a year.

15. X Q. During all that time?

A. Yes, sir.

16. X Q. You were one of the four witnesses that went from Philadelphia to Brattleboro' to aid in breaking down the patent that is the subject of litigation in this suit?

A. I was called there to give my testimony as I knew it.

17. X Q. You are one of the four witnesses that went up there to testify?

A. Yes, sir.

By Mr. CLARKE:

18. X Q. State whether the postage-stamps were cancelled as effectually with the instrument having the canceller on the side, and the handle over the post-marker, as of the instrument having them balanced on the handle?

A. Yes, sir; they were cancelled fully as well as with the cross-bar.

2961 WILLIAM H. WAREING, recalled on behalf of the defendant, and examined by Mr. CLARKE, testified as follows:

30. Re D. Q. Mr. Wareing, in regard to the ink that is now used for the purpose of postmarking and cancelling in the New York post-office, is that any different or any better ink, or worse, than it used to be?

A. The ink is better than it used to be.

31. Re D. Q. Now, in regard to the effectiveness of the cancellation at present, is that any better than it used to be?

A. Yes, sir.

32. Re D. Q. What do you assign as the reason for that?

A. The reason is we used to use rubber killers, and now we use steel.

33 Re D. Q. How is steel different?

A. I think it breaks the fiber of the paper, or takes hold of the enamel of the stamp better than the rubber killer.

34. Re D. Q. Well, how far back were you employed?

A. I have been fifteen years in the office.

35. Re D. Q. The steel killer has been used since about 1876, somewhere along there?

A. I think in 1875; until the English killer came.

36. Re D. Q. In regard to the class of men that are employed for stamping in the office; are they young or old men?

A. Principally young men.

37. Re D. Q. The policy of the office is to have young men, isn't it?

A. When a young man is first appointed we usually put him on the stamp-block, and we keep him there until he gets to be an expert in handling letters, then we advance him to the separating cases.

38. Re D. Q. That is the usual course of advancement in the office?

2962 A. Yes, sir.

39. Re D. Q. Most of the men in the office who do the stamping and nothing else are principally boys?

A. Yes, sir; boys and young men; they are over sixteen years of age.

40. Re D. Q. Have you caused any experiment to be made in the office with reference to the several capacities or uses of the instruments having cancellers on one side, and the handle over the postmarker?

(Objected to by Mr. Norton as immaterial, incompetent, and improper, as to whether any experiment has been made or not. The question is not what may or might have been done, but what was done during the time of the infringement.)

A. Yes, sir.

41. Re D. Q. Those instruments having the canceller on one side of the postmarker, and the handle over the postmarker, have been used?

A. Yes, sir.

42. Re D. Q. Was the cancellation mark made as well on the postage-stamps?

A. Yes, sir; equally as good.

43. Re D. Q. Made as well as with the instrument having the handle balanced on the postmarker and canceller?

A. Yes, sir.

44. Re D. Q. How many men have you had in use there?

A. Three men.

45. Re D. Q. And those are good competent men?

A. Yes, sir; fair men.

46. Re D. Q. And was the postmark made well?

A. The postmark was made very good.

47. Re D. Q. Do you know any pecuniary advantage in using the stamper having the postmarker and canceller balanced on the
2963 handle over one where the canceller is attached to the side of the postmarker?

A. No, sir; I do not.

48. Re D. Q. That is your opinion from your knowledge of the business of the post-office, that there is no pecuniary advantage?

A. Yes, sir; I see none now.

49. Re D. Q. (Handing witness a stamp which is subsequently marked Master's Exhibit 4.) Is that one of the stamps that have been tried?

A. Yes, sir.

50. Re D. Q. And you say the postmarking and cancelling as done by that instrument was done well?

A. Yes, sir; very well.

51. Re D. Q. So far as the types are concerned in the postmark relative to the English style?

A. That is not as good.

52. Re D. Q. That way of fastening in the type is not as good as the other way?

A. No, sir.

53. Re D. Q. Why?

A. The other sets in the case (illustrating).

54. Re D. Q. You say the cancellation mark was well done by that?

A. Yes, sir.

55. Re D. Q. And your general opinion is that such an instrument as that can be used in place of one where the parts are balanced on the handle, without any money difference in value of the use?

A. Well, I don't know what you mean by money difference. Do you mean that they can do it as quick by that as they can by the other—as fast? The impression is equally as good by that.

56. Re D. Q. Well, about the rapidity?

A. They are not as fast—it is too heavy.

57. Re D. Q. Comparing that with Master's Exhibit No. 5, which I claim is the patent stamp, can they work No. 4 as rapidly as they can No. 5?

A. Yes, sir.

2964 58. Re D. Q. But they cannot do it as rapidly as the stamp now in use?

A. No, sir.

59. Re D. Q. The so-called English stamp?

A. No, sir.

60. Re D. Q. But the impressions are equally as good?

A. Yes, sir.

61. Re D. Q. Is that another of the instruments, Exhibit No. 6? [Handing witness a stamp.]

A. Yes, sir.

62. Re D. Q. How does that work?

A. That works faster.

63. Re D. Q. Than the English stamp?

A. Yes, sir.
64. Re D. Q. Now in use?
A. Yes, sir.
65. Re D. Q. What is the reason of that?
A. Because it is lighter.
66. Re D. Q. That works faster than either No. 4 or No. 5?
A. Yes, sir.
67. Re D. Q. And also faster than the other English stamp?
A. Yes, sir.
68. Re D. Q. And the difference is due to the weight?
A. Yes, sir.
69. Re D. Q. That is the reason you give?
A. Yes, sir.
70. Re D. Q. Now, to make the thing clear, this Exhibit No. 6, which has the same way of fastening the type in as the other English stamp, I understand?
A. Yes, sir.
71. Re D. Q. I understand the way of fastening the type as illustrated in Exhibit No. 6 is the same way, and has an advantage over the method of fastening the types, as shown in Exhibit 4 and 5, by a set screw?
A. Yes, sir.
72. Q. So far as the excellency of cancellation is concerned,
2965 they do well, and equally well, as I understand?
A. Yes, sir; so far as I have watched it.
73. Q. And the matter was intrusted to you to look after?
A. Yes, sir.

Cross-examination by Mr. NORTON:

74. X Q. Give the names of those persons that made these experiments under your direction.
A. The stampers, you mean?
75. X Q. Certainly, whoever made the experiment.
A. One is named William Beach, William Magee, and I think the other is named Estee.
76. X Q. About how much time was occupied in the business of experimenting with those different devices?
A. All this week. I think it was a week ago on Saturday that they were given to me.
77. X Q. Were those persons competent and expert in that business?
A. They were good stampers.
78. X Q. Were they infants, boys, or men?
One of them is married; they cannot be very young.
79. X Q. What salaries do they get?
A. I think one of them gets four hundred dollars; another, four hundred and eighty; and I think the other gets six hundred; but I won't be sure whether it is six hundred, or seven hundred and twenty dollars. I don't recollect the pay.
80. X Q. Did you take any part in the experiment yourself?
A. No, sir.
81. X Q. Now, who made these stamps?
A. I could not tell you.
82. X Q. I mean the exhibits to which you refer.
2966 A. I could not tell you. I know who makes all our stamps in the office, and I presume he made those.

83. X Q. Give the name and residence of the person who makes all your stamps.

A. Mr. Bruner, in Gold street, I think. I cannot give his residence.

84. X Q. Look on that plate and see if that is the name (handing witness the stamp, and referring to the name stamped on it).

A. (Witness reading). "F. Bruner; 78 Fulton street."

85. X Q. He makes all the stamps for that office?

A. Yes, sir; all of that kind.

86. X Q. How long have those men who have made experiments been in business in the post-office here?

A. I dont think they have been there a year; about a year, or less than a year; one of them possibly a little longer.

87. X Q. Now, you say, do you not, that each one of these exhibits make clear and distinct postmarks, with dates, and also cancels the postage-stamps distinctly and permanently, do you not?

A. I do, sir.

88. X Q. In that way you postmark your letters and cancel your postage stamps in that office, do you not? in a thorough and complete manner?

A. That is our endeavor.

89. X Q. The instruments that have been used there for that purpose since Mr. James has been postmaster have been of that kind and character—that is, to do that work in that way, have they not?

A. Yes, sir.

90. X Q. You think that the lighter this device for postmarking and cancelling is constructed, the easier and the greater rapidity of the work can be obtained, do you not?

A. I don't think so; it can be made too light.

91. X Q. As well as too heavy?

A. Yes, sir.

2967 92. X Q. Does the ease and rapidity by which they are operated depend upon the weight to a considerable degree?

A. Well, if it is very heavy, of course they cannot use it or handle it so rapidly.

93. X Q. You have said something about devices being balanced on the handle. What do you mean by that?

A. Well, as I understand it, the handle is in the center of the two markers; that is, the postmarker and the canceller.

94. X Q. That is all you meant in reference to the construction of it?

A. Yes, sir.

95. X Q. The gravity of the thing has nothing to do with it, has it?

A. Well, I don't know as I understand what you mean.

96. X Q. Now, who brought those stamps to you to be tested in the New York post-office?

A. The assistant postmaster.

97. X Q. What is his name?

A. Mr. H. G. Pierson.

98. X Q. What did he tell you he wanted you to do with them?

A. He told me to test them.

99. X Q. How, and for what purpose?

A. He didn't tell me for any particular purpose, that I recollect.

100. X Q. You never knew until Mr. Clarke asked you questions what was wanted by those experiments, did you?

A. Well, I didn't know what they were for; I knew that I was to test them, and that is all I did know.

101. X Q. And the result of the test is, that you found the Master's

Exhibit No. 6 works more easily and with more rapidity than the Master's Exhibit No. 5, or his Exhibit No. 4; is that it?

A. Yes, sir.

2968 102. X Q. And all that you attribute to the form and construction of the one being lighter than the other; is that it?

A. I do.

103. X Q. There is no difference in the character of the work performed by either of them?

A. I think not.

104. X Q. They operated first rate in making postmarks and cancelling the postage-stamps at one blow of the instrument?

A. Yes, sir.

105. X Q. They all use ink for postmarking and cancelling?

A. Yes, sir.

106. X Q. Where do you get your ink?

A. It is made by Von Linden & Co.

107. X Q. Does the government furnish it?

A. Yes, sir.

108. X Q. Now, the one that is regularly in use in the New York post-office for the purposes you say those were used for, is it heavier or lighter than this?

A. It is a little heavier than Exhibit No. 6.

109. X Q. Then you would recommend the postmaster, from experiments that you have made, to reduce the weight of that a little, so as to make it operate a little more easily and rapidly?

A. Yes, sir; I should prefer that now.

Redirect examination by Mr. CLARKE:

110. Re D. Q. In regard to Exhibits Nos. 5 and 6, somebody weighed them. Do you know whether they are about the same weight?

A. I don't; I didn't weigh them.

111. Re D. Q. Supposing that the combined instrument, having a postmarker and canceller balanced on a handle, now in use in the New York post-office, was replaced by instruments constructed on the principle shown in Exhibits No. 4 and 6, would any more clerks be needed to perform the work?

A. No, sir; I think not.

2969 112. Re D. Q. When you say that the clerks that have used these stamps have been employed about a year or less, is you' recollection clear on that point? They would know better than you on that point, wouldn't they?

A. Yes, sir; but I could tell by looking at the records. Possibly one of them may have been more than a year.

113. Re D. Q. If there is any advantage, not pecuniary, in balancing the stamp in the middle, what do you consider it to be?

A. I don't think there is any advantage.

Recross-examination by Mr. NORTON:

114. Re X Q. Counsel has called your attention to Master's Exhibit No. 6. Suppose that the cancelling part of that was separated and put on a separate handle, and they were used separately, would that require more clerks to postmark the letters and cancel the postage-stamp than they do with this combined instrument?

A. Most assuredly.

115. Re X Q. Do you know anything about the Philadelphia post-office?

A. No, sir.

116. Re X Q. Nothing about the stamps used there?
A. No, sir; except the postmarks I see.

2970 Mr. CHARLES O'CONNER, a witness called on behalf of the defendant, being duly sworn and examined by Mr. CLARK, testified as follows:

1. Q. Please state your age, residence, and occupation.
A. I am 33 years of age, and am chief clerk in the distribution department——
2. Q. Of the New York post-office?
A. Yes, sir; and my residence is 34 Macdougal street.
3. Q. How long have you been employed in the New York post-office?
A. A trifle over seven years.
4. Q. Do you have the supervision of the clerks who do the cancelling and postmarking?
A. Yes, sir.
5. Q. Is it part of your duties to see whether they make fair impressions?
A. Yes, sir.
6. Q. Have you ever done any stamping yourself?
A. Nothing more than directing stampers, but not as a stamper.
7. Q. It is your duty to oversee their work?
A. Yes, sir.
8. Q. Have Master's Exhibits 4, 5, and 6 been tried in your department?
A. Yes, sir.
9 Q. Was the cancellation mark and the postmark done by them well done?
A. Yes, sir.
10. Q. Was the cancellation mark done by them all equally as well?
A. Yes, sir.
11. Q. And as well as by the stamp that is constantly in use?
A. Yes, sir.
12. Q. As to the postmark and the date, is that well done now all the time?
2971 A. Yes, sir; there is one stamp there, I believe, which postmark was a little more clearly defined than the other.
13. Q. In what particular?
A. In the "New York"—post-office; not in the figures.
14. Q. In the date particularly?
A. (Witness taking Exhibit No. 4.) This stamp would make a very fine postmark. The difficulty was in the figures. They were not set properly with a set screw.
15. Q. Any more difficulty in that respect than there was in Exhibit No. 5?
A. No, sir; no more. About the same.
16. Q. It was not so much in the case of Exhibit 6, and the stamps that you have been using in the office?
A. No, sir; this one, No. 6, seemed to give no difficulty.
17. Q The only difficulty was in Exhibits 4 and 5?
A. And that was in the date and figure.
18. Q. The men who tried or tested these stamps, were they good stampers?
A. Three about the best we have, I should say.
19. Q. Do you know any pecuniary advantage in using the instrument having a postmarker and canceller balanced on the handle, over using

one where the canceller is on one side, and the handle is directly over the postmarker?

A. No, sir.

Cross-examination by Mr. NORTON:

20. X Q. How long have you been superintendent there?

A. I am not superintendent; I am chief clerk. I have been there about a year and a half.

21. X Q. What is your salary?

A. $1,200.

22. X Q. Your business is to inspect letters to see they are properly postmarked and the postage-stamps properly cancelled?

2972 A. Part of it.

23. X Q. A large part of it?

A. Yes, sir.

24. X Q. You never stamp any letters yourself?

A. Well, I stamp letters, but I have never been in the position of a stamper to make a business of it.

25. X Q. All the letters since you have been there are postmarked and the postage-stamps cancelled by an instrument so combined and arranged as to do it by one blow?

A. Yes, sir.

26. X Q. Some of them used have been lighter and larger than others?

A. I have never noticed that.

27. X Q. Now, the cancellers that have been used in that office are constructed about the size of a postage-stamp, are they not?

A. A little longer than that.

28. X Q. It is done so as to hit some part of the postage-stamp when the postmark is put upon the letter, is it not?

A. Yes, sir.

29. X Q. Do not you think that a man with one eye can possibly postmark letters and cancel the postage-stamp with this combined instrument?

A. Yes, sir.

30. X Q. It does not require any great skill or intellect to look at the postage-stamp?

A. I think the skill can be obtained by practice.

31. X Q. You think that boys and small children are just as good for that purpose as the counsel on the other side would be?

A. Well, I don't know; children couldn't do it.

Adjourned to November 11th, at 11 o'clock.

2973 N. Y., *Nov.* 11*th*, 1879—11 A. M.

Present, Mr. Marcus P. Norton, for complainant; Mr. Samuel B. Clarke, for Mr. James.

Mr. WM. S. MAGEE, a witness called on behalf of the defendant, being duly sworn and examined by Mr. CLARKE, testified as follows:

1. Q. Give us your name, age, residence, and occupation?

A. I reside at 350 West 51st street; my age is twenty; and I am a stamper in the New York post-office; my name is Wm. S. Magee.

2. Q. How long have you been stamper in the New York post-office?

A. About a year. A little over.

3. Q. How rapidly can you stamp and postmark, cancel postage-

stamps, and postmark letters with the combined instrument—letters or postal cards?

A. Well, on an average, a hundred a minute. A little over.

4. Q. How rapidly have you postmarked and cancelled the stamps on five thousand postal cards, or fifty-five hundred?

A. I have done fifty-five hundred in fifty-five minutes.

5. Q. You are in the Third Division?

A. Yes, sir.

6. Q. And employed at the long table where there are sixteen places?

A. Yes, sir.

7. Q. Are there any other stampers at that table who make more rapid time than you do?

A. No, sir.

8. Q. Do all of them make as rapid time?

A. Not all of them.

9. Q. Of those who are employed at that table?

A. Yes, sir.

10. Q. Look at Master's Exhibit, Nos. 4, 5, and 6, and state whether you have used those three instruments in the New York post-office?

2974 A. (Examining the Exhibits Numbers 4, 5, and 6.) Yes, sir.

11. Q. Now, with reference to perfectness of impression, both of the postmark and cancellation mark, did you find that any one of them had any advantage over the others in that respect?

A. Well, yes, I think this is about the best (referring to Exhibit No. 4.)

12. Q. What is the best?

A. Exhibit No. 4.

13. Q. That one makes the best impression of all of them?

A. Yes, sir.

14. Q. How about the date held in by the set screw?

A. That is not as well, because it requires more time to change them.

15. Q. That is, you cannot set them so accurately as you can in Exhibit No. 6?

A. No, sir.

16. Q. But you can as in Exhibit No. 5?

A. It is just the same as Exhibit No. 4.

17. Q. In respect to the dates?

A. Yes, sir.

18. Q. You say you think as a whole Exhibit No. 4 makes the best impression; but do they all make good impressions?

A. They all make good impressions.

19. Q. Impressions that passed persons who inspected them at the trial?

A. Yes, sir.

20. Q. You tried them when?

A. From the first to the seventh of this month.

21. Q. Did you try them long enough to give them sufficient trial in your judgment?

A. Yes, sir.

22. Q. Have you got the knack of using all of them?

A. Yes, sir.

2975 By the MASTER:

23. Q. Do you now actually use them in practice?

A. Not since the 7th.

24. Q. Since these were introduced in the post-office, have you been using them?
A. No, sir.

Mr. CLARKE, continuing:

25. Q. You have a large stock of others on hand?
A. Yes, sir.

By the MASTER:

26. Q. These were used experimentally?
A. Yes, sir.

Mr. CLARKE, continuing:

27. Q. Now, in reference to rapidity of use, did you find any of the three had any advantage over the rest?
A. Yes, sir; No. 6.
28. Q. Could you use that as rapidly as you do the English stamp that is in use in the office?
A. Yes, sir, I think a little more so.
29. Q. Why?
A. On account of the lightness.
30. Q. That makes a difference?
A. Oh, Yes.
31. Q. Now, as between Exhibits numbers 4 and 5, with regard to rapidity of use, did you notice any difference?
A. Yes, sir; Exhibit No. 4 is better than Exhibit No. 5.
32. Q. I that regard?
A. Yes, sir.
33. Q. Is the difference practically of much account?
A. Well, yes, I should think so. You cannot get as much work out of it.
34. Q. What is the reason of that?
A. Well, that cannot be explained. I don't think it seems in the construction of the stamp.
2976 35. Q. Was it in the height of the handle?
A. I think it is the height of the construction here—the post-marker.
36. Q. That is the fact, that the canceller and the post-marker and the cross-bar make the whole arrangement higher?
A. Yes, sir.
37. Q. That is, makes a slight difference?
A. Yes, sir.
38. Q. Do you know whether Nos. 4 and 5 are of the same weight?
A. No, sir; well, I don't know.
39. Q. Do the men all hold the stamps in stamping in the same way?
A. Oh, no.
40. Q. Then do all men like precisely the same form, that is, does the same form and construction suit all equally alike?
A. Oh, yes.
41. Q. They can all get used to them?
A. Yes, sir.
42. Q. Do you think there would be any difference between No. 4 and No. 5, supposing that the canceller and postmarker were cut down no higher than No. 4?
A. I don't think there would be much difference then, that is, for rapidity.
43. Q. Suppose that the stamp now used in the New York post-office,

in which the canceller and postmarker are balanced on the handle, were replaced by a stamp constructed on the principle shown in Exhibit No. 4, in your judgment would any more clerks be needed to do the stamping?

A. Oh, no; no, sir.

44. Q. I mean on your table?

A. Not on my table.

By the MASTER:

45. Q. In Master's Exhibits Nos. 4, 5, and 6 there is but one handle, is there?

2977 A. The handles are all the same—that is, the wooden handles.

46. Q. And attached to that handle at the bottom is a combined postmarker and stamp-cancelling device, is there not?

A. Yes, sir.

47. Q. And the postal mark and the cancellation of the postage-stamp are both done at one blow, are they not?

A. Yes, sir.

Cross-examination by Mr. NORTON:

48. X Q. Look at Master's Exhibits numbers 2 and 3, and state in what office, if you know, were the postmark upon those envelopes and the postage-stamp cancelled, made.

A. (Examining Exhibits Nos. 2 and 3.) Well, from the looks, I should judge they were made in the New York post office.

49. X Q. What is the date?

A. (Reading the postmark.) September 19, 5 p. m., 1879.

50. X Q. Have you any doubts about where they were made?

A. And one is 2 p. m.; one the 17th, and one the 19th of September.

51. Q. You have no doubt about that?

A. I don't think anybody but a stamper could do it.

52. X Q. Now, the letters and postal cards and other mail matter that have postage-stamps requiring a postmark and cancellation of the postage-stamp in the New York post-office—since you have been there—have been substantially the same as appears on these envelopes?

A. Yes, sir, except with this three.

53. X Q. Now, those two marks, the postmark on the envelope and the cancellation marks upon the postage-stamp have been—since you have been there—all done by one instrument, containing two

2978 devices for that purpose, and by one blow of it, have they not?

A. Yes, sir.

54. X Q. Now, has ink been used with them for that purpose?

A. Yes, sir.

55. X Q. The cancellation of the postage-stamp and the postmarking on the envelope has been done by one blow of the instrument in ink?

A. Yes, sir.

56. X Q. Now, you say you have stamped about a hundred letters in a minute in this way?

A. Yes, sir; I have averaged that.

57. X Q. You will average that?

A. Yes, sir.

58. X Q. That is, you will make the postmark and cancellation of the postage-stamp on one hundred letters in one minute?

A. Yes, sir.

59. X Q. Now, suppose the cancellation device were not used at that time, how many could you postmark in a single minute?

A. Well, I don't know that I could do a hundred, because it is more difficult to use a single stamp.

60. X Q. Now, how many letters with a separate canceling stamp could you cancel the postage stamp in a minute by striking the blow upon it?

A. Just upon the postage-stamp?

61. X Q. Yes, sir.

A. Well, it is easier to use the canceller.

62. X Q. Answer my question, please.

A. Well, I cannot tell.

63. X Q. You could cancel a hundred in a minute?

A. Yes, sir.

64. X Q. About the same as you could postmark in a minute?

A. No, sir; I could not postmark as many as I could kill.

2979 65. X Q. You could strike with greater rapidity a postmarker three fourths of an inch in diameter than you could a postage-stamp canceller of the same diameter?

A. No, sir.

66. X Q. It requires about the same time for the separate operations where the operating stamp is in the hands by the downward motion?

A. No, sir; the killing you could do more rapidly than the postmarking, because it takes more time to make a good impression of the postmark.

67. X Q. Now, please explain to the master the difference in striking the stamp down and making a postmark and then in striking a stamp down and making the cancelling marks by the separate instruments.

A. I cannot do that because I never tried it.

68. X Q. Well. I do not want any speculation about the matter.

A. Well, I think if I could stamp one hundred postmarks singly, I could do one hundred and twenty cancellations afterwards.

By the MASTER:

69 X Q. You have stated that by the combined instrument you can stamp the postal mark and cancel the postage-stamp on fifty-five hundred letters in fifty-five minutes. Suppose now that you use a separate instrument for stamping the postmark and a separate instrument for cancelling the postage-stamp, how many letters could you thus stamp in an hour with the separate instruments?

A. Well, about half that number.

Mr. NORTON continuing:

70 X Q. Now, suppose that you were to postmark all the letters separately, and then, after that had been done, you were to take the same letters and cancel the postage-stamp in the same manner that you did the postmarking—that is, with a separate instrument, how many more tables would be required for that purpose in that office?

2980 A. Well, I could not answer that question.

Redirect examination by Mr. CLARKE:

71. ReD. Q. Mr. Magee, if you use a separate postmarker, can you use it more or less rapidly than you use the combined postmarker and canceller?

A. No; I don't think so.

72. ReD. Q. Don't think what?

A. I don't think I can use it as well as the combined postmarker and killer.

73. ReD. Q. If you use a separate postmarker simply on a handle, with which you can put the impression anywhere on top of the envelope, why can't you use that as rapidly?

A. Because the base of it being so small you have to take more time to make an impression.

74. ReD. Q. Have you ever tried it?

A. Yes, sir; I tried it this morning for the first time.

75. ReD. Q. You never used that until this morning?

A. Not to work with it.

76. X Q. You never used a separate postmarker except this morning?

A. I have used it, but never regularly.

77. ReD. Q. What instrument did you use, then?

A. I used what we call the "transit" stamp for stamping letters on the back.

78. ReD. Q. How long did you use it this morning?

A. Well, I should say for an hour.

79. ReD. Q. Have you ever used separate cancellers at all?

A. Yes, sir; on circulars.

80. ReD. Q. Can you use them more or less rapidly than you can the combined instrument?

A. Oh, yes; you can use them more rapidly.

2981 Recross-examination by Mr. NORTON:

81. Re X Q. You say you can use a separate canceller more rapidly than one combined with a postmarker; why?

A. I have used them on circulars.

82. Re X Q. I say why?

A. I cannot tell you why.

83. Re X Q. How many have you conversed with in your office, and how frequently, as to the course to be pursued to reduce the recovery of damages in this case?

A. I have not conversed with anybody. I don't know what the case is or the names or that Mr. James is connected with it, only that this gentleman (referring to the master) read the names; I didn't know what the case was.

84. Re X Q. Nobody ever said anything to you about the case?

A. No, sir; only to try these stamps and that I would be called as a witness to give my opinion.

85. Re X Q. Your opinion on what?

A. Which was the best of these stamps.

86. Re X Q What are your conclusions about that?

A. That number six is the best.

87. Re X Q. Why?

A. The reason it is better I don't know.

Mr. MAGEE recalled by Mr. CLARKE:

88. Re D. Q. What salary do you get?

A. Sixty dollars a month.

89. Re D. Q. Is there a clerk named Estee employed on your table?

A. Yes, sir.

90. Re D. Q. Did he use these stamps?

A. I didn't see him use them; I don't think so.

2982 WILLIAM G. BEACH, a witness called in behalf of the defendant, being duly sworn and examined by Mr. CLARK, testified as follows:

1. Q. Give us your name, age, residence, and occupation.

A. My name is Wm. G. Beach; I live at 319 East 27th street; am eighteen years old, and my occupation is a stamper in the New York post-office.

2. Q. How long have you been a stamper there?

A. I have been a stamper in the third division of the Post-Office very nearly a year.

3. Q. You stamp at the same table that Mr. Magee does?

A. The same table.

4. Q. The long table?

A. Yes, sir.

5. Q. How rapidly do you use the combined instrument?

A. Well, I make an average of about a hundred a minute.

6. Q. Of those who are employed at that table, do all do as well as that?

A. Not all.

7. Q. Are there any who do better than that?

A. None, so far as I know.

8. Q. Have you used the Master's Exhibits Nos. 4, 5, and 6?

A. (Examining the exhibits.) I have.

9. Q. You tried them when?

A. I commenced November the 1st.

10. Q. And tried them during last week?

A. Yes, sir.

11. Q. Now, with reference to the impressions for postmarking and cancellation with which they make, state whether one has any advantage over the others in that respect?

A. (Examining them). Well, I could put on the best impression with this stamp.

12. Q. Which is that?

2983 A. Exhibit No. 4.

13. Q. Were the impressions all good?

A. Yes, sir.

14. Q. All passed muster?

A. Yes, sir.

15. Q. None sent back on your hands?

A. No, sir.

16. Q. Did you give the stamps what you considered a fair trial?

A. Yes, sir.

17. Q. And you got the knack of using them?

A. Yes, sir.

18. Q. And letters marked with these stamps were actually sent out just the same as those marked with the other stamps?

A. Yes, sir.

19. Q. Now, with reference to rapidity of work, did you find that any one of those stamps had an advantage over another?

A. I could do more rapid work with No. 6.

20. Q. Why?

A. It is a light stamp, and that has a good deal to do in stamping.

21. Q. Now, in reference to Nos. 4 and 5?

A. Of those two No. 4 was the most rapid.

22. Q. Can you tell why?

A. This stamp No. 5 is high and it is more awkward to use; you cannot hold it as well.

23. Q. If it was cut down, so as to be the same size, do you think there would be any practical difference between those two?

A. I don't know; I could not say.

By the MASTER:

24. Q. The ones which you actually use in the Post-Office, which you have used before you tried these, how were they relatively in height to these three exhibits?

A. I think I cannot state; from what I have seen they seemed to feel as though this was the same height, No. 6.

2984 25. Q. Those that you used, then, were about the height of Exhibit No. 6?

A. Yes, sir.

26. Q. Then Exhibit No. 6 is higher than the ones you have been accustomed to using in the post-office?

A. Yes, sir.

Mr. CLARKE continuing:

27. Q. Can you use Exhibit No. 6 as well as the English stamp in use?

A. Yes, sir.

28. Q. You notice no difference?

A. I notice no difference.

By the MASTER:

29. Q. I suppose that Exhibit No. 5, the handle or wooden part of Exhibit No. 5, was made shorter, so as to be of the same length as that shown in Exhibit No. 6; would there then be any difference in the rapidity or speed?

A. The metallic part should be shortened; it would do no good to shorten the handle.

30. Q. Suppose the metallic part was shortened?

A. I could not say whether it would improve it or not; it might.

Mr. CLARKE continuing:

31. Q. Difference in weight makes a difference; did you find that?

31½. Q. I found out that weight does make a difference.

Cross examination by Mr. NORTON:

32. X Q. How long have you been in the New York post-office?

A. I have been on the stamping-block nearly a year, but I have been in the post-office longer than that.

2985 33. X Q. Describe the device for postmarking and cancelling postage-stamps that you have used in that office since you have been there?

A. Well, it is a stamp about the size of Exhibit No. 6. This killing part is fastened on in the same manner as this Exhibit No. 6. The difference is this: Exhibit No. 6 the handle is over the date, while the stamp that is used in the New York post-office the handle was in the centre.

34. X Q. The one that you have used since you have been there has a postmarking device and cancelling device combined, so as to do the work of the two; that is, postmarking the letter and cancelling the postage-stamp by one downward blow of the instrument?

A. Yes, sir.

35. X Q. That has been used ever since you have been there?

A. Yes, sir.

36. X Q. And you know it was used there before you were on the stamping block?

A. Yes, sir.

37. X Q. It is a very valuable arrangement for that purpose?

A. It is a very good thing for that purpose, but I don't know about its value.

38. X Q. The instrument that you have used has cancelled all your postage stamps in a very perfect way?

A. Yes, sir.

39. X Q. There has been no complaint from any source that you know of, on account of the postage-stamp not being thoroughly cancelled?

A. No, sir.

40. X Q. And the post mark is made equally as good?

A. Yes, sir.

41. X Q. Giving the name of the office, date, and time?

A. Yes, sir.

42. X Q. No complaints from any source in reference to that, as you know?

2986 A. No, sir.

43. X Q. You use ink with that stamp?

A. Yes, sir.

44. X Q. The better the quality of ink is, the better the stamp will work?

A. The darker will be the impression.

45. X Q. Your stamp wants to be clean, of course?

A. Yes, sir; clean.

46. X Q. Did you ever have a single stamp for postmarking letters?

A. Not for postmarking but for stamping on the back. It is a receiving stamp showing what time the letter is received in the office.

47. X Q. It takes you as much time to put that postmark on the back as it would to put the postmark and cancellation on the front?

A. Yes, sir; just the same.

48. X Q. So you give the postmark and cancellation mark in the same time as you give the postmark with the separate instrument?

A. Yes, sir.

49. X Q. Now, about the tables; how many tables do you use in that business?

A. In the third division where I am, there is one long table with sixteen blocks on it. Every man has a block.

50. X Q. How much spare room have you in that post-office?

A. I have not seen any spare room.

51. X Q. Not an inch?

A. There is an inch, maybe.

52. X Q. Not much more than that?

A. No, sir.

53. X Q. You want more room in that building for the proper management——

A. I am no judge of that.

54. X Q. Now, another thing; do you keep your mails open so as to receive letters up to within how long a time before you commence to transfer them to the cars?

2987 A. I don't know how long. Every mail goes out at a certain hour.

55. X Q. You keep postmarking letters and cancelling postage stamps up to the very hour?

A. Yes, sir.

56. X Q. So there are no mails kept back for want of time in postmarking and cancelling postage-stamps?

A. No mails kept back at all. Stamping for 2 p. m. is for whatever mail comes in before two o'clock; after that we change our stamp.

57. X Q. After the time for the mail to go out you change the hour of your stamp?

A. Yes, sir.

58. X Q. Then you go on making up the next mail to go out at another specified time?

A. Yes, sir.

Redirect-examination by Mr. CLARKE:

59. Re D. Q. How much have you used the receiving postmarking stamp?

A. I used that in the fourth division. I used it one or two months; then I was transferred to the third division, and since that time I have used this combined stamp.

60. Re D. Q. Was that your first stamping on that?

A. I first stamped with the single stamp in the fourth division.

61. Re D. Q. You did no stamping before that?

A. No, sir.

62. Re D. Q. How long does it take to get a green hand well used to stamping?

A. Well, he could get so he could put on a good impression in three or four days; but not rapid work. It might take him a month to do rapid work. It depends upon the skill he possesses. Some people have an aptitude for it.

2988 63. Re D. Q. When you say that there is no spare room in the post office, do you think you are a good judge of that?

A. I think I am.

64. Re D. Q. Do you think you are a better judge than Mr. James on that?

A. No, sir.

65. Re D. Q. Couldn't the long table you now use be extended, couldn't it come down in front of Mr. Steel's desk?

A. It could come down there.

66. Re D. Q. That space is not used for anything specially?

A. No; it is only a way for the elevator there.

67. Re D. Q. Couldn't the other side of that table be utilized for stamping blocks; the side opposite from which you now stamp?

A. That is where the stuff is put out. It could be used for that; stamps could be put there.

68. Re D. Q. What salary do you receive, Mr. Beach?

A. Thirty-five dollars a month.

Recross-examination by Mr. NORTON:

69. Re X. Q. Now, suppose that you were to take the table that was in there and have stampers on each side of it, what would you do with the matter you postmarked and cancelled?

A. I would do what I was told; I don't know.

70. Re X. Q. It would be in the way.

A. I could get it out very easily.

71. Re X. Q. How?

A. They could arrange it some way.

72. Re X. Q. How wide is that table?

A. I cannot form any idea.

73. Re X. Q. It is wider than this table, (referring to the table upon which the testimony was taken in the master's office.)

A. I think it is.

74. Re X. Q. If you put stampers on both sides you would have to make the tables wider?

2989 A. I don't know.

75. Re X Q. What is the opposite side used for?

A. We shove the matter out in the little slots in the middle.

76. Re X Q. Now, what would you do with the matter on that side of the table if you were to put stampers there?

A. As I said before, I would do whatever the superintendent told me to do. He would undoubtedly find some way to put it away.

77. Re X Q. You occupy that side of the table now necessarily in making up your mails?

A. We don't make up any mails on that table at all.

78. Re X Q. You postmark there?

A. Yes, sir; we throw it out in boxes.

79. Re X Q. Now, I ask you what the opposite side of that table is used for in the post-office?

A. On the side where the stamping is done in the middle of the table or right beyond where the stamping is done is the shoots where the stuff is put out after it is stamped, and beyond that is a space where the stuff is picked out of the shoots and laid in this space and given to the separators from there.

80. Re X Q. Both sides of the table are occupied now?

A. Yes, sir; utilized now.

81. Re X Q. One for the stampers and the other to receive the work?

A. Yes, sir.

82. Re X Q. Now, that is necessarily occupied in that office for that purpose?

A. Yes, sir.

83. Re X Q. How many other tables are there besides this long table with sixteen blocks to it used in that office?

A. For stamping purposes?

84. Re X Q. Yes, sir.

A. I don't know.

2990 By the MASTER:

85. Re X Q. Is any other table used besides that for the combined stamper?

A. Not in our department.

Mr. NORTON continuing:

86. Re X Q. That is sixteen blocks for sixteen stampers?

A. Yes, sir.

87. Re X Q. You say, in answer to a question by Mr. Clarke, that the table could be extended. Now how far could it be extended?

A. I don't know how many feet it could be extended; but some little distance up.

88. Re X Q. It could be run out into the street if necessary.

A. I suppose so, if the postmaster wanted to do it.

89. Re X Q. The longer the table and the more space occupied the more difficulty there would be to get around it?

A. I don't know. If they had to extend the table they could do it.

89. Re X Q. You think that some special Providence would be interposed for that purpose?

A. There would be some special ingenuity interposed I suppose.

Redirect examination by Mr. CLARKE:

90. Re D. Q. You have nothing to do with the arrangement of the tables in the office?

A. No, sir.

91. Re D Q. No responsibility?
A. No responsibility; my work is to stamp.
92. Re D Q. You do what you are told?
A. Yes, sir.

2991 CHARLES E. ANDREWS, a witness called on behalf of the defendant, being duly sworn, and examined by Mr. Clarke, testifies as follows:

1. Q. Give me your name, age, residence, and occupation.
A. Charles E. Andrews; about thirty-five; residence, 144th street, near College avenue, and am a post-office clerk.
2. Q. How long have you been a post-office clerk?
A. About twelve years.
3. Q. In the New York post-office?
A. Yes, sir.
4. Q. What part of the business of the post-office do you do?
A. I am a stamper.
5. Q. In which division?
A. I am in the city department, the fourth division.
6. Q. In which Mr. Gaylor is superintendent?
A. Yes, sir.
7. Q. Have you been a stamper all these twelve years?
A. Except for a few months.
8. Q. You are a stamper now?
A. Yes, sir.
9. Q. How rapidly do you stamp, postmark letters, and cancel postage stamps? Have you ever tried an experiment how long it took you to postmark and cancel the postage stamps, say on 5,000 postal cards?
A. I killed five thousand postal cards in twenty-three minutes.
10. Q. Postmarked with the combined instrument?
A. Yes, sir.
11. Q. In twenty-three minutes?
A. Yes, sir.
12. Q. Are there any others who do work as rapidly as that in the office?

A. I suppose there might be, but not as I know of. I have
2992 never seen any of them test themselves. Some of the boys have practiced handling a hundred letters, but what time they did it in I cannot say. I don't know.

13. Q. You don't know of any that do as rapid work as you do?
A. Not that I know of. Of course there may be, but not to my knowledge.
14. Q. Look at the Master's Exhibits Nos. 4, 5, and 6, and state if you have used those instruments.
A. I have.
15. Q. Used them recently?
A. I have, recently, during the last week.
16. Q. Now, with reference to the impression, the postmark and cancel which these instruments make, state whether, in regard to that matter, you found any difference between them.
A. In the impressions I did not.
17. Q. How was it as to the dates in the Exhibits Nos. 5 and 4, which are held in by set screws?
A. You want to know the difference between these two?
18. Q. Between Nos. 6, 4, and 5 altogether, in regard to the date.
A. Well, I have more trouble with Nos. 5 and 4 than I have with this other stamp No. 6—I mean of the setting of the dies. I can set the

dies in No. 6 more even and make a more legible stamp than I can with Nos. 4 and 5.

19. Q. But otherwise in regard to the affixed part which makes an impression, they all make good impressions, do they not?

A. Yes, sir; they all make good impressions.

20. Q. And with the exception of the dates, do they all do as well as the English stamp, so far as the impression goes?

A. Yes, sir.

21. Q. Now with reference to rapidity of use of those three instruments, did any one of them have any advantage over another in that respect?

A. Oh, yes; I can stamp more rapidly with No. 6.

2993 22. Q. Why?

A. It is a lighter stamp. I can use it better and I have more control over it.

23. Q. Now with reference to Nos. 4 and 5 with respect to rapidity of work?

A. I can stamp faster with No. 5 than with No. 4.

24. Q. The instrument having the cross-bar you can use more rapidly?

A. Yes, sir; No. 4 is too heavy on the side.

25. Q. Are the weights of Nos. 4 and 5 about the same?

A. Well, I should judge there was very little difference in the weight as they stand. I should not say any difference in the weight, not much if any, not that I can tell in using them. I would not feel the difference.

26. Q. Now, for ordinary stamping—the ordinary run of stamping, can you use one as rapidly as the other?

A. Yes, sir.

27. Q. If you do very rapid work you say you find an advantage in No. 5?

A. Yes, sir; No. 5.

28. Q And the reason of that is?

A. Because it is more evenly balanced—not so much on one side.

29. Q. And the weight, I understand you to say——

A. Well, the weight don't make much difference. I can use No. 6 better than either of them.

30. Q. You can use No. 6 better than either of them because it is lighter?

A. Oh, yes.

31. Q. But you think for very rapid work No. 5 is better?

A. Yes, sir.

32. Q. No doubt about it?

A. No, sir; I can use this No. 5 a great deal better for rapidity, for the reason I have better control over it.

33. Q. That is, for very rapid work?

A. Yes, sir.

2994 34. Q. Now, suppose that the weight of these two instruments, Nos. 5 and 4, were reduced, the construction remaining the same, would the difference in rapidity between them continue to be the same, or would they diminish with their weights?

A. You mean if I diminish the weights of Nos. 5 and 4. What do you mean by diminishing, do you mean lessening the same as No. 6?

35. Q. [Counsel explaining to witness.]

A. By cutting them down I could use Nos. 4 and 5 as well as No. 6.

36. Q. Then I understand you to mean that in your opinion that the advantage derived from balancing the post-mark and canceller diminishes if you decrease the weight?

A. Yes, sir.

By the MASTER:

37. Q. Suppose that Master's Exhibits Nos. 4, 5, and 6 were made of the same weight and with the same length of handle, which one, in your judgment, could be used to perform the work of postmarking and cancelling postage-stamps with the greatest rapidity and with equal efficiency?

A. No. 5.

Mr. CLARKE, continuing:

38. Q. Suppose that the weight of the three instruments was the same as we see in Nos. 4 and 5, there would be then, I understand you, a practical advantage in balancing the instrument?

A. I think so.

39. Q. Suppose the weight was the same as in No. 6, would there then be a practical advantage?

A. I think there would be a small advantage.

40. Q. Would it be as great as it would if the weight was the same as Nos. 4 and 5?

A. No, sir.

41. Q. That is, the advantage of the balancing diminishes with the weight?

A. Yes, sir; that is my candid opinion.

2995 By the MASTER:

42. Q. Then, in your opinion, Exhibit No. 5 is not capable of being used as rapidly or with the efficiency, because it is made too heavy; is that so?

A. Yes, sir.

By Mr. CLARKE:

43. Q. Is that so, also, of Exhibit No. 4?

A. Also the same case.

By the MASTER:

44. Q. Then the practical advantage of No. 6 is the fact that it is made lighter?

A. Yes, sir; but No. 6 could be made heavier than it is. It is a little bit too light. I could use it heavier and with better advantage than the way it is at the present time.

Mr. CLARKE, continuing:

45. Q. The cross-bar instruments you used before the introduction of the English stamp were about that weight?

A. Yes, sir; except that I never used any since I have been there with the brass. I was compelled to make my own killers of cork or rubber. I introduced the rubber myself; the corks wore out too fast.

46. Q. Now, suppose that the stamp, having the handle balanced on the postmark and canceller now used in the office, were replaced by one constructed on the principle shown in Exhibit No. 6, do you think any more clerks would be needed to do the work?

A. I should think not.

Cross-examination by Mr. NORTON:

47. X Q. You have been in the post-office for twelve years or more?

A. About that.

2996 48. X Q. Your business has been that of postmarking letters and cancelling stamps?

A. Yes, sir.

49. X Q. Now, since you have been in that business you have used the combined instrument, consisting of a postmarker and a postage-stamp cancelling device, so combined and arranged with a handle as by one blow to leave a postmark on the envelope and cancellation marks on the postage-stamp?

A. I have.

50. X Q. And that has been done with ink, has it *it* not?

A. Yes, sir.

51. X Q. And that has been the system and the plan of doing that kind of work since you have been there?

A. Yes, sir.

52. X Q. And the device used has been of that character, that kind of construction?

A. Ever since I have been in the office they have used one like No. 5, or the one they are using now.

53. X Q. Will you state the difference, if there be any difference, between the stamp device you refer to as having been used in the New York post-office by you for postmarking letters and cancelling postage-stamps at the same time and with one blow of the instrument, and Master's Exhibits Nos. 4 and 5 and 6 now before you?

A. I have used all kinds of weights and all kinds of stamps.

(Question repeated.)

A. All the difference in the stamps and No. 5, are on the same principle, except the ones that I am using now are lighter than No. 5. In No. 6 and No. 4, the handle is over the postmark, instead of being in the middle, same as on No. 5; and No. 6 and No. 4 are different from
2997 No. 5, for the reason that these two, Nos. 6 and 4, have the handle over the postmark, whereas No. 5 has it in the middle.

54. X Q. The difference, then, is in the form of the construction?

A. Yes, sir.

55. X Q. In the mechanical construction?

A. Yes, sir.

56. X Q. The functions of all these instruments are substantially the same?

A. Substantially the same—yes, sir.

57. X Q. Now, you have post-marked your letters and cancelled the postage-stamps in that office with a degree of clearness and certainty so that there has been no fault or complaint in that respect since you have been there?

A. Very little. Of course we are liable once in a while to make mistakes. I have not been hauled up but very little.

58. X Q. That is a very rare occurrence?

A. Yes, sir.

59. X Q. And has been since you have been there?

A. Yes, sir.

60. X Q. And postage stamps are perfectly cancelled, and letters post-marked, with the date, year, and time very clearly put on the envelope?

A. Yes, sir.

61. X Q. And that has all been done by this combined instrument?

A. Yes, sir.

62. X Q. How much is your salary there at this time?

A. I don't know whether I ought to answer that question. I get ninety-five dollars a month.

63. X Q. At the present time?

A. Yes, sir.

64. X Q. How much did you receive last year?

A. About the same.

65. X Q. Well, how much did you receive the first year you went in there?

A. I received eighty dollars a month.

2998 66. X Q. How much have you received during each year since you have been there in the office as stamper?

A. I was raised to eighty-four dollars, then to eighty-nine dollars, and then to ninety-five dollars.

67. X Q. So it has averaged from ninety to ninety-five dollars a month for the twelve years?

A. Somewhere near that.

68. X Q. A little more than that?

A. Not over ninety-five dollars.

69. X Q. Now, have those infants and boys in that department ever been handed into your custody for training for this business, as an expert?

A. Oh, yes. I broke a great many of them in.

70. X-Q. You have been the master that directed these youths in the practice of postmarking and cancelling with this combined instrument?

A. I have had all those that came under my supervision.

71. X Q. Now, you say that you have postmarked and cancelled the stamps on postal cards to the extent of 5,000 in about twenty-three minutes. Is that it?

A. Yes, sir.

72. X Q. Suppose those same postal cards were to have been postmarked without any reference to the cancellation of the stamps, how many could you have done in that same time with a single instrument?

A. I don't think I could have done a great many more. I know I can stamp a little more with the single instrument. I can do more with a single instrument if I use it a whole day.

73. X Q. How much more?

A. Well, I say a third more. Not in a short space of time, but stamping all day long, I think I could.

74 X Q. Now, suppose those same five thousand postal cards, which had been postmarked by you in about twenty-three minutes, were
2999 then to be put into your hands to have the stamps cancelled by the separate instrument, having a handle like the one you use for the postmarking, how long would it take to cancel those stamps with that separate instrument of the same size of the postmarker?

A. Well, I could stamp them in a short time, but I could not say how much; but I could use a common cork to kill the stamp quicker.

75. X Q. You can strike the postage-stamp cancelling device on a postage-stamp quicker than you can the same instrument used with the postmarker?

A. Oh, yes.

76. X Q. So that the configuration upon the surface of this device has to do with the rapidity of stamping?

A. Certainly.

77. X Q. If you had an eagle on the lower end of the postmarker, and a wild goose on the lower end of the cancelling stamp, you could postmark faster with the eagle than you could cancel postage-stamps with the goose?

A. I don't know; I never tried to stamp with an eagle.

78. X Q. Now, if you were to use a separate instrument for destroy-

ing the postage-stamp, it would be about the size of the one for post-marking, would it not?

A. Yes, sir; about the size; then it would be much lighter—you would have nothing but a cork. By striking one you could run and strike a half a dozen; you don't have to stop to see where you strike.

79. X Q. You don't have to stop to see where you strike——

By the MASTER (interrupting):

80. X Q. During the time you have been in the post-office have you ever known them to use combined instruments for stamping the postal mark and cancelling the stamp other than those in which the handle was balanced in the middle—except these, which you see, Exhibits Nos. 4 and 6?

3000 A. Not in general use; no.

81. X Q. You say not in general use. For what purpose have they been used?

A. I have seen some brought in to try.

82. X Q. Experimentally?

A. That is all.

83. X Q. That is all?

A. Yes, sir.

84. X Q. But the stamps that have been actually used in the business of the post-office have been those where the handle was balanced on the cross-bar?

A. Yes, sir.

Mr. NORTON, continuing:

85. X Q. How long is it since they have begun to employ boys in that department for postmarking letters and cancelling postage-stamps?

A. I cannot answer that; I don't know, sir.

86. X Q. When did you first see boys in the building there for that purpose?

A. I believe there was some boys in the distribution department. I believe there are some there yet; I don't have much to do with the distribution, unless it is once in a while to run through the department. I have so much to do in my department that I don't get time to go anywhere else.

87. X Q. Have you any assistant in your department?

A. Yes, sir. I have an assistant during the day that I call upon.

88. X Q. What salary is he paid?

A. More than I can tell you.

89. X Q. He is worth as much as you are in this business by the month?

A. I guess not.

90. X Q. How much less?

A. I cannot say that. I am not the postmaster.

91. X Q. He does the work well—what he does?

A. I suppose he does.

3001 92. X Q. If he did not you would not keep him there?

A. That part I have nothing to say about either.

93. X Q. You do not know anything about what has previously been paid for postmarkers and cancellers, then?

A. I haven't the least idea what they are, excepting my own pay. I only see my own check.

94. X Q. You do not think you are paid too much for your services?

A. I should think not.

95. X Q. You think that the salary paid you is fully small enough for the work you do?

A. Yes, sir; if I had anything to say about it I should say that I ought to have more.

96. X Q. Now, how many tables are used in your department for the business of postmarking letters and cancelling postage-stamps by this double or combined instrument about which you have testified?

A. I have two blocks myself, and then there are six blocks on the other side which are used for cancelling letters on the back, and I have four stamps, and in case I am urged I call on their men to do it, and I am liable to use all those six blocks at one time.

97. X Q. With the double instrument?

A. Yes, sir.

98. X Q. Each block means a stamper?

A. Yes, sir.

99. X Q. Now, you say you have four and two are six blocks in your department?

A. I think there are seven blocks that I could use any time I wanted to.

100. X Q. You mean by a block, a place occupied by a person in the postmarking of letters and in the cancellation of postage-stamps?

A. Yes, sir; or used for that purpose.

101. X Q. Now, in your department you say you frequently use all those blocks with the combined instruments?

3002 A. Yes, sir; part of them, not frequently all of them.

102. X Q. How large a part of them?

A. May be one or two besides my two.

By the MASTER:

103. X Q. Do I understand you to say that from the time you were employed in the post-office up to the time that Exhibits 4 and 6 were used, no combined instruments were used for postmarking and cancelling except such as had a single handle in the centre of the cross-bar, or nearly so?

A. I have never seen any except those, except as I told you; some may be brought in there for experiments and tried for a short time and dropped, but not for a long time.

By Mr. NORTON, continuing:

104. X Q. Do you know of any spare space in the post-office that can be dedicated to any purpose?

A. Yes, sir; the post-office is pretty big and I know a place up-stairs where they could put forty places.

105. X Q. I ask you about the first floor—any spare space in the post-office that is not used?

A. I don't doubt, if they would let me, I could put up a dozen more blocks right in my department.

106. X Q. How would you do that?

A. There is plenty of space; I think you could move the tables up close together.

107. X Q. And set them down side by side, the same as you would in a theatre?

A. Oh, no, not as close as that.

Redirect examination by Mr. CLARKE:

108. Re D. Q. Mr. Andrews, taking an instrument of the weight shown in Exhibit No. 6, and suppose that a handle was balanced

3003 on it, can you give us any idea of what the practical advantage is of having it so balanced on an instrument of that weight over Exhibit No. 6; how much?

A. It would be more practical if that were in the centre; I could use it to a better advantage, I am sure of that. Then I would be more positive in regard to it, but the difference would be slight.

109. Re D. Q. But if the weight was the same as in Nos. 4 and 5, can you give an idea of what the amount of the practical difference there would be?

A. Oh, there would be quite a difference between them two. I don't think much of this stamp No. 4 at all for rapid work. For slow work it is very good. I could get along with it very nicely. When I am to kill about ten thousand letters an hour, I don't think I could do it as well. I should want some other stamp that I could be more positive about.

110. Re D. Q. Taking the weight you see in Nos. 4 and 5, couldn't you give us an idea of what the advantage would be in having the postage-stamps balanced during the hours when you need to work very rapidly?

A. I cannot tell you what the real difference would be, but I know there would be some. I could not tell you exactly how it is, because I never stamped a great deal with it, only to know what it is. If I have any heavy work I don't use it, because I never have any time to use it; but there is a difference, there is no doubt, about it.

111. Re D. Q. For rapid work?

A. For rapid work. But if made lighter the difference would become less.

Adjourned to November 12th at 11 o'clock a. m.

3004 NEW YORK, *Nov. 12th*, 1879—11 *a. m.*

Present, George H. Williams, counsel for complainant; Marcus P. Norton, solicitor for complainant; Samuel B. Clarke, counsel for defendant.

JOHN RICHARDS, a witness, duly sworn in behalf of the defendant, and being examined by Mr. CLARKE, testified as follows:

1. Q. State your age, residence, and occupation.

A. Age, 45; residence, Brooklyn, N. Y.; occupation, superintendent of the city delivery of the New York post-office.

2. Q. How long have you been employed in the post-office in New York?

A. Between five and six years.

3. Q. Were you ever employed in any post-office before that?

A. Used to be in the Utica post-office.

4. Q. How long.

A. Nine years.

5. Q. At what time?

A. I left it in 1855; I think it was in 1855.

6. Q. What have been your duties since you have been employed in the New York post-office?

A. I commenced as a clerk and then got to be superintendent.

7. Q. Of the city delivery?

A. Yes, sir; of the post-office delivery, not the letter city delivery.

8. Q. That is the department of which Mr. Gaylor is general superintendent?

A. Yes, sir.

9. Q. Is it part of your duties to superintend the stamping of letters stamped in your department?

3005 A. Superintendent of letters received in the mails from out of town, and all letters mailed here for city delivery.

10. Q. Mr. Andrews is in your department?

A. Yes, sir.

11. Q. How long have you been superintendent?

A. Between three and four years.

12. Q. Look at Master's Exhibits, Nos. 4, 5 and 6, and state whether they have been used by Mr. Andrews.

A. (Examining Exhibits 4, 5 and 6.) Those have been used by Mr. Andrews.

13. Q. Did you inspect the work done by him?

A. Yes, sir.

14. Q. Was it satisfactory—the impressions of the post-mark and cancellation mark?

A. Yes, sir.

15. Q. All of them?

A. Yes, sir.

16. Q. From your knowledge of stamping in the post office—your general knowledge of stamping, that you have derived from your service in the postal service of the United States—can you state whether or not the balancing of a post-marker and a postage-stamp canceller on a handle has an advantage?

A. It has an advantage where the stamp is heavy for rapid stamping.

17 Q. Supposing the stamp is made lighter, does that advantage remain the same, or would it decrease?

A. It would decrease—that is disadvantage—it would not be so great as with the heavy stamp.

18. Q. In the ordinary work of the office, how would a stamp constructed on the principle shown in Exhibit No. 4 work?

A. It would work well enough for ordinary stamping.

19. Q. What is the ordinary rate of stamping in the office?

A. An ordinary stamper will stamp from eighty to one hundred a minute.

3006 20. Q. For very rapid work, you say the balancing of the post-marker and postage-stamp canceller for a given weight has an advantage?

A. Yes, sir.

21. Q. That advantage decreases as you diminish the weight?

A. Yes, sir.

Cross-examination by Mr. WILLIAMS:

22. X Q. You have never done any stamping yourself, as I understand?

A. Yes, I have; yes, I do.

23. X Q. When?

A. Well, I have done the most of it years ago in the Utica office.

24. X Q. How long ago?

A. I quit there in 1855, I think it was.

25. X Q. Never did any stamping in the New York post-office?

A. Not regularly; I have stamped, but not as a regular stamper.

26. X Q. You have not used these stamps yourself, so as to test their respective merits?

A. No, sir.

27. X Q. Is it desirable in a stamp to have it of a particular weight?

A. Well, the lighter a stamp is the quicker it can be used, in my opinion. No particular weight about it.

28. X Q. May not a stamp be made too light to be efficient in post-marking the letter and in cancelling the postage stamp?

A. Well, I cannot say as to that. I can only give an opinion. It cannot.

29. X Q. Cannot be made too light?

A. That is my opinion. I cannot state it as a fact, though.

30. X Q. Is it not desirable in the use of a stamp to make a distinct impression upon the letter, and a distinct impression upon the postage-stamp?

3007 A. Yes, sir.

31. X Q. Well, do you pretend to say that that could be done by a stamp weighing an ounce as well as by one weighing six or ten ounces?

A. Well, as I said before, I can only give you my opinion. I think it could be better done.

32. X Q. Would not the stamper have to strike a very much harder blow?

A. No, sir. It does not require a very hard blow to make a good impression. That is one thing we have to guard against in teaching a man to stamp, not to strike too hard a blow.

33. X Q. So you think that no matter how light a stamp is, the lighter it is the better it is?

A. That is my opinion.

34. X Q. That is your opinion?

A. Yes, sir.

35. X Q. What sort of a stamp has been used in the New York post-office since you have been there?

A. There has been two or three kinds used there. There are several kinds used now.

36. X Q. I mean generally for post marking letters and cancelling postage-stamps thereon?

A. The stamp has been used with the combination of the post-marker and killer.

37. X Q. Like Master's Exhibit No. 5?

A. Not exactly like that, but after that pattern.

38. X Q. Do you think if the post-marker and postage canceller on Exhibit No. 5 were both made of wood that they would operate better than they do made of iron and steel?

A. No, sir, I don't, because they would not wear so long.

39. X Q. They would be much lighter though, would they not?

A. I don't think there is much doubt between wood and steel as to weight.

40. X Q. Can you state how Exhibit No. 5 compares in weight with the stamp that has been generally used in the post-office in New York?

3008 A. I should think it was heavier.

41. X Q. Considerably heavier?

A. Well, I am not able to state that, sir.

42. X Q. Do you know how Exhibit No. 4 compares in weight?

A. I should think that Exhibit No. 5 was a little heavier.

43. X Q. How does No. 6 compare in weight?

A. I should think that No. 6 was lighter.

44. X Q. So that none of these models that have been exhibited here to the master are like the instruments that have been generally used in the post-office?

A. Not exactly like those I have seen there.

45. X Q. You say that No. 4 here will do for ordinary stamping?

A. Yes, sir.

46. X Q. Do you know whether or not it is very desirable in the post-office to postmark and cancel the postage-stamp on letters with great expedition?

A. At certain times it is; not at all times.

47. X Q. Well, do you mean that when it is desirable to do so that that is extraordinary stamping?

A. Well, I don't just understand what you mean by extraordinary stamping.

48. X Q. You have spoken of ordinary stamping?

A. I mean an ordinary rate of speed; the other I should consider an extraordinary rate of speed.

49. X Q. What do you consider an ordinary rate of speed?

A. From eighty to one hundred in a minute.

50. X Q. And what do you consider an extraordinary rate of speed?

A. From one hundred and fifty to one hundred and sixty a minute.

51. X Q. Do you think that a man could stamp one hundred and fifty to one hundred and sixty letters with Exhibit No. 5 as quick as he could stamp eighty or one hundred with Exhibit No. 4?

3009 A. I think he could, being used to the use of both stamps, after having had practice with both of them.

52. X Q. Exhibits Nos. 4 and 6 have been used in the post-office within the last week or so?

A. Yes, sir.

53. X Q. Were those stamps made and used with a view of giving evidence in this case?

A. That I cannot say, sir; I have no knowledge on that subject.

54. X Q. Do you know where Nos. 4 and 6 came from?

A. I know where they came from when they came to us; they came from the distribution department.

55. X Q. Were you not aware of a suit that was pending, of Mr. Campbell against Mr. James, about this post-office stamp?

A. Yes, sir.

56. X Q. Didn't you know that you were called upon to test those two stamps, Nos. 4 and 6, in reference to this suit?

A. Yes, sir.

57. X Q. And they were used in your branch of the business with that view and for that purpose?

A. That was the view I had of it; yes, sir.

58. X Q. Are you not aware, Mr. Richards, that that stamp, like Master's Exhibit No. 5, for the purpose of postmarking and cancelling postage stamps on letters, which has been used in the New York post-office since you have been there—I don't refer to mere difference in form and substance—has been ascertained to be by actual experiments the best kind of a stamp that can be used for such purposes?

A. I don't know that I catch the full meaning of your question.

(Question repeated.)

A. Well, stamps that we have there now I consider better than those like Exhibit No. 5.

3010–3110 By the MASTER:

59. X Q. The ones you have there now are the ones you have used continuously for years?

A. We have used them between one and two years; may be a little longer.

Mr. WILLIAMS, continuing:

60. X Q. Are the stamps, then, that you now use in the New York post-office for postmarking letters and cancelling postage-stamps the best that can be found for those purposes after experimenting on the subject?

A. In my opinion they are the best I have ever seen.

61. X Q. State, if you please, why the stamp that you now use is better than the one that you formerly used more like Exhibit No. 5.

A. I don't remember ever seeing one in the office like Exhibit No. 5, except as to the combination of the two things together. One just like that I never saw anything much resembling it.

62. X Q. Then I ask you this question: Prior to a year or two ago you used a postmarking and postage stamp cancelling instrument in the post-office in New York which postmarked the letter and cancelled the postage-stamp at a single blow?

A. Yes, sir.

63. X Q. A year or two ago you adopted another stamp which was somewhat different in form from the one you had formerly used?

A. Embodying the same principle, but a different kind of a stamp.

64. X Q. Now state, if you please, why the stamp you now use is better than the one you formerly used.

A. It is lighter and more compact; not so bungling as the other was.

65. X Q. That is the only difference?

A. I cannot explain it; it is just about the difference between Exhibits Nos. 5 and 6 in weight and in being compact.

3111 By Mr. CLARKE:

66. X Q. Isn't there a difference in the way of fixing the type in?

A. Yes, sir; there is a difference of fastening the type in, which makes it better. This screwing down on the head of the type makes them come flush with the face of the stamp; while a stamp of the kind of No. 5 is apt to get dirty and make the type set uneven.

By the MASTER:

67. X Q. Has that any name or designation—that piece across there? (Referring to the cross-bar on Exhibits No. 5, that connects the postmarker with the postage-stamp canceller.)

A. There is no name we use in our office.

68. X Q. Take this piece used on here. (Referring to the bottom piece on Exhibit No. 6.)

A. It corresponds with the cross-bar in Exhibit No. 5.

Mr. WILLIAMS, resuming:

69. X Q. Mr. Richards, in the postmarking of letters and the cancellation of stamps upon them, I ask you if perfection of impressions, expedition in the handling of letters, and economy of labor and time and space are not desirable?

A. Yes, sir.

70. X Q. Do you know of any reason, Mr. Richards, why this kind of a stamp, Exhibit No. 4, has not been used in the New York post-office?

A. No, sir.

Re-direct examination by Mr. CLARKE:

71. Re D. Q. Mr. Richards, when you say the lighter the stamp is the quicker you can use it, do you mean by that that a stamp could not be made too light for all purposes?

A. I don't think a stamp could be made too light.

3112 72. Re D. Q. Couldn't it be made so light as not to be strong enough?

A. It could not be made too light and be serviceable.

73. Re D. Q. That is, the lighter the stamp is, consistent with serviceableness, the better it is?

A. Yes, sir.

74. Re D. Q. That is what you mean by saying the lighter the stamp is the better it is?

A. Yes, sir.

75. Re D. Q. What is your judgment as to whether the stamps now used are practically better than the stamp No. 6 for the work done by the greater number of stampers in the post office?

A. I don't understand the question.

76. Re D. Q. What is your opinion upon the point whether the stamps, which I think you call the English stamps, which have been used for the last year or two in the post-office, are any better than No. 6 would be for the use of the ordinary stamping?

A. I don't think they are any better than that.

77. Re D. Q. That is your opinion?

A. Yes, sir.

78. Re D. Q. That is, Exhibit No. 6 being so light that the balancing there for ordinary stamping would not be affected?

A. No, sir.

79. Re D. Q. If Master's Exhibit No. 4 were made of the same weight as the combined stamps of the post-office, could that or could it not be used by the ordinary run of stampers in the office to accomplish the same work they now do with the English stamp?

A. If that weight was reduced, do you mean?

80. Re D. Q. Say same weight as the English patented stamps for the ordinary business of the post-office?

A. It would answer for the ordinary business of the post-office.

81. Re D. Q. For the ordinary stampers?

3113 A. Yes, sir.

Recross-examination by Mr. WILLIAMS:

82. Re X Q. Now, Mr. Richards, do you undertake to swear that a man can use that stamp Exhibit No. 6 in postmarking letters and in cancelling the postage-stamps upon them and always produce as perfect an impression as by the use of the stamp with the handle in the middle?

A. At an ordinary rate of stamping, I think they could.

83. Re X Q. I ask you, if in the use of No. 4, in striking it down upon the letter, if the weight of the postage-stamp canceller would not tend to make the instrument strike the letter first upon that edge of the canceller?

A. I don't think it would after a man had practiced with it.

84. Re X Q. Wouldn't it require more care and more skill to avoid an imperfect impression with Exhibit No. 4 than it would with Exhibit No. 5?

A. I don't think it would require any more care after a little practice.

85. Re X Q. Why not?

A. Because I think they would get in the habit of using that stamp just as handy as they would No. 5.

86. Re X Q. You think there is no advantage whatever in having a handle located exactly on a cross-bar between the postmarker and stamp canceller?

A. Not for ordinary cancelling; no, sir.

87. Re X Q. You think that a man cannot make a more accurate impression with a stamp made like Exhibit No. 5 than he could with a stamp made like Exhibit No. 4?

A. I don't think there would be any difference in regard to that after practice.

87. Re X Q. You don't think so?

A. No, sir.

3114 88. Re X Q. That is your opinion without any knowledge upon the subject of stamping?

A. Well, it is a knowledge upon the stamping, because I have to have a certain knowledge of it to superintend my men.

89. Re X Q. Now, I ask you if there is any man of common sense, to say nothing of experience and skill in stamping, that don't know that ordinarily in using instruments of this description in a post-office that he would make a more accurate impression with a stamp constructed like Exhibit No. 5 than he would with a stamp constructed like Exhibit No. 4?

A. I don't think I am competent to answer that question.

90. Re X Q. You don't claim, then, to be a man of common sense?

A. Yes, I do; but that is not it, as I understand your question.

91. Re X Q. Now, if it is of advantage to have the instrument lighter, can you tell why the instrument that was used with a ferrule having a cork or rubber inserted was not better than the one having a solid body of metal, as it was so much lighter?

A. Well, I should think making it lighter would be an improvement of it.

92. Re X Q. Wouldthere be any difficulty in reducing the weight of a stamp constructed like Exhibit No. 5, so as to make it exactly right in weight?

A. I don't know that I could answer that question, not being an expert in the weight of metals, and whether that could be reduced or not. I have not examined it closely enough to say. (Examining the stamp.) (Question repeated.)

A. The weight of that exhibit could be reduced without any detriment to the stamp, but to make it exactly right in weight, I cannot say what you mean by exactly right; I don't know what the standard would be.

3115 93. Re X Q. When your clerks are employed in postmarking and cancelling the postage-stamps on letters, are they not expected to work as rapidly as they can?

A. At certain times, but not always.

94. Re X Q. For most of the time do you not expect them to do all the work they can?

A. No, sir. I should not think it was over half of the time that they were obliged to do their utmost.

95. Re X Q. Am I to understand you that there are more clerks now employed in the New York post-office in postmarking letters and cancelling postage-stamps thereon than are necessary for that business? Do you wish to be understood in that way?

A. No, sir; I don't intend any such thing.

96. Re X Q. The men so employed have all they can do withthe double stamp?

A. No, sir; because the mails are not always there, and that is when they are not obliged to do their utmost. The work is not there to require them; we have busy and dull times.

Redirect examination by Mr. CLARKE:

97. Re D. Q. You have said that one of the things you have to guard against in teaching a green hand to stamp is to prevent him making too strong a blow. Is the process of stamping giving a hard blow, or a sort of a slant?

A. A short, quick blow.

98. Re D. Q. Like the snap of a whip?

A. Yes, sir; I should think that would convey the meaning as well as anything.

99. Re D. Q. Do you consider that practical stampers and men who have to look after the stamping of letters in the post-office are or are not more competent to judge in reference to stamping than people outside who possess only common sense?

A. I should think a man versed in the workings of the post-office would be the best judge.

3116 100. Re D. Q. When you say that a stamp with a cork in it is an improvement, you mean it is an improvement so far as the weight is concerned?

A. Yes, sir.

101. Re D. Q. There may be reasons, taking the stamp as a whole, to prefer a metal stamp?

A. As for work and actual use the metal canceller would be better, because the rubber and cork soon wears out. The rubber is better while it retains its shape, but it soon wears out.

102. Re D. Q. The metal makes a neater impression than the rubber?

A. Yes, sir; more clear and defined.

103. Re D. Q. There is less daubing of the ink?

A. Yes, sir; and makes an impression that hangs to the stamp better than if made with the rubber.

104. Re D. Q. Metal tends to break the enamel of the stamp more than the rubber would?

A. Yes, sir.

105. Re D. Q. In regard to Mr. Andrews; is he, in your opinion, the most rapid stamper in the post-office?

A. I think he is the most rapid stamper in the post-office.

106. Re D. Q. And the best?

A. Well, I cannot say he is the best, because we have other stampers that make as clear impressions as he does.

107. Re D. Q. But he makes equally as clear impressions on a long run?

A. Yes, sir.

108. Re D. Do you consider his judgment good on the question of stamps and stamping?

A. Yes, sir.

Adjourned to Nov. 13th, 1879, at 11 o'clock a. m.

3117 NEW YORK, *Nov. 13th*, 1879—11 a. m.

Present, counsel as before.

Defendant's counsel announces that he presents to the consideration of the master the following parts of the record used at the final hearing: Depositions of Wheeler, Henry S. Bishop, Cottrell, Coon, Warner, Albinger, Nott, Beardsley, and the depositions of Powers, Anthony, Rupp, Geilfus, Yeomans; defendant's deposition, Ryer's; defendant's deposition, Dix's, Corbett's, Riley's, Miller's, Roberts', John H. Zevely's, Edmond S. Zevely's, Benjamin Chambers', and the exhibits referred to in

those depositions. Also the depositions of John P. Rees, William M. Ireland, Matthew C. Bogia, and W. B. Burchard, and the models and exhibits therein referred to. Also complainant's depositions of Bassett and Cook; also the patent of August 9th, 1859, patent of December 16th, 1862, Berries' English patent, Chambers' patent, Ruggles' patent, Robertson's patent, and Hill's patent, and the models of those patents.

Adjourned to Nov. 14th, 1879, at 11 o'clock a. m.

3118 *Complainant's testimony in rebuttal.*

Mr. KITTLE recalled, and examined by Mr. WILLIAMS:

1. Q. Mr. Kittle, I find on page 224 of complainant's first volume this question put to you by the defendant's counsel (reading): "Look at Exhibit U, and suppose that there were no cross-bar, and that the handle was screwed into the post-marker and was directly above it, and that the canceller were soldered or bolted, or otherwise firmly fixed to one side of the post-marker, would that be anything more than a mere mechanical change of Exhibit U?" Now look at Exhibit U, and state whether, if Exhibit U were changed in the manner supposed in that question, would it be like the Master's Exhibit No. 4?

A. It would.

2. Q. Now, you may read your answer, if you please, to that question and then state to the examiner whether or not you still adhere to the opinion expressed there.

A. My answer to that question, as found in complainant's volume 1, of the record, page 224, commencing folio 895; I have read the answer, and the opinion therein expressed is my opinion to-day; after seeing the Master's Exhibits Nos. 4 and 6 I will state that they represent a construction substantially the same as that which would be represented by the supposititious post-office marker and postage-stamp canceller found in the question to which that answer was made.

3. Q. I find another question here, question No. 105, on the same page (page 224), which is as follows (reading): "Q. Look at Exhibit U, and say whether if the post-marker and cross-bar were to be cast in one solid piece, that would be more than merely a mechanical change"?

A. My answer to that question is: "That that would be all," and I entertain that same opinion now.

3119 Cross-examination by Mr. CLARKE:

4. X Q. You don't desire to alter anything on your cross-examination in the principal case now?

A. Nothing.

3120 Mr. MARCUS P. NORTON recalled by Mr. WILLIAMS:

4½. X Q. Mr. James has referred to a conversation, in his testimony, which he had with you. I ask you if you had any idea of giving him a license to use this stamp without compensation at that time, or during that conversation?

(Objected to by Mr. Clarke as immaterial what Mr. Norton's idea was; if the words are important they speak for themselves. Question allowed.)

5. Q. State the conversation substantially as you remember it.

A. At the time I filed the bill, on the 4th day of June, 1877, I called on Mr. James and handed him a copy of the bill of complaint, and explained to him the reason why I brought the suit against him; I said to him that I had selected the New York post office because it was the

largest in the United States, and the invention was first introduced into that office experimentally, and I wanted a thorough test as to the validity of the patent and of all matters connected with it. He asked me if I intended to move the court to stop the using of it, and I told him no, that I did not wish to put him to any unnecessary trouble, or to interfere with the business of the department or of the government in their post-office business; but what I wanted was a thorough trial upon the patent and pay for that property. I did not give any license, nor undertook at that time to give any; no such thing ever entered into my mind at that time or since. The first suggestion I ever heard of anything of the kind was here by Mr. James the other day.

By the MASTER:

6. Q. You say that that was after the suit was brought?

A. Yes, sir.

3121 By Mr. WILLIAMS:

7. Q. Had you any authority from Mr. Campbell to grant any license?

A. No, sir; if I had, I would not grant any license to any one.

3122 Mr. WAREING recalled by Mr. WILLIAMS:

1. Q. State, Mr. Wareing, if you know where and by whom the postmarking and postage-stamp cancelling instruments used in the New York post-office are made.

A. They are made by Mr. Bruner now.

2. Q. Where is his place?

A. In Fulton street, No. 78.

3. Q. Can you state how many combined postmarkers and postage-stamp cancellers he has made since Mr. James has been postmaster; about the number altogether?

A. I don't know; I cannot tell you all he has made altogether. I know the number we have in use now.

4. Q. Can you form any reasonable estimate?

A. I think I could obtain the records.

5. Q. I want the whole number manufactured since Mr. James has been postmaster, and the prices paid for them.

A. I cannot give you that information now.

6. Q. You cannot give me the prices paid?

A. Well, I think the price of the stamp is six dollars and a half without the letters, and the letters and figures are ten cents each. I cannot tell you the total number he has made.

7. Q. Can you go to the office and send over a paper here containing the number he has made each year and the prices?

A. I don't think there were any records kept before 1875, but since 1875 I could give you the total number made. I know how many have been in use, but I don't know how many have been thrown aside.

8. Q. Will you go and send here that memorandum, whatever your books show about it?

A. All right.

(Mr. Wareing returning from the post-office.)

3123 9. Q. Have you procured and can you produce any memorandum of the purchases of the stamps as heretofore requested?

A. No, sir; it is impossible to obtain it—the actual number of stamps made by Mr. Bruner; the combination stamps.

10. Q. Why is it impossible?

A. We have no record of it.

3124 *Exhibit No. 2.—K. G. W., Master.*

Official business. U. S. district attorney's office, New York.

MARCUS P. NORTON, ESQ.,

No. 7 BOWDOIN SQUARE,

BOSTON, MASS.

(Postmark:) Rec'd in Boston, Mass., Sept. 18, 7 a. m.

(Postmark on back:) Boston. Mass. Carrier. Sep. 18, 8 a. m.

Exhibit No. 3.—K. G. W., Master.

Official business. U. S. district attorney's office. New York.

MARCUS P. NORTON, ESQ.,

No. 7 BOWDOIN SQUARE,

BOSTON, MASS.

(Postmark:) Rec'd in Boston, Mass., Sep. 20, 7 a. m.

(Postmark on back:) Boston, Mass. Carrier. Sep. 20, 8 a. m.

It is understood that the depositions and exhibits contained in the record for final hearing may be referred to on the matters of the accounting, subject to the objections taken in the record for final hearing.

Adjourned to Wednesday, Nov. 26th, 1879, at 11 o'clock a. m.

3125 *Master's report.*

In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT, and assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

The above case, referred to the master by the decree dated 1st of September, 1879, is one somewhat peculiar in its character.

It is for the infringement of a patent, and although against the defendant, James, personally, any recovery which may be had against him will be for "gains, profits, and advantages" which have "arisen or accrued," not to him individually, but by his use of it in his official capacity as postmaster of the city of New York. The court has held that the patent, which is the subject-matter of the suit, has been used by him without authority of law, and, hence, that he is personally responsible, the same as any public officer is who takes private property for public use without the authority of the owner.

In the presentation of the case to the master, numerous questions have been raised by the counsel, which it seems necessary to consider and determine, in order that the findings of the master may be intelligible

and reviewable, and that all the points made by the counsel may fully appear on exceptions (if any) which may be taken to the master's report.

It appears to be conceded that this invention is one which can
3126 be used only by, and be of benefit to, the government in the conduct of its general postal service. The court says in its opinion: "Upon the whole case it appears that in fact and in law Norton was the original and first inventor of this patented invention;" and, further, that "the patent is for a machine or instrument that will do both of these things at one blow;" that is, the postmarking of the letter and the cancellation of the postage-stamp. It further appears from the opinion of the court, and from the evidence before the court on final hearing, that by a strict requirement or order of the Postmaster-General, made on the twenty-third day of July, 1860, the postmarking and the cancelling of the postage-stamp were required to be placed upon all letters separately. It appears that previous to that time the postmark was stamped upon the postage-stamp, and thereby in a measure acted as a canceller of it. This requirement or order of the Post-Office Department called for the discontinuance and abandonment of this mode of stamping and cancelling, and required the use of two separate stamps —one for the postmark and the other for cancelling the postage stamp. It seems to have been this requirement or order of the Post-Office Department that brought into use in the New York post-office the combined instrument (see opinion of the court) by which the postmarking and the cancelling of the postage stamp were done by a combined instrument; that is, by a single blow of one and the same instrument, by one and the same hand, instead of by two blows or impressions made by two separate and distinct instruments, requiring two persons, or the double use of the hand of the same person upon the two instruments.

This invention, it appears, was in use in the New York post-office at least as early as 1861, and was found there in use on the first day of April, 1873, by the present postmaster, James, when he was appointed postmaster, and is still in use there. According to the decree of the court, James is an unlawful user of such patented invention, and an infringer.

3127 The decree sets forth:

"First. That the letters patent are good and valid.

"Second. That Marcus P. Norton was the original and first inventor. * * *

"Third. That the complainant, Christopher C. Campbell, is the exclusive owner, in trust, of such letters patent.

"Fourth. That the said Thomas L. James has infringed upon the said letters patent, No. 4143, hereinbefore described," * * * and charged in the said bill of complaint.

"Fifth. That an account be taken of the profits, gains, and advantages which have in anywise been received or made, or which have arisen or accrued on account of the infringements aforesaid, and also of the damages in addition thereto, if any, which the said complainant has sustained by reason of the infringements aforesaid.

"Sixth. That the said complainant do recover of the said defendant, Thomas L. James, his costs, charges, and disbursements to be taxed.

"Seventh. That it be referred, and the same hereby is referred, to Kenneth G. White, of the city of New York, to ascertain and take, and state and report to the court, an account of the gains, profits, and advantages which the said Thomas L. James has in any wise received or made, or which have arisen or accrued on account of the infringements

aforesaid, and also of the damages in addition thereto which the said complainant has sustained by reason of said infringements."

The master having now stated his understanding of the decision of the court, and what is referred to him under the decree based upon such decision, will consider the questions raised before him by the counsel for the respective parties. It is claimed by counsel for complainant—

First. That by the use of the patented instrument one man has been enabled to do the work which it took two men to do before the invention of such instrument.

3128 Second. That more perfect and complete work is done by the use of said patented instrument than was attained by any other instrument known or used before or since the patent was granted; that such instrument makes clearer and more perfect impressions of the postal mark, and also more complete and perfect cancellation of the postage-stamp.

Third. That the use of said patented instrument has greatly conduced to the regular and speedy transmission of letters through the mails.

Fourth. That, by the saving of the number of clerks necessary to be employed, valuable space or room is saved in the post-office. Each and all of these, it is claimed, enter into and make part of the gains, profits, and advantages derived from the use of the invention.

It is claimed on behalf of the defendant, that no gains, profits, or advantages are shown to have accrued to or been received by the defendant, James, personally, from the manufacture or use of the patented invention; that whatever use he has made of the invention has been as an officer of the United States, and in that capacity alone has he infringed the patent, and if any gains, profits, or advantages have accrued, they are for the benefit of the United States and not for his benefit.

Second. That as to any gains, profits, or advantages which have arisen or accrued to the government by reason of the infringement, there can be no recovery, as there have been no sales of the patented invention, and no profits, strictly speaking, have accrued from its use, as the post-office is not a profit and loss concern; that admitting, for argument's sake, that there has been a saving of time by the use of the combined postmarking and postage-stamp cancelling patented instrument, there is no evidence of the pecuniary value of such saving of time offered; that the evidence makes nothing clear except that more clerks would be needed to postmark and cancel the same number of letters in the same time with the separate instruments than with the patented

3129 instruments; that this is not a proper measure of profit; that the salaries of the additional clerks have nothing to do with the question; that the real advantages which the government has received are two:

First. A post-mark on the envelope, distinct and separate from the cancellation-mark on the postage-stamp.

Second. Attaining this result in such time as not to delay the mails.

That there can be no pecuniary value attached to these advantages; that the comparison of the patented instrument with separate instruments is unjustifiable; that combined instruments, in which the canceller was attached to one side of the post-marker and where the two were not balanced on the handle, were open to use during the period of infringement and long before the patent was granted; that if it is proper to make any comparison in this case to ascertain the advantages received by the government by the use of the patented improvement, such comparison should relate to this unbalanced combination.

Third. That the statute which allows damages, in addition to profits,

to be recovered in equity, has been construed to mean that damages in excess of or beyond the amount of profits made by defendant may be recovered; and that no damages, as such, to the complainant, are shown to have been sustained.

Fourth. That the time to be covered by the account of the master should be limited to cover only the infringements that have taken place since the assignment to Campbell (Jan. 2, 1877); that the account should commence with that date.

Fifth. That as to the alleged advantages other than clerk-hire, the evidence does not show satisfactorily that they exist; that no evidence of their pecuniary value has been given, and they cannot be considered in stating an account of profits in equity.

These are substantially all the questions raised before the master on this accounting; and, as counsel for both parties have made a
3130 request of the master that he would, in his report, consider and pass upon each one of them, he will do so.

The first question (the saving in the number of clerks) raised by the complainant's counsel will be considered last.

As to the second question, it seems from the testimony of all the witnesses called, who are employees in the New York post-office, that more perfect and efficient work is done by the patented combined instrument, both in the making of the postal mark and in the cancellation of the postage-stamp, than by any other instrument known or used in the post-office prior to the use of such combined instrument.

As to the third question, it appears that the use of the combined instrument has conduced to the regular and speedy transmission of matter through the mails, assuming, of course, that, had not such combined instrument been used, two separate instruments, one for post-marking, and the other for cancelling the stamp, would have been used, and no additional clerks had been employed.

Fourth. Assuming that an additional number of clerks would be necessary to the proper performance of the work in the post office, there would be, necessarily, more space or room required for them, and, consequently, under certain circumstances, that would be an advantage or saving derived from the use of the invention in question. It has been proved, before the master, that there is a saving of the number of clerks, as will hereafter more fully appear. But such advantage or saving, so far as room is concerned, in the New York post-office, or so far as the defendant James is concerned, does not appear to have any pecuniary value in this case, as the post-office in the city of New York is a building owned by the government, and more space could be provided, if necessary, without any additional cost either to the postmaster or the government.

As to the first question raised by the defendant that "no
3131,3132 gains, profits, or advantages are shown to have accrued to, or been received by the defendant, personally," &c., this question is disposed of by the decision of the court, as already stated in this report.

The second point made by the counsel for the defendant James embraces several questions. The first is, "That no gains, profits, or advantages have arisen or accrued to the government by reason of the infringement, as there have been no sales of the patented invention."

As to the fact of there having been no sales of the patented invention, that, of itself, amounts to nothing, as the claim here is for its use, and it is for such use that any profits made are claimed by the complainant.

Defendant's counsel admits, for argument's sake, that there may have been a saving of time by the use of the combined patented instrument, but that no evidence has been offered of the pecuniary value of such saving of time. This is so. The evidence of saving of time in the making-up and despatch of the mail, as the master understands it, is to show that this is one of the "advantages" derived from the use of the combined instrument, and he is asked to take this into the account in estimating or determining what "gains and profits" have arisen or accrued to the defendant thereby; complainant's counsel claiming that the master is authorized and called upon to fix and report some sum as an amount to be awarded for these "advantages." That there has been such advantage, there seems, from the testimony, to be no question; but, as the pecuniary value of such advantages has not been proven, the master is not authorized, as he understands the decisions of the courts, to merely estimate or conjecture an amount. As to the question raised of the saving of clerks and clerk-hire, that will be, as has been before stated, considered hereafter.

Counsel claims that the real and only advantages which have arisen to the government or to the defendant are:

3133 First. A post-mark on the envelope, distinct and separate from the cancellation-mark on the postage-stamp; and

Second. Attaining this result in such time as not to delay the mails.

That both are great advantages, and that such advantages have been secured to the government by the invention in question, there can be no doubt. It is certified by the order or requirement of the Postmaster-General to be absolutely necessary to the postal service; also by the communications of different Postmasters-General to Congress, and the various reports of successive Congressional committees, all of which appears in the testimony for final hearing in the case, and which is offered in evidence before the master; and also by the testimony of each and all of the witnesses from the New York post office produced before the master. No evidence is produced showing what the actual pecuniary saving by either has been, and hence none can be reported by the master.

It is claimed by counsel for the defendant that what he designates as the balancing of the handle, or the placing of it equidistant between the post-marker and the stamp-ca celler, is a material element of the patented combination, and that if the handle is not so placed in the centre, or equidistant between the two-stampers, such an instrument is no infringment of the patent in question; and he urges that, in the ascertainment by the master of gains, profits, and advantages, comparison should be made between the stamper having the so-called balanced handle, and a stamper where the handle is not so balanced. He has produced before the master two instruments which are marked "K. G. W. Master's Exhibits, Nos. 4 & 6," and which he claims are not within the patent, and which are therefore open and free to be used in the post-office; and has produced witnesses as to their recent trial there.

The answers to this claim, are:

First. That such claim is not warranted by the opinion of the court as the master understands it.

3134 Second. It is not warranted by a proper construction or interpretation of the patent in controversy.

Third. The proofs in the case show, and the decision of the court also shows, that Norton himself was the first and original inventor of such device; that is, a combined stamper and canceller, in which the handle was not placed in the middle, but on one side over the postage-stamper. The use, therefore, of such device, was not open to the defendant or the

government, and for this reason no comparison in the ascertainment of profits can be made between the two. Further, the witnesses who have been produced on the part of the defendant before the master, and who are employed as regular stampers in the post-office, say that the instruments Nos. 4 and 6 are not as efficient for the work to be done in the post office as the instrument heretofore used there, and which the court has declared an infringement, nor does it produce "equally beneficial results."

And the proofs show that such instrument was never used in the post-office, except experimentally, and then only since the commencement of the proceedings before the master, and was made expressly for use upon this reference. The master cannot assent to the claim made by counsel.

It is also claimed that, under the statute which allows damages in addition to profits, to be recovered in equity, no damages as such have been proven in this case or can be allowed. No damages apart or separate from profits, as the master understands it, are claimed. The claim is for the profits made by the defendant, which under the decision of the courts are the same thing as damages, and are called damages. As said by the Supreme Court of the United States, in Mowry against Whitney, 14 Wallace, 653, "Though called profits, they are really damages unliquidated until the decree is made." And in Patent Office Gazette, No. 23, vol. 15, 1879, the court says, "Gains and profits are the proper measure of damages in equity suits." Justice Strong
3135 says, "The rule of damages should be the value of the use of such a machine during the time of the illegal user." Counsel for defendant also claims that the time to be covered by the account should be limited to the time of the assignment to the complainant, Jan. 2, 1877. But there is no such limitation in the decree or order of reference. And the assignment to Campbell shows not only the assignment of the patent, but the assignment of all past profits and damages. The account should therefore cover the entire period of the use of the patent by the defendant James, since he became postmaster; that is, since April 1, 1873.

It now only remains for the master to determine what have been the pecuniary gains, profits, and advantages, which have been derived by the use of the invention in the New York post office, during the term of the present postmaster, Thomas L. James.

Mr. James himself and various or his subordinates have been examined before the master on this question. There is some variance in such testimony as to the actual saving in clerk-hire by the use of the invention, over and above what would be necessary in case the combined instrument was dispensed with, and two separate instruments to perform the same work were used. Mr. James himself says that in his judgment it would require about one-third more clerks than are now employed in the stamping departments. Upon being recalled he is asked:

"81. Q. If you had been compelled to separate these instruments, and use the postmarker by itself, and the postage-stamp canceller by itself, it of course would have required additional labor.

"A. Certainly.

"82. Q. Have you examined the subject sufficiently to form an estimate as to the amount of saving in labor in the New York post-office, by the use of the combined postmarker and stamp-canceller in place of a separate postmarker and a separate stamp-canceller?

"A. Yes, sir; I have thought the thing over.

3136 "83. Q. You can state it, if you please.

"A. I think I have stated it in my direct examination.

"84. Q. No, sir; you did not state that.

"A. It would cost from seven to nine thousand dollars more a year to cancel separately, and postmark separately."

Mr. Yeomans, the superintendent of the third division in the post-office, says that he now employs in his division twenty clerks, and that it would require, in his judgment, nine more to do the same work if separate instruments were used, and that their average would be seven hundred dollars per annum each.

Mr. Gaylor, who is general superintendent of the city department, testifies that he has in his department in the post-office building three clerks engaged in postmarking and cancelling postage-stamps on letters with the combined instruments, and that, if separate instruments were used for the same purpose, he would require one additional clerk. He testifies in relation to the different post-office stations in the city, which are also in his charge as superintendent, that the clerks in those stations are employed, each day of twenty-four hours, eighty-four hours and forty-five minutes in the postmarking and cancelling of stamps on letters. He says that in his judgment it would require one-third more time to do the work if separate instruments were used. Or, taking Station A as an example, where thirty and a half hours are consumed each day, it would take ten more hours in a day, or "it might possibly take more than that; it might take twelve hours; but I am not very competent in my opinion about that, because I do not have immediate supervision of any of that work." He has furnished a statement, which is put in evidence, showing the "average number of letters, &c., postmarked daily," "number of clerks employed," "time consumed daily in stamping."

3137 Mr. Lawrence, who is the superintendent of the foreign department of the New York post-office, says that if he was called upon to use the separate instruments for postmarking and cancelling stamps, "I should want one more man, and should make application for it."

Mr. Steele, who is assistant superintendent of the third division (same division as Yeomans), says he thinks, if separate instruments were used, it would require eight or nine more men.

Mr. Wearing, also assistant in the third division, testifies to the number of combination-stamps used in different years since 1872.

These are all the witnesses called on behalf of the complainant as to the profit or saving arising from the use of the combined instrument; and, as will be seen, all are called from the post-office itself. One other witness (Kittle) was called as an expert to give his opinion as to the use of the combined and separate instruments; and he says that it would "take just about as near double the number as you could imagine" of clerks to do the same work with the separate instruments as it would with the combined instrument.

The defendant has called eight witnesses in his behelf, all to testify as to the use of a combined instrument with the handle placed over the postmarker, and not equidistant between the two stampers. Six of these witnesses used this instrument, or saw it used in the New York post-office, within a few days of giving their testimony. It was used there experimentally for a few days, and solely for the purpose of being used as evidence on this reference. The other two witnesses were from the Philadelphia post-office, and were examined upon the hearing of the case before Judge Wheeler at Brattleboro', and their testimony is dis-

posed of by him. The master, in a former part of his report, has disposed of the question sought to be raised by this testimony.

The testimony of some of these witnesses in regard to the use of the combined instrument, as compared with the single instrument, in
3138 the New York post-office, is important. They are practical stampers there, and, as appears, the most experienced and expert. They are asked by complainant's counsel, on cross-examination, to give their experience, and do so.

Magee says he has postmarked and cancelled with combined instrument 5,500 postal cards in 55 minutes. He is asked how many he could postmark with a single instrument without the canceller in a minute, and says, "I don't know that I could do a hundred, because it is more difficult to use a single stamp."..... He is further asked:

"73. Re D. Q. If you use a separate postmarker simply on a handle, with which you can put the impression anywhere on top of the envelope, why can't you use that as rapidly?

"A. Because, the base of it being so small, you have to take more time to make an impression.

"74. Re D. Q. Have you ever tried it?

"A. Yes, sir; I tried it this morning for the first time."

Beach says, "I put the postmark and cancellation on in same time it would take to put postmark on alone with separate instrument.

"47. X Q. It takes you as much time to put that postmark on the back as it would to put the postmark and cancellation on the front?

"A. Yes, sir; just the same.

"48. X Q. So you give the postmark and cancellation mark in the same time as you give the postmark with the separate instrument?

"A. Yes, sir."

Andrews says he has stamped with combined instrument five thousand postal-cards in twenty-three minutes. He says he could not stamp the postmark much faster with a single stamp for a short time; but might stamp a third more if he used it all day.

It results from the testimony, and the master hereby finds, and reports, that the gains and profits which have arisen or accrued to the defendant James, under the decree, in the saving of salaries alone,
3139 and independent of any advantages which it appears have been derived from saving of time and labor, the better performance of the postmarking, and more complete cancellation of the postage-stamp, and speed in dispatching the mail, are as follows, viz:

The saving of the salaries of six clerks in the third division of the New York post-office from April 1, 1873, to Jan. 1, 1877 (three years and nine months), at an average annual salary each of $700.....	$15,750
The saving of the salaries of nine clerks in the same division from Jan. 1, 1877, to Jan. 1, 1880 (three years), at an average annual salary each of $700.....	18,900
The saving of the salary of one clerk (in the "foreign department"), from April 1, 1873, to Jan. 1, 1880 (six years and nine months), at the annual rate of $700.....	4,725
The salary of one clerk in the fourth division from April, 1873, to January, 1880 (six years and nine months), at the annual salary of $700.....	4,725

The salaries of four clerks in the various city stations of the post-office from April 1, 1873, to Jan. 1, 1880 (six years and nine months), at an average salary each of $700	18,900
Total	$63,000

All which is respectfully submitted.

KENNETH G. WHITE, *Master.*

Dated New York, Jan. 2, 1880.

3140 *Complainant's exceptions.*

In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY, ET AL., defendants.

Complainant's exceptions to the report of the master in this cause, Hon. Kenneth G. White, dated the 2d day of January, A. D. 1880, and filed in court by him on the 12th day of same month and year.

EXCEPTION No. 1.

For that the said master, after finding the fact to be that time was saved in the making up and in the dispatch of the mails for transportation by the use of the machine or device containing the said new and useful improvements in post-office, postmarking and cancelling hand stamps "described in the specifications, shown and illustrated in the drawings, and embraced in and covered by the several claims of the letters patent specified and described in the bill of complaint in
3141 this suit as "Division A," dated the 4th day of October, A. D. 1870, and No. 4143, the same being a reissue of the letters patent mentioned in the bill of complaint as having originally been granted and issued to Marcus P. Norton on the 14th day of April, A. D. 1863, held and decided, that he could make no allowance of damages or profits therefor because the pecuniary value of the time so saved was not proven.

Whereas the said master should have made an estimate of the value of such time, taking into consideration all the evidence and circumstances of this case, and allowed the same as damages or profits.

EXCEPTION No. 2.

For that the said master, after finding the fact to be that "more perfect and efficient work is done by the said combined patented instrument, both in the making of the postal-mark and in the cancellation of the postage stamp, than by any other instrument known or used in the post offices prior to the use of such combined instrument," held and decided that he could make no allowance of damages or profits therefor because the pecuniary value of the said superior advantages of the said combined instrument was not proven.

Whereas, the said master, taking into consideration all the evidence and circumstances of the case, should have made an estimate of the

value of said superior advantages, and allowed the same as damages or profits.

EXCEPTION No. 3.

3142 For that the said master, after finding the fact to be that the use of the said machine, or combined instrument, had conduced to the regular and speedy transmission of matter through the mails, held and decided that he could make no allowance of damages or profits therefor because the pecuniary value thereof was not proven.

Whereas the said master, taking into consideration all the evidence and circumstances of the case, should have made an estimate of the value of said advantages and allowed the same as damages or profits.

EXCEPTION No. 4.

For that the said master, after finding the fact to be that the saving of space or room was an advantage derived from the use of the said machine or combined instrument, held and decided that he could not make an allowance therefore because the "New York post-office is a building owned by the government and more space could be provided, if necessary, without additional cost either to the postmaster or the Government of the United States."

Whereas the said master should have allowed the value of said advantage as damages or profits on the evidence produced before him on that subject.

EXCEPTION No. 5.

For that the said master found the gains and profits accruing to said defendant Thomas L. James, in the third division of the New York post-office, from April 1st, A. D. 1873, to January 1st, A. D. 1877, to
3143 be the saving of the salaries of six clerks during said time, at an annual sa ary each of $700, amounting to $15,750.

Whereas the said master should have found the gains and profits during said period to be the saving of the salaries of twelve clerks at an annual salary of $700 each, amounting to $31,500.

EXCEPTION No. 6.

For that the said master found also that the gains and profits accruing to the said defendant Thomas L. James, in the said third division of the New York post-office, from January 1st, A. D. 1877, to January 1st, A. D. 1880, were the saving of the salaries of nine clerks therein at an annual salary of $700 each, amounting to $18,900.

Whereas the said master should have found the said gains and profits during said period to have been the saving of the salaries of eighteen clerks at an annual salary of $700 each, amounting to $37,800.

EXCEPTION No. 7.

For that the said master found as a part of said defendant's gains and profits the saving of the salary of one clerk in the "foreign department" from April 1st, A. D. 1873, to January 1st, A. D. 1880, at an annual salary of $700, amounting to $4,725.

Whereas the said master should have found instead thereof the saving of the salaries of two clerks at an annual salary of $700 each, amounting to $9,450.

3144 EXCEPTION No. 8.

For that the said master found as a part of said defendant Thomas L. James' gains and profits, the saving of the salary of one clerk in the "fourth division," from April, 1873, to January, 1880, a period of six years and nine months, at an annual salary of $700, amounting to $4,725,

Whereas the said master should have found instead thereof the saving of the salaries of two clerks at an annual salary of $700 each, amounting to $9,550.

EXCEPTION No. 9.

For that the said master found as a part of the said defendant's gains and profits the saving of the salaries of four clerks "in the various city stations of the post-office" from April 1st, A. D. 1873, to January 1st, A. D. 1880, a period of six years and nine months, at an annual salary of $700 each, amounting to $18,900.

Whereas the said master instead thereof should have found the saving of the salaries of eight clerks during said period at a salary of $700 each, amounting to $37,800.

EXCEPTION No. 10.

For that the said master found the total amount of said gains and profits to be $63,000.

Whereas he should have found them to be $136,000—one hundred and thirty-six thousand dollars.

3145 EXCEPTION No. 11.

For that the said master found and reported the said $63,000 as gains and profits.

Whereas he should have found the same as damages upon the whole evidence as by law provided.

EXCEPTION No. 12.

For that the said master did not assess the damages of the complainant Christopher C. Campbell at $136,000 or any other sum.

Whereas he should have found and assessed, on the whole evidence, the sum of ($136,000) one hundred and thirty-six thousand dollars, to be the damages of the complainant Christopher C. Campbell, in consequence of the infringements stated in said decretal order of September 1st, 1879.

Dated at New York this 11th day of February, A. D. 1880.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

3146 *Defendant's exceptions to the master's report, filed in court February the 7th,* 1880.

3147 In the circuit court of the United States, in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY ET al., defendants.

DEFENDANT'S EXCEPTIONS.

The exceptions of defendant James to the report of the master, Kenneth G. White, esq.

And now comes the said defendant, Thomas L. James, and excepts to the report of the master herein filed January 12, 1880, as follows:

I. Said defendant excepts to the master's finding and report, and to his statement of the account on the theory that the time to be covered by the accounting commenced when he, the said defendant, first became postmaster, to wit, in April, 1873, because said master should have found and reported, that under the case stated in the bill of complaint, such time did not begin earlier than the date of the assignment from Helen M. Ingalls to the complainant, to wit, January 2d, 1877.

II. Said defendant excepts to the master's report for that, 3148 whereas it was referred to the master by the interlocutory decree to ascertain and "take and state and report to the court an account of the gains, profits, and advantages which the said defendant Thomas L. James has in anywise received or made * * * * by reason of the infringements aforesaid," the master has failed to make any report on the subject.

III. Said defendant excepts to the master's report, for that the master should have found and reported on the uncontradicted evidence of said defendant, that he, said defendant, has not in any manner received or made any gains, profits, and advantages by reason of said infringements.

IV. Said defendant excepts to the following finding in said report: "The court has held that the patent which is the subject matter of the suit has been used by him without authority of law, and hence, that he is personally responsible, the same as any public officer is, who takes private property for public use without the authority of the owner," for that it was not referred to the master to make any finding or report upon the subject.

V. Said defendant excepts to the following finding in the report: "As to the first question raised by the defendant, that no gains, profits, or advantages are shown to have accrued to, or been received by the defendant, personally, &c., this question is disposed of by the decision of the court, as already stated in this report," for that said question was not so disposed of, and for that it was not referred to the master to determine whether or not said question was so disposed of.

VII. Said defendant excepts to the report for that, whereas it was referred to the master to ascertain, and take, and state, and report 3149 to the court an account of the "damages in addition" which the

complainant has sustained by reason of the infringements, nothing has been reported on the subject.

VII. Said defendant excepts to the report, for that, under the reference recited in the last exception, the master should have reported that no damages were proved to have been sustained by the complainant by reason of the infringements, no evidence of any damages having been put in before him.

VIII. Said defendant excepts to the finding in the report as follows: "Which (to wit, profits made by the defendant), under the decision of the courts, are the same thing as damages, and are called damages," for that profits made by the defendant are not the same thing as damages.

IX. Said defendant excepts to the following finding in the report in answer to defendant's claim, that unbalanced combined instruments were open and free to be used:

"The answers to this claim are—

"1st. That such claim was not warranted by the opinion of the court, as the master understands it.

"2d. It is not warranted by a proper construction or interpretation of the patent in controversy.

"3d. The proofs in the case show, and the decision of the court, also, shows, that Norton himself was the original and first inventor of such device: that is, a combined stamper and canceller, in which the handle was not placed in the middle, but on one side over the postage-
3150 stamper. The use therefor of such device was not open to the defendant or to the government, and for this reason no comparison in the ascertainment of profits can be made between the two."

a. Because such claim is warranted by the opinion of the court.

b. Because it is warranted by a proper construction of the patent in controversy.

c. Because neither the proofs nor the opinion of the court show that Norton was the original and first inventor of such unbalanced combinations.

d. Because the fact (if true) that Norton was such original and first inventor, is immaterial.

e. Because such unbalanced combination is adequate to the work of efficient postmarking and cancelling, at a less expense than would be necessary if separate postmarkers and cancellers were used, and was open to the defendant and to the government to use during all the period of infringement, as appears from the testimony of master's witnesses, Burchard, Bogia, Wareing, O'Connor, Magee, Beach, Andrews, and Richards; and from the testimony as to the unbalanced combined instruments used in the New York, Geneva, Buffalo, Cleveland, Janesville, Cincinnati, and Philadelphia post-offices, made and sold by J. H. and E. S. Zevely, and disclosed in the patent of Aug. 9, 1859, prior to the issuance of the patent in suit.

X. Said defendant excepts to the report, for that if saving of the expense on salaries is or is shown to be by the evidence a proper
3151 measure of gains and profits in this suit (which defendant protests is not the case), the master should have found and reported in lieu of the finding recited in the last exception, on the evidence referred to under E in that exception, that unbalanced combined instruments, adequate to the work of efficient postmarking and cancelling at a less expense than would be necessary if separate postmarkers and cancellers were used, were open and free to the defendant to use during all the period of infringement, and that comparison ought to be made between such unbalanced combined instruments and the infringing ma-

chines, in determining what saving has been made by the use of said infringing machines.

XI. Said defendant excepts to the report, for that, in lieu of the items of saving in salaries reported, the same being based upon a comparison of the infringing machines with separate postmarkers and cancelers, the master should have reported that no evidence of a saving in salaries or expense in using the infringing machines, rather than unbalanced combined instruments, is proved by the evidence to have been made.

XII. Said defendant excepts to the report, for that, in lieu of the items of saving in salaries reported, the master should have reported on all the evidence before him, that no pecuniary gains, profits or advantages were proved to have arisen or accrued by reason of the infringements.

XIII. Said defendant excepts to the finding in said report as follows: "That more perfect and efficient work is done by the patented combined instrument, both in the making of the postal mark and in the cancellation of the postage stamp, than by any other instru-
3152 ment known or used in the post-office prior to the use of such combined instrument."

a. Because it is not supported by evidence.

b. Because it is contrary to the weight of evidence.

c. Because the testimony before the master, of the witnesses, from the New York post-office shows that the improvement in postmarks and cancellation marks is not due to the patented features of the infringing machines, but to other causes.

XIV. The said defendant excepts to the finding and report of the master, "That the gains and profits which have arisen or accrued to the defendant James, under the decree, in the saving of salaries alone, and independent of any advantages which it appears have been derived from saving of time and labor, the better performance of the postmarking, and more complete cancellation of the postage stamp, and speed in despatching the mail, are as follows, viz, &c., &c."

(Here follows the items at the end of the report.*)

a. Because it is not supported by the evidence.

b. Because it is contrary to the weight of the evidence.

c. Because it is not relevant in any of the matters referred to the master by the interlocutory degree herein.

d. Because it is based on estimate, conjecture and guess, and not upon any certain data established by evidence.

3153 *e.* Because the testimony of the defendant James that he has neither made nor received any gains, profits or advantages from the use of the infringing machines, is uncontradicted.

f. Because it was not referred to the master by the interlocutory decree herein, to find and report on the question whether, as matter of law, under the decree, gains and profits (if any) which have arisen or accrued, have arisen or accrued to the defendant.

g. Because under the circumstances of the case as developed by the evidence before the master, the saving in salaries is not a proper or lawful measure of gains, profits and advantages arising from the use of the infringing machines.

h. Because the saving in salaries is not shown by the evidence to be a proper or lawful measure of gains, profits and advantages arising from the use of the infringing machines, there being no evidence to show that the end or purpose accomplished by the use of the infringing machines has a pecuniary value equal to, or greater than, or standing in

any ascertained ratio to the salaries of such additional clerks as would be required to accomplish the same end and purpose by other means.

i. Because the gains and profits itemized in this finding are arrived at (as appears by preceding parts of the report), by considering how many additional clerks would be required to accomplish the same result, if separate postmarkers and cancellers were used in lieu of the infringing machines; whereas, the unbalanced combined instruments
3154 (which, as appears from the evidence referred to under *e* in the ninth exception, were, prior the issuance of the patent in suit, used in the New York, Geneva, Buffalo, Cleveland, Janesville, Cincinnati, and Philadelphia post-offices; made and sold by J. H. & E. S. Zevely; disclosed in the patent of Aug. 9, 1859; and are capable of effective use, for the purpose of postmarking and cancelling, at a less expense than would be necessary if separate postmarkers and cancellers were used), were open and free to be used by the defendant during all the period of infringement.

XV. Said defendant excepts to the report, because the finding that the saving in salaries, itemized and reported, is gains, profits and advantages which have arisen or accrued, is inconsistent with and repugnant to the following finding:

"No evidence is produced, showing what the actual pecuniary saving by either has been, and hence none can be reported by the master"; referring to the two advantages, to wit:

First. "A postmark on the envelope, distinct and separate from the cancellation mark on the postage-stamp," and

Second. "Attaining the result in such time as not to delay the mails," which constitute the end or purpose for the accomplishment of which the infringing machines have been used.

XVI. Said defendant excepts to the finding and report, and to the statement of the account on the theory that by the use of the patented instrument the salary of one clerk has been saved in the foreign department of the New York post-office during all the time between April 1, 1873, and Jan. 1, 1880.

3155 To support this exception, said defendant claims that there was no evidence before the master that warranted this finding; and such finding is inconsistent with Mr. James' uncontradicted testimony. (Master's Rec., p. 116, fol. 375.)

XVII. Said defendant excepts to the finding and report, and to the statement of the account on the theory that by the use of the patented instrument the salary of one clerk has been saved in the 4th division of the N. Y. post-office, during all the time between April 1, 1873, and Jan. 1, 1880.

To support this exception, said defendant claims that there was no evidence before the master that warranted such finding, and such finding is inconsistent with Mr. James' uncontradicted testimony. (Master's Rec., p. 116, fol. 375.)

XVIII. Said defendant excepts to the finding and report and to the statement of account on the theory that the salaries of four clerks have been saved in the various city stations of the N. Y. post-office during all the time between April 1st, 1873, and Jan. 1st, 1880.

To support this exception said defendant claims that there was no evidence before the master that warranted such finding; and such finding is inconsistent with Mr. James' uncontradicted testimony. (Master's Rec., p. 116, fol. 375.)

Dated New York City, February 6th, 1880.

STEWART L. WOODFORD,
U. S. Attorney, for Def't James.

3156 (Endorsed:) U. S. circuit court, southern district of New York. C. C. Campbell vs. Thomas L. James and others. Exceptions to the master's report, in behalf of defendant James. Stewart L. Woodford, U. S. attorney, for defendant James. U. S. circuit court. Filed February 7th, 1880. John I. Davenport, clerk.

3157 U. S. circuit court, southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, UNITED STATES POSTMASTER, New York, and Charles Eddy.

You will please to enter my appearance for the defendant Charles Eddy, in the cause above entitled, and all papers herein are hereby demanded to be served on me, at my office, number 206 Broadway, New York City, New York.

Dated New York, December 4, 1879.

Yours, &c.,

EDWARD D. BETTENS,
Solicitor for Charles Eddy.

To JOHN I. DAVENPORT, Esq.,
Clerk of U. S. Circuit Court, Southern District of New York.
& to MARCUS P. NORTON, Esq.,
Solicitor for Complainant.
& to STEWART L. WOODFORD, Esq.,
U. S. Attorney, and Solicitor for Thomas L. James.

(Endorsed:) U. S. circuit court. Filed Dec. 4, 1879. John I. Davenport, clerk.

3158 *Charles Eddy's motion papers for leave to take further testimony.*

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

Please to take notice, that on the 13th day of December, 1879, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the court-house of said court, in New York City, upon the pleadings, evidence, and proceedings in this suit, and upon the papers copies of which are hereto attached, I shall move said court, held by Mr. Justice Wheeler, for leave to take evidence as to the cancellation of the contract dated October 7, 1871, and recorded in the Patent Office January 29, 1872, and found at pages 323-4 of complainant's printed book of exhibit proof, made by William W. Secombe, Albert C. Corse, Charles Eddy, and Jacob Shavor, and that at the same time a motion will be made that Caroline G. Caswell be made a party defendant herein.

Dated New York, Dec. 12, 1879.

EDWARD D. BETTENS,
Solicitor for Charles Eddy.

To MARCUS P. NORTON, Esq.,
Complainant's Solicitor.
STEWART L. WOODFORD, Esq.,
Solicitor for Defendant James.

(Endorsed:) U. S. circuit court. Filed Dec. 18, 1879. John I. Davenport, clerk.

3159 In the circuit court of the United States, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

STATE OF CONNECTICUT,
County of Middlesex, ss:

Charles Eddy, being duly sworn, says that he is one of the defendant's in this suit; that at the time deponent signed the stipulation by which he became a party herein deponent thought, and ever since has thought, that the proper time for introducing further evidence to sustain deponent's claim in said patent would be after or on the coming in of the master's report assessing the damages herein.

That the right to take further evidence was reserved in said stipulation and the order thereon, and in the decree herein said rights are left to be still determined. That deponent's claim rests mainly on an assignment from Marcus P. Norton to deponent, dated October 23, 1869, and recorded October 25, 1869, of a one-third interest in said patent (which assignment is in evidence, and is found at pages 17 and 18 of the printed book of the defendant James' pleadings and proofs).

That the complainant insists that deponent's rights are determined by an agreement dated October 7, 1871, recorded January 29, 1872, and found at pages 323–4 of complainant's printed book of exhibit proofs, and made by deponent and others with one William W. Secombe.

3160 That said Secombe agreement has been duly and properly cancelled in writing, and that said written cancellation is now in the possession of Jeremiah D. Green, of Troy, New York; that deponent desires that said cancellation be proved and admitted in evidence in this case.

CHARLES EDDY.

STATE OF CONNECTICUT,
County of Middlesex, ss:

MIDDLESEX, *December* 9, 1879.

Subscribed and sworn to this 9th day of December. 1879, before me.
[SEAL.] FRED. B. CHAFFEE,
Notary Public.

In the circuit court of the United States, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

STATE OF NEW YORK,
Rensselaer County, ss.:

Albert C. Corse, being duly sworn, says that he is the Albert C. Corse named in the order of this court in this suit filed September 13, 1878; that by said order Charles Eddy was made a party defendant in this suit for himself as well as in trust for Jacob Shavor and Albert C. Corse (this deponent). That it was further ordered in said order, as re-
3161 gards the complainant Campbell and said Eddy, that this cause be

heard upon the pleadings and evidence as they stood at the time said order was made, unless the court should thereafter otherwise direct; that, as regards said Campbell and said Eddy, the material evidence as it then stood was as follows:

(1.) An assignment by Marcus P. Norton to Charles Eddy, in trust, of a one-third interest in the patent dated April 14, 1863, and the reissues; that said assignment is dated October 23, 1869, and was recorded October 25, 1869, and is to be found at pages 17 and 18 of the printed book of defendant James' pleadings and proofs.

(2.) An agreement and assignment dated October 23, 1869, and found at pages 215-220 of said printed book, confirmatory of the above assignment, and by which the said Norton agreed that said Eddy, as trustee for himself, said Corse, and Shavor, was to receive $20,000 out of the first money or moneys paid by the United States for the use of said invention.

(3.) An agreement dated October 7, 1871, recorded January 29, 1872, and found at pages 323-4 of complainant's printed book of exhibit proofs, between said Eddy, Shavor, and Corse of one part, and William W. Secombe, by which the said Eddy, Shavor, and Corse agreed to receive $30,000 for their certain claim against the United States.

That thereafter, and on September 1, 1879, a decree in this suit was filed, and wherein among other things it was decreed that Christopher C. Campbell, the complainant in this suit, is the exclusive owner in trust of said patent, subject to the rights of one Helen M. Ingalls and of Charles Eddy thereto, if any.

That said Eddy did not appear in this suit by solicitor until December, 1879; that the rights of said Eddy in said patent have not been determined by said decree; that said rights remain still to be de-
3162 termined, and that there can be no final decree herein until said rights are determined; that the evidepce now in in said suit is insufficient to determine said rights; that the agreement dated October 7, 1871, has been duly and properly cancelled by all the parties to said agreement, and that said written cancellation is now in the possession of Jeremiah D. Green, of Troy, New York; that said written cancellation ought to be proved and admitted in evidence in this case.

Deponent further says that the said decree ought to be resettled, and that said Eddy, trustee, should be decreed to be the owner in fee of one-third of said patent.

ALBERT C. CORSE.

Sworn to before me this 9th day of December, 1879.

J. M. LANDON,
U. S. Commissioner, N. District N. Y.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

STATE OF NEW YORK,
Rensselaer County, ss:

Caroline G. Caswell, being duly sworn, says that by an instrument in writing, of which a copy is hereto annexed, all of the right, title,
3163 and interest of Albert C. Corse in and to the patent described in

the pleadings and the decree herein has been assigned to deponent, and that deponent is now the owner of all of said Corse's right, title, and interest therein; that deponent desires and consents to be made a party defendant in this suit.

CAROLINE C. CASWELL.

Sworn to before me December 9th, 1879.

J. M. LANDON,
U. S. Commisssoner, N. District N. Y.

Copy assignment Albert C. Corse to Caroline S. Caswell.

Know all men by these presents that Albert C. Corse, of the city of Troy, county of Rensselaer, and State of New York, party of the first part, in consideration of the sum of one dollar, and other good, valuable, and sufficient consideration to him in hand paid by Caroline G. Caswell, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over unto the said party of the second part all his right, title, and interest in and to certain patents of the United States for and improvements in certain postage-stamp cancelling apparatus now in the name of Charles Eddy, trustee, in trust and for the benefit of said party of the first part and others. The same to be held by the said Caroline G. Caswell for her own use and behoof and for the use and behoof of her legal representatives as fully and as entirely as the same would have been held and enjoyed by me if this agreement and sale had not been made.

In witness whereof I have hereunto set my hand and seal this twenty-second day of March, in the year eighteen hundred and seventy-nine.

[SEAL.] ALBERT C. CORSE.

3164 STATE OF NEW YORK,
County of Rensselaer:

On this twenty-seventh day of March, in the year eighteen hundred and seventy-nine, before me, the subscriber, personally came Albert C. Corse, to me known to be the person described in and who executed the within instrument, and who acknowledged that he executed the same.

EDWARD F. LEAHY,
Com. Deeds, Troy, N. Y.

Affidavit in opposition to motion.

In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George H. Williams, being duly sworn, says that as counsel for the complainant he made the agreement with the said Charles Eddy, dated June, 1878, by which said Eddy agreed to become a party to this
3165 suit, and that said agreement was made and executed and all the agreements and admissions by complainant therein were made

upon the distinct understanding that the assignment or agreement between Secombe, Eddy, Shavor, and Corse, dated October 7th, 1871. was a valid and subsisting agreement; and that at that time neither affiant or complainant, as affiant is informed and believes, had any knowledge or information that said assignment or agreement had been cancelled as alleged in the affidavits filed in support of this motion. And affiant, upon information, states as his belief that said assignment or agreement has never been so cancelled.

Affiant further shows that the alleged claim now made by said Eddy and Corse that said assignment or agreement was then cancelled, is a surprise to and a fraud upon complainant.

Affiant further shows that said Eddy was duly served with a copy of the order under which this case was heard by Judge Wheeler on or about the 20th day of July, A. D. 1879, and signed the stipulation for that purpose, and that he neglected and refused to be represented at such hearing, and that he has so neglected and refused since he was made a party to this suit until the present time; affiant therefore insists that the alleged claims of said Eddy should be determined upon the pleadingss and evidence in the case as they now stand; but affiant says that if said Eddy is allowed to abandon and disprove his admissions in said agreement of June, 1878, for the purpose indicated in this motion, said allowance should be made upon terms, to wit, that said complainant shall not be bound by his agreements and admissions in said agreement of June, 1878; and that the whole question as to the alleged rights of said Eddy shall be open as though no such agreement had been made; and that said allowance shall only be made upon the payment by said Eddy of a reasonable amount of the costs, disbursements, and charges in this case, to be fixed by the court.

And affiant further says that Mr. J. A. Cipperly, an attorney
3166 and counsellor at law, residing at and doing business in the city of Troy, N. Y., was present at the time of the making of said agreement of June, 1878, as the counsel of the said Charles Eddy, and that said Eddy advised with him, said Cipperly, as to the stipulations and admissions contained in said agreement, and that said Cipperly has since notified this affiant, in writing, that he was the counsel of said Eddy in this cause, and that said Cipperly signed his name to said agreement as a witness to the signature of the said Charles Eddy.

(S'g'd) GEO. H. WILLIAMS.

Sworn to before me this 13th day of Dec., 1879.

(S'g'd) JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

(Endorsed:) Filed in open court Dec. 23, 1879. U. S. circuit court. Filed Dec. 23, 1879. John I. Davenport, clerk.

Circuit court of the United States, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

The motion of the defendant Eddy for leave totake further testimony in respect to the rights of the orator and himself to the patent in suit, respectively, has been heard and considered.

He became a party to the suit by stipulation with the orator, in which it is stated that he claims his right to extend to one-third interest by virtue of an assignment dated October 23d, 1869, and that the orator claims his right is limited by an agreement dated October 7th,
3167 1871, both of which were in evidence when the stipulation was made, and that his right should be determined by the court upon the pleadings and evidence then in the case, unless the court should otherwise direct.

By the terms of the agreement of October 7th, 1871, the right of Eddy was to be $30,000, to be paid out of moneys which might be received for the patent, and if less than $62,000 should be received, a less sum in proportion. Upon that evidence his apparent right would be limited according to the later agreement. His motion is founded upon a proposition to show that this agreement had been cancelled before suit. The stipulation seems to contemplate that further evidence on this subject might be directed by the court, which would ordinarily be done only upon motion of a party. It seems proper enough that this motion should be granted and the evidence admitted, with evidence on the same subject in behalf of the orator if desired. Should he introduce this evidence and prevail upon it to the extent of showing that he is entitled to one-third interest, then this suit will be for his benefit in that proportion, while, as it now apparently stands, he has no interest unless the orator recovers. In the former aspect, if he would stand in the orator's suit entitled to one-third of its advantages he ought to bear one-third of its burdens. He should therefore be admitted to show that interest upon terms that if he succeeds he shall assume his share of the expenses of the suit.

The motion is therefore granted, upon terms that he is to pay one-third of the expenses accruing in the prosecution of this suit against the other defendant, until the evidence is taken and, under the stipulation, passed upon by the court, and in case he prevails upon the evidence so as to establish his right to one-third interest, then that he pay the same share of the expenses during the prosecution of the suit. There was included in this motion a further motion to make Caroline G. Caswell a party to the suit, on the ground that she has acquired some interest in the patent. Whatever interest she appears to
3168 have acquired is a mere right to share with Eddy what he may obtain, and that has been acquired long since the pendency of this suit. Therefore it does not appear to be necessary at all, even if proper, to make her a party.

Therefore, that part of the motion is denied.

(Signed) HOYT H. WHEELER.

(Endorsed:) U. S. circuit court. Filed Dec. 23, 1879. John I. Davenport, clerk.

At a stated term of the circuit court of the United States for the southern district of New York, held at the city of New York, on the 23d day of December, 1879.

Present Hon. Hoyt H. Wheeler, justice.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

On reading and filing the notice of motion made by Charles Eddy, dated the 13th day of December, 1879, and the affidavits of Charles

Eddy, Albert C. Corse, and Caroline G. Caswell, verified on the 9th day of December, 1879, and the affidavit of George H. Williams, and on all the pleadings, proceedings, and evidence herein, and after hearing Francis C. Barlow, esq., of counsel, in support of said motion, and George H. Williams, esq., of counsel, in opposition, and due deliberation being had thereon, now, on motion of Edward D. Bettens, esq., solicitor for Charles Eddy, it is

Ordered, That the defendant Charles Eddy be, and he hereby is given leave to take and file testimony in this suit, as to the cancellation of the contract signed by William W. Secombe, Charles Eddy,
3169 Jacob Shavor, and Albert C. Corse, dated October 7th, 1871, and printed in complainant's printed book of exhibit proofs at pages 323-4, provided that said Eddy or his solicitor herein, within five days from the entry of this order, file with the clerk of this court a written assent to the terms hereinafter mentioned, upon which this order is granted. If said written assent be not so filed in said five days, then said motion is denied. The terms upon which this order is granted are:

(1.) That the complainant, Christopher C. Campbell, have leave to introduce testimony to disprove said cancellation.

(2.) That the defendant Charles Eddy pay one-third of the legitimate expenses, to be taxed by the clerk, subject to the revision of this court, accruing in the prosecution of this suit against the defendant James, between the date of the filing of the written assent above mentioned and the time when said evidence is taken and passed upon by the court, under the stipulation by which said Eddy became a party defendant in this suit, as the same shall accrue.

(3.) That in case said Charles Eddy prevails upon the evidence in this suit so as to establish his right to one-third interest in said patent, then the said Charles Eddy is to contribute towards the expenses of the carrying on of this suit to the extent of one third thereof, as the same accrues, to be taxed by the clerk, subject to the revision of this court, or stand upon his rights the same as if this motion had not been granted.

And it is further ordered that said testimony be taken and filed in the manner usual in suits in this court, but that the time for so taking and filing said testimony be limited to thirty days from the date of the filing of the written assent above mentioned, unless the court or a judge thereof shall extend said time.

3170 And it is further ordered that Irving Browne, esq., of Troy, New York, be and he hereby is appointed a special examiner of this court to take the testimony at Troy, New York, under the 67th equity rule as amended, of such competent witnesses and of such documentary proofs as may be brought before him on the part of the defendant Charles Eddy, in proof of said cancellation, or of the complainant, Christopher C. Campbell, to disprove said cancellation.

And it is further ordered that Kenneth G. White, esq., of New York City, be, and he hereby is, appointed a special examiner of this court, to take the testimony in Connecticut, under the 67th equity rule as amended, of such competent witnesses and of such documentary proofs as may be brought before him on the part of the defendant Charles Eddy, in proof of said cancellation, or of the complainant, Christopher C. Campbell, to disprove said cancellation.

And it is further ordered that said Eddy and Christopher C. Campbell, or either of them, may examine such witnesses or take such testimony in proof or disproof of said cancellation, before a standing examiner of this court upon proper notice given.

The motion to make Caroline G. Caswell a party defendant herein is hereby denied, without costs.

(Signed) HOYT H. WHEELER.

(A copy.)

(Endorsed:) U. S. circuit court. Filed Dec. 23, 1879. John I. Davenport, clerk.

Circuit court of the United States, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

Please to take notice, that the terms upon which the order in
3171 this suit was granted, which order is dated December 23, 1879, and was entered and filed in the office of the clerk of this court on or about December 23, 1879, and gives leave to the defendant Eddy to take testimony as to the cancellation of a certain contract, and to the complainant, Campbell, to disprove said cancellation, are each and all hereby assented to by the defendant, Charles Eddy and Edward D. Bettens, as the solicitor herein for said Eddy. The said terms are specified in said order.

Dated New York, December 26, 1879.

EDWARD D. BETTENS,
As Solicitor for the Defendant, Charles Eddy, in this Suit.

To JOHN I. DAVENPORT, Esq.,
Clerk of U. S. Circuit Court.
MARCUS P. NORTON, Esq.,
Solicitor for Complainant Campbell.
STEWART L. WOODFORD, Esq.,
Solicitor for Defendant James.

(Endorsed:) U. S. circuit court. Filed Dec. 26, 1879. John I. Davenport, clerk.

Order to show cause, and papers used thereon, why Horace T. Caswell and Samuel R. Clexton should not be made parties defendants herein.

U. S. circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

On reading the affidavits of Horace T. Caswell, Samuel R. Clexton and Edward D. Bettens, and the papers referred to in said affida-
3172 vits, and on all the papers, pleadings and proceedings in this suit, and on motion of Edward D. Bettens, solicitor of record for the defendant, Charles Eddy, and of Horace T. Caswell and Samuel R. Clexton, appearing by said Bettens as counsel, it is

Ordered, that the complainant and the defendant Thomas L. James show cause before this court, to be held by Judge Hoyt H. Wheeler, at the United States court-house, post office building, in the city and State of New York, on the 21st day of January, 1880, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why

Samuel R. Clexton and Horace T. Caswell be not made parties defendants in this suit, under the same stipulations and subject to the same orders by which the said Eddy became and is a party in this suit, or why the said solicitor may not continue to act in this suit in the interest of said Caswell and Clexton, and at the sole expense of said Caswell and Clexton, or why Albert C. Corse be not made a party defendant, or for such other relief as to this court may seem just.

Jan'y 18, 1880.

SAMUEL BLATCHFORD.

(Endorsed:) Service of copies of within admitted Jan'y 23, '80. Geo. H. Williams, counsel for compl. U. S. circuit court. Filed Jan. 26, '80. John I. Davenport, clerk.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Edward D. Bettens, being duly sworn, says, that he is the solic-
3173 itor of record for the defendant, Charles Eddy, herein. That on or about November 20, 1879, deponent was retained by Horace T. Caswell (whose affidavit is hereto annexed) to attend to his interests in this suit. That thereafter deponent fully informed Charles Eddy of said retainer, and asked said Eddy to unite with deponent in attending to said interests. That thereupon, on December 4, 1879, the said Eddy retained deponent as his solicitor in this suit. That on said day deponent did appear in this suit for said Eddy, and ever since has been actively engaged in protecting the Eddy interests herein. That on or about January 12, 1880, said Eddy notified deponent to do nothing more in this suit in his name. Deponent believes that such notification will work great harm to the interests Eddy has hitherto represented, unless the relief prayed for by Horace T. Caswell and Samuel R. Clexton (whose affidavits are hereto annexed) be granted. That an examination of witnesses in behalf of said Eddy interests is now pending, and the time for taking said examination is limited to about twenty days.

That the complainant herein has a motion returnable January 21, 1880, which will require a week's preparation to meet.

That one suit is now pending affecting said Eddy interests (a suit begun by one Secombe), and another suit is threatened against said interests. That deponent believes the Eddy interests will be seriously imperilled, if not sacrificed, if said interests are not immediately and actively attended to. That said Eddy was made a party as trustee for himself, Jacob Shavor and Albert C. Corse. That Corse's interests are now vested in Horace T. Caswell, as appears by said Caswell's affidavit hereto annexed. That all of Eddy's interests are vested in Samuel R. Clexton, as appears by the affidavit of Samuel R. Clexton, hereto annexed. That said Caswell and Clexton are willing to pay all the necessary expenses of protecting their interests in this suit.

That said Eddy is a bankrupt, having made a general assign-
3174 ment for the benefit of his creditors, under the insolvency laws of the State of New York, and is now and has long been out of the State of New York.

EDWARD D. BETTENS.

Sworn to before me this 16th day of January, 1880.

CORNELIUS D. GOULD,
Notary Public, New York Co.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

STATE OF NEW YORK,
Rensselaer County, ss:

Albert C. Corse, being duly sworn, says that he is the Albert C. Corse named in the order of this court in this suit, filed September 13th, 1878, and that deponent desires and consents to be made a party defendant in this suit.

ALBERT C. CORSE.

Sworn to before me this 9th day of December, 1879.

J. M. LANDON,
U. S. Commissioner, N. Dist. of N. Y.

3175 U. S. circuit court, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

CITY AND COUNTY OF NEW YORK.
Southern District of New York, ss:

Samuel R. Clexton, being duly sworn, says that he has read the affidavit of Horace T. Caswell, hereto annexed, and knows the contents thereof, and believes that all the allegations therein made are true. Deponent further says that on January 7th, 1880, he became by purchase the owner of all the right, title, and interest of Charles Eddy in and to the patent referred to in said affidavit, as appears by a copy of the assignment hereto annexed, marked Exhibit A. That by such purchase deponent became the owner of two-ninths of said patent; that this deponent became the owner of all the interest in said patent which Charles Eddy and Jacob Shavor acquired by the assignment dated October 23d, 1869, referred to in said affidavit; that deponent and Horace T. Caswell are the full and exclusive owners of the one-third of said patent which was assigned to said Eddy as trustee by Marcus P. Norton by said assignment, dated October 23d, 1869.

That said Charles Eddy no longer has any right, title, or interest in said patent, except that he is the named trustee of said one-third interest; that said Eddy refuses to protect said interest, and for that reason, and also for the reasons set forth in said affidavit of Hor-
3176 ace T. Caswell, deponent desires to be made a party defendant to this suit, with permission to protect his interest in said suit at his own expense.

S. R. CLEXTON.

Sworn to before me this 15th day of January, 1880.

GEORGE W. VULTEE,
Notary Public, City and Co. of N. Y.

Exhibit A is at page 133, and is marked Defendant Clexton's Exhibit, Cipperly & Stannard assignment.—J. A. S., ex'r.

In the circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Horace T. Caswell, being duly sworn, says: That he is the owner of one-ninth of the patent specified hereafter.

That this is a suit brought for relief against infringements of letters patents for an improvement in post-office, postmarking, and canceling hand-stamps, originally granted to Marcus P. Norton April 14, 1863, reissued to Jacob Shavor and Albert C. Corse August 23d, 1864, and to Helen M. Ingalls October 3d, 1870, in Division A, numbered
3177 4143; that the complainant is the assignee of said Helen M. Ingalls, and that this suit was begun by said complainant about July, 1877, against the defendant James only; that said defendant set up in his answer, as one of his defences, the non-joinder of Charles Eddy as a party to this suit; that said Charles Eddy, as trustee for himself and said Shavor and Corse, was the owner in fee of an undivided one-third part of said patent, by virtue of an assignment to him as such trustee, made by said Marcus P. Norton, dated October 23, 1869, recorded in the Patent Office October 25, 1869, and in evidence in this suit and printed at pages 17, 18, Vol. II, Defendants' Exhibits.

That thereafter, on the 13th day of September, 1878 (over one year after this suit was begun), on motion of complainant, Charles Eddy was made a party defendant in this suit, as trustee for himself, said Shavor and said Corse; that said motion, the papers used thereon and the order thereon are printed at pages 463–473, Complainant's Book of Exhibits; that thereafter, and on the 1st day of September, 1879 (nearly one year after said Eddy was made a party to this suit), an interlocutory decree, establishing the validity of the patent, and directing a reference to a master to assess damages, was filed.

That said Eddy had not, up to that time, appeared by solicitor or counsel in this suit; that he did not appear personally or by solicitor or counsel at the final hearing; that the rights of said Eddy as trustee or individually were never, up to the filing of that decree, brought to the notice of said court, except as aforesaid. That the opinion of the court on said final hearing makes no allusion to the rights or interests of said Eddy in said patent except as hereinafter stated. That in consequence of said neglect of said Eddy to appear by solicitor, or counsel, or individually in said suit and at said hearing, the court did not understand what Eddy's rights were. That in said decree the court decreed that the complainant Campbell was the exclusive owner in trust of said patent subject to the rights of Helen M. Ingalls; and of Charles Eddy, if
3178 any. That such a decree is manifestly erroneous, inasmuch as said Eddy, as trustee aforesaid, was at the time of filing of said interlocutory decree, the owner in fee of one undivided one-third of said patent by virtue of the assignment dated October 23, 1869, above referred to, and found at pages 17–18, Vol. II, of defendants' exhibits. That on March 22, 1879, the said Albert C. Corse (one of Eddy's cestuis qui trust herein) transferred all his right, title, and interest in said

patent to Caroline G. Caswell, as appears by an assignment, a copy of which was filed herein on or about December 26, 1879. That by assignments, copies of which are hereto annexed, and marked Exhibits B and C, deponent is now the owner of said interest. That as the attorney in fact of said Caroline G. Caswell, deponent has made frequent and earnest endeavors to induce said Eddy to attend to his interest as trustee of said one-third part of said patent, and to appear in said suit, and to defend and protect and maintain said interests; but that said Eddy steadily neglected to attend to said interests, or to appear in said suit. That thereupon, as said attorney in fact, deponent retained Edward D. Bettens, esq., a solicitor of this court, to protect as far as possible his interests in said suit represented by said Eddy. That retainer was on or about November 20, 1879. That said Bettens thereafter was retained by said Eddy as solicitor herein. That said solicitor on examining the evidence, papers, and proceedings herein, discovered that there was a conflict between said complainant and said Eddy as to the ownership of said patent. That said Eddy claimed that his interests were fixed and determined by the assignment dated October 23, 1869, aforementioned, and printed at pages 17, 18, of defendants' exhibits, (Vol. II), and that he was the owner in trust of one-third of said patent pursuant to said assignment.

That on the other hand said said complainant claimed that said Eddy's rights were limited by a contract, printed at pages 323–4 of complainant's exhibits (said contract being one entered into by said Eddy,
3179 Shavor, Corse, and one Secombe). That said contract was a sort of pooling arrangement between said parties, by which, in case of their collecting certain moneys from the United States, on a certain claim, said moneys were to be divided between said parties in manner specified in said contract. That the complainant claims that said contract is an assignment of Eddy's interest to said Secombe, and that Eddy's interest' in said patent are determined by that contract. That deponent considers such claim of the complainant as an absurd one. But that inasmuch as complainant made such a claim, deponent and said solicitor deemed it advisable to obtain permission from the court to prove that said contract was duly canceled. That after argument said permission was duly given by order of court, entered on or about December 23, 1879. That the time to take said testimony was limited to thirty days from December 26, 1879. That said examination was set down for January 6, 1880, and was adjourned, at request of complainant, to January 15, 1880. That said complainant has served notice of motion on said solicitor for January 21, 1880, for an order to take testimony to prove that said Eddy is entitled to no rights at all under said assignment of October 23, 1869, above mentioned. That deponent has expended large sums of money and given much of his time in endeavoring to protect the interest of said Eddy as trustee herein, and that said Eddy has been fully informed of said expenses and of the active interest taken by deponent herein. And said Eddy has duly authorized said solicitor to do all the acts above mentioned, but has taken no further interest therein, and has made no payments to said solicitor or for the expenses herein. That on or about the 31st day of March, 1879, the said Eddy made a general assignment for benefit of his creditors under the laws of the State of New York. That the assignees of said Eddy, under a general assignment, on or about the 7th day of January, 1880, sold and transferred all of said Eddy's right, title and interest in said patent to Samuel R. Clexton. That since said sale the said solicitor has been notified by said Eddy

3180 to no longer act as solicitor for said Eddy herein; that the interests of deponent are in imminent peril on account of said Eddy's refusal to permit further proceedings in his name herein, and said interests will be certainly sacrified and lost unless said solicitor be permitted to proceed with said examination, and to oppose said motion and to actively attend to said interests. And deponent asks that he be made a party defendant herein, or that said solicitor be permitted to proceed herein and take said examination and protect said interests at the expense of deponent.

That at the time when said Eddy made a motion to take testimony herein (to wit, on or about December 22, 1879), a motion was also made that said Caroline G. Caswell be made a party defendant herein; that said motion was made simply on the ground that said Caroline G. Caswell was a proper and necessary party to this suit, because she was a cestui que trust to Eddy as trustee of the interests involved in this suit, and the rule in equity cases is that both the trustee and cestui que trust are proper and necessary parties to a suit affecting the trust property; that said motion was denied, on the ground that her interest "appears to be a mere right to share with Eddy what he may obtain, and that said right has been acquired long since the pendency of this suit."

That deponent's rights are the same that Albert C. Corse (the assignor's of Caroline G. Caswell), possessed by said assignment, dated October 23, 1869, and that said Corse Caswell interests are really eight years older than this suit; that the reason why this motion is now made, is not merely because deponent is a cestui que trust of said patent (the ground of former motion to make Caroline G. Caswell a party), but because his trustee, said Eddy, has neglected and still neglects his trust, and now refuses to protect deponent's interest in said patent in this suit, and because said Eddy has no title in said patent except that of a naked trustee.

3181 That the complainant's motion for leave to take testimony to prove that the said assignment, dated October 23, 1869, is invalid, comes up for argument before Mr. Justice Hoyt H. Wheeler, on January 21, 1880; that deponent asks for an order to show cause, returnable before Mr. Justice Hoyt H. Wheeler, January 21, 1880, New York City, why deponent and said Samuel R. Clexton should not be made parties defendants to this suit, under the stipulation and orders by which said Eddy is made a party, and why deponent and said Clexton should not be permitted to oppose said motion of complainant and to protect their interests in this suit at their own expense; or why Albert C. Corse (whose consent to be made a party defendant is hereto annexed) be not made a party defendant, in order that through said Corse the interests of deponent and said Clexton may be protected.

H. T. CASWELL.

Sworn to before me this 16th day of January, 1880.

CORNELIUS D. GOULD,
Notary Public, New York Co.

EXHIBIT B.

I hereby sell, assign, and transfer to Herbert M. Caswell, of Troy, New York, all my right, title, and interest in law and in equity, in and to all those certain inventions and improvements in postmarking and canceling stamps, and of, and in and to letters patent of the United States of America issued therefor, April 14, 1863, to Marcus P. Norton,

and of, and in and to all the several and respective reissues and assignments thereof, and agreements thereto, and of, and in and to all and any rights, claims, and demands for the past and future use thereof, or for any infringements thereof.

CAROLINE G. CASWELL. [SEAL.]

Sealed and delivered this 16th day of January, 1880, in the presence of—

HORACE L. HICKS.

3182 EXHIBIT C.

I hereby sell, assign, and transfer to Horace T. Caswell, of Troy, New York, all my right, title, and interest, in law and in equity, in and to all those certain inventions and improvements in postmarking and canceling stamps, and of and in and to letters patent of the United States of America issued therefor, April 14, 1863, to Marcus P. Norton, and of and in and to all the several and respective reissues and assignments thereof, and agreements thereto, and of and in and to all and any rights, claims, and demands for the past and future use thereof, or for any infringements thereof.

HERBERT M. CASWELL.

Sealed and delivered this 16th day of January, 1880, in the presence of

HORACE L. HICKS.

At a stated term of the circuit court of the United States for the southern district of New York, held on the 24th of January, 1880, at the court-house thereof, New York City.

Present, Hon. Hoyt H. Wheeler, justice.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY.

On reading and filing the order to show cause, granted herein by Hon. Samuel Blatchford, dated January 17, 1880, and the affi-
3183 davit of Edward D. Bettens, verified January 16, 1880; the affidavit of Albert C. Corse, verified December 9, 1879; the affidavit of Samuel R Clexton, verified January 15, 1880, and the affidavit of Horace T. Caswell, verified January 16, 1880, and the papers referred to in said affidavits, and on the pleadings, papers, and proceedings herein, and after hearing Edward D. Bettens, esq., of counsel in favor of the motion, and George H. Williams, esq., of counsel for complainant, and Samuel B. Clarke, esq., of counsel for defendant James, being present, and having been heard thereon, now on motion of Edward D. Bettens, of counsel for Horace T. Caswell and Samuel R. Clexton, it is

Ordered, that the said Horace T. Caswell and Samuel R. Clexton be, and the same are hereby, made parties defendants to this suit, subject to same orders and stipulations by and under which Charles Eddy, as trustee for himself, Jacob Shavor, and Albert C. Corse, became and is a party defendant to this suit, with the same rights and privileges and

subject to the same obligations and liabilities as the said Eddy, as they appear in the proceedings in this suit.

HOYT H. WHEELER.

Agreed to as to form.
EDWARD BETTENS,
Of Counsel for Caswell & Clexton.
GEO. H. WILLIAMS,
Of Counsel for Compl't.
STEWART L. WOODFORD,
U. S. Attorney and Solicitor for def't James.

(Endorsed:) U. S. circuit court. Filed Jan. 26, 1880. John I. Davenport, clerk.

3184 *Stipulation and order under which Charles Eddy is a defendant in this suit.*

In the circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

Whereas it is alleged in defendant's answer herein, that Charles Eddy is interested in the subject-matter of this suit, in trust for himself, Albert C. Corse, and Jacob Shavor; and whereas said defendant in his said answer prays that said Charles Eddy may be made a party to this suit; and whereas said complainant is willing that said prayer should be granted so far as it may be necessary to bring said Eddy before this court for the proper adjudication thereby of all his claims or interests in the subject-matter of this suit: Now it is hereby stipulated and agreed, by and between said complainant, Christopher C. Campbell and said Charles Eddy, that said Eddy, by an order of this court, shall be made a party to this suit, as prayed for in said answer, and the filing of this stipulation in said court in the above-entitled case shall be held and treated by the court as his voluntary appearance for that purpose and for all the purposes of this suit, as fully in all respects as though he was an original party thereto. It is understood that said Eddy claims that his rights and interests in the subject-matter of this suit are fixed
3185 and determined by an assignment from Marcus P. Norton to him in trust of a one third interest in the patent, dated April 14, 1863, and its reissues referred to in the pleadings in this case, which said assignment is dated October 23, 1869, and a certified copy of which is now in evidence, and by a contract of even date with said assignment now in evidence, and that said complainant denies this, and claims that said Eddy's rights and interests are fixed and determined by an instrument in writing, dated October 7, 1871, and executed by Charles Eddy, Jacob Shavor, Albert C. Corse, and W. W. Secombe, a certified copy of which is now in evidence. And it is further stipulated and agreed that upon the pleadings and evidence as they now stand, and without any further evidence or pleadings in the case, unless the court shall otherwise direct, said court shall decide as to what the rights and interests of said Eddy in the subject-matter of this suit are, and shall make such decree in respect thereto as equity and good conscience may require. And it is further agreed that if there is recovery in said suit against said de-

fendant James, the court shall determine the rights respectively thereto of complainant and said Eddy, as equity and good conscience may require. And said complainant further agrees that the said assignment of October 23, 1869, from Marcus P. Norton to Charles Eddy, in trust as aforesaid, was a valid assignment, not affected by any prior or cotemporaneous assignment by said Norton to Helen M. Ingalls, or other written agreement to which said Eddy is a party, excepting the one hereinbefore referred to and dated October 7, 1871. And it is further understood that all costs awarded against said complainant, and counsel fees, are first to be paid out of any recovery in said case, and that no costs are to be adjudged against said Eddy.

Witness our hands and seals this day of June, 1878.

CHARLES EDDY. [L. S.]
CHRISTOPHER C. CAMPBELL. [L. S.]

Witness as to Charles Eddy:
J. A. CIPPERLY.

3186 Witness as to Christopher C. Campbell:
ALLEN C. SMITH,
Canaan, N. Y.
GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.
MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.

I hereby consent to and approve the within instrument.
HELEN M. INGALLS.

Witness:
H. GRACE NORTON.

I hereby consent to and approve the within instrument.
MARCUS P. NORTON.

Witness:
IRVING BROWNE.
JULY 17, 1878.

Received for record July 19, 1878, and recorded in Liber $E^{2\ 3}$, page 255, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

Ex'd, F. C. T.
U. S. A. Patent Office, July 19, 1878.

3187 UNITED STATES OF AMERICA,
Northern District of New York, ss:

On the 11th day of September, A. D. 1878, before the undersigned, a United States commissioner in and for said district, came the above-named Charles Eddy, who is personally known to me to be the identical person who executed the foregoing agreement as Charles Eddy, and acknowledged to me that he had executed the same for the purposes therein named. Witness my hand and official seal, at Troy, Rensselaer County, in said State, at the date above given.

[SEAL.] N. B. SYLVESTER.
United States Commissioner.

(Endorsed:) U. S. circuit court. Filed Sept. 13, 1878. John I. Davenport, clerk.

Motion to make Charles Eddy a defendant.

In the circuit court of the United States, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, DEFENDANT.

Order by the court.

Now comes the said complainant, by George H. Williams, his
3188 counsel, and the defendant, by S. B. Clarke, assistant U. S. district attorney, his counsel, and the motion heretofore continued from the 23d of last July by consent of parties, came on to be heard upon a stipulation between said complainant and said Eddy, filed herein, and an affidavit by said counsel for complainant filed therewith, as well as upon the pleadings and evidence in this case, and after hearing said counsel for complainant in support of said motion, and said counsel for defendant in opposition thereto, and it appearing that said defendant in his answer had prayed that said Eddy be made a party to this suit, and the said Eddy in said stipulation claiming to have an interest in the subject matter of this suit, agrees in said stipulation that the filing thereof in this cause shall be held and treated by the court as his voluntary appearance for all the purposes of this suit, as fully in all respects as though he was an original party thereto; it is considered upon the foregoing and the pleadings and evidence in the case, that the said motion of complainant ought to be granted; and it further appearing that said Eddy cannot be made one of the complainants herein, it is ordered and adjudged, that the said Eddy be, and he is hereby, made a defendant in this suit, for himself, as well as in trust for Jacob Shaver and Albert C. Corse, for all the purposes thereof, as fully in all respects as though he were an original party thereto. And it is further ordered, as regards the complainant Campbell and defendant Eddy, that this cause, the said Eddy consenting thereto in said stipulation, be heard upon the pleadings and evidence as they now stand, unless the court shall hereafter otherwise direct.

(Signed) SAMUEL BLATCHFORD.

True and correct copy of an order of the court on file, and of the whole thereof.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

Exd., T.

(Endorsed:) U. S. circuit court. Filed September 13th, 1878. John I. Davenport, clerk.

3189 In the circuit court of the United States of America, southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES AND CHARLES EDDY, DEFENDANTS.

To the complainant, Christopher C. Campbell, and Marcus P. Norton, esq., his solicitor; and to the defendant Thomas L. James, and Stewart L. Woodford, esq., solicitor for said Thomas L. James:

GENTLEMEN: You, and each of you, will please to take notice, and

due notice is now and hereby given to you and each of you, that on Tuesday, the 6th day of January, 1880, at 10½ o'clock in the forenoon of that day, pursuant to and by virtue of the order of this court, dated December 23d, 1879, made in this suit, and filed in the office of the clerk of this court, on or about December 23d, 1879, I shall commence the taking of evidence and proofs, on the part of, and in behalf of the above-named defendant, Charles Eddy, in this cause, as to the cancellation of the contract signed by William W. Secombe, Charles Eddy, Jacob Shavor and Albert C. Corse, dated October 7th, 1871, and printed in complainant's printed book of exhibit proofs, at pages 323–4. And I shall continue the examination from day to day until said proofs have been completed.

You will further take due notice that the said evidence and proofs in this cause so to be taken on the part and behalf of said defendant Eddy will be so taken by and before John A. Shields, esq., one of the standing examiners of this court, at his office in the new post-office and
3190 court-house building of said United States, in the city of New York, and in room No. 78 of said building. The same to commence on said 6th day of January, 1880, at 10½ o'clock in the forenoon of that day.

You will also take notice that the said evidence and proofs so to be taken will be taken under and in pursuance to and with the 67th equity rule of this court, and all amendments thereof. You will also please to take notice that all evidence and proofs so taken will be duly filed in the office of the clerk of this court; and the same being so filed will be used at and upon a hearing in this cause, under the stipulation by which said Eddy became a party defendant in this suit, and under the said order of December 23d, 1879.

Dated New York, December 30th, 1879.

Yours, &c.,

EDWARD D. BETTENS,
Solicitor for Charles Eddy.

An application having been made to the undersigned, one of the standing examiners of this court, by the solicitor of the defendant Charles Eddy, to take evidence and proofs in the aforesaid entitled cause, in pursuance of the above and foregoing notice of time and place for the taking of the testimony on the part and behalf of said defendant Eddy, as stated in the said notice, bearing date this 30th day of December, 1879:

It is now and hereby ordered that the examination of witnesses, and the taking of documentary proofs, and the filing of exhibits, or other evidence according to said notice, take place before me at the time and place designated in the said notice. You are requested to be present to attend the same for and on the part of the parties to this suit that you respectively represent, if you shall deem it best so to do.

Dated New York, December 30th, 1879.

JOHN A. SHIELDS,
Examiner, &c.

To MARCUS P. NORTON, Esq.,
Solicitor for Complainant.
STEWART L. WOODFORD, Esq.,
Solicitor for Defendant James.

3191 At a stated term of the circuit court of the United States for

the southern district of New York, held at the city of New York, on the 5th day of January, 1880.

Present, Hon. Samuel Blatchford, justice.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND CHARLES EDDY. } In equity.

The examination of witnesses in behalf of defendant Eddy, having been set down for January 6, 1880 (Tuesday), before John A. Shields, esq., standing examiner, pursuant to an order of this court in this suit dated December 23, 1879, and, at complainant's solicitor's request, the said examination having been adjourned to January 15, 1880, same hour and place, and the time in which the examination under said order of December 23, 1879, is to be taken, being limited to thirty days from December 26, 1879, now, on consent of complainant's solicitor, and on motion of Edward D. Bettens, solicitor for defendant, Eddy, it is

Ordered, that the time for taking the testimony, under and pursuant to said order of December 23, 1879, be, and the same is hereby extended to forty-five days from December 26, 1879, making fifteen additional days to the time in which said testimony is to be taken.

SAMUEL BLATCHFORD, *J.*

Entry of above is consented to.
EDWARD D. BETTENS,
Solicitor for Defendant Eddy.
MARCUS P. NORTON,
Solicitor for Complainant.
STEWART L. WOODFORD,
Solicitor for Defendant James.

(Endorsed:) U. S. circuit court. Filed Feb. 10, 1880. John I. Davenport, clerk.

3192 *Testimony taken and filed by Horace T. Caswell and Samuel R. Clexton, under the orders dated December 23, 1879, and January 24, 1880.*

United States Circuit Court. Southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS JAMES AND CHAS. EDDY. }

Testimony taken on the part of the defendant Charles Eddy, pursuant to order of court, dated December 23, 1879, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, esq., a standing examiner of said court.

NEW YORK, *January* 6, 1880.

The defendant, Charles Eddy, appeared by his solicitor, Edward D. Bettens, esq.

Examination adjourned at the request of solicitor for complainant, Marcus P. Norton, esq., to January 15, 1880.

NEW YORK, *January* 15, 1880—11 o'clock a. m.

Examination adjourned to January 23, 1880.

3193 NEW YORK, *January* 23, 1880—11 o'clock a. m.

Met pursuant to adjournment.

Present: Hon. George H. Williams, of counsel for complainant, and Esek Cowen, esq., and Edward D. Bettens, esq., of counsel for defendant Eddy, Samuel B. Clarke, esq., of counsel for defendant James.

CHARLES H. MCGRATH, a witness produced on the part of the defendant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Charles H. McGrath; I am thirty-four years of age; I reside in Troy, N. Y.; and I am a shipper in stove business.

Q. 2. Do you know Charles Eddy, formerly of Troy, N. Y.?

A. Yes, sir.

Q. 3. Look at the agreement now shown you, and state whether or not the same was signed by Charles Eddy, in your presence?

A. Yes, sir; I suppose it was.

Q. 4. Is the signature C. H. McGrath, witness for Charles Eddy, your signature?

A. Yes, sir.

Q. 5. At whose request did you sign it as subscribing witness?

A. At Mr. Eddy's.

CHAS. H. MCGRATH.

Sworn to before me this January 23, 1880.

JOHN H. SHIELDS,
Examiner, &c.

3194 The complainant's counsel will make no objection to said agreement for want of further proofs to as its execution.

The agreement offered in evidence, being the original agreement, of which a certified copy was put in evidence by complainant in this case, on May 17, 1878, and marked Complainant's Exhibit Secombe, on page 323 of complainant's book of exhibits.

Complainant's counsel objects to anything and everything upon said agreement, or connected with it, except as it appears in the certified copy referred to.

The said agreement is marked Defendant Eddy's Exhibit, Secombe Original January 23, 1880.

J. A. S., *Exr.*

NEW YORK, *February 3d*, 1880.

Met pursuant to adjournment.

Present: Counsel as before.

HORACE HOLT, a witness produced on the part of the defendants, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. Horace Holt; I am 50 years of age; I reside in Brooklyn, Kings County, N. Y.; and I am a hand-stamp manufacturer.

Q. 2. Did you know William W. Secombe in his lifetime?

A. I did.

Q. 3. Were you connected in business with him; and, if so, for how many years?

A. I was, for about ten years.

Q. 4. During that time did you have an opportunity to become acquainted with his handwriting?

A. I had.

Q. 5. How often have you seen him write?

A. Almost daily during the time that I was connected with
3195 him; I was superintendent of the mechanical part of his business; I had correspondence with him on two occasions which I distinctly recollect.

Q. 6. (Counsel for defendants shows the witness the letter without date attached to the Exhibit Secombe Original, and addressed to Mr. Norton.) Please look at this letter now shown you, and the signature to the same, and state whether or not, in your judgment, the said letter and signature are in the handwriting of William W. Secombe?

A. It is, to the best of my knowledge and belief, both the letter and signature?

Cross-examined by Hon. GEORGE H. WILLIAMS:

Cross-Q. 7. You do not appear to be very positive about it; is there anything in the writing that causes you to hesitate?

A. No, sir.

Cross-Q. 8 Is that the usual signature of Mr. Secombe to that letter?

A. With a single exception.

Cross-Q. 9. What is the exception?

A. The initial letter in Secoombe is not his usual way of writing his name.

Cross Q. 10. What is the difference?

A. The initial letter of his signature usually was in the form of a double loop, coming below the line.

Cross-Q. 11. The initial letter of this signature is not made in that way, is it?

A. It is not.

Cross-Q. 12. Did Mr. Secombe usually write his Christian name, or the initials of his Christian name, as they are written in this letter?

A. He did with those he was intimate and familiar with.

Cross-Q. 13. He had then, as I understand you, one way of signing his name for friends and another way of signing it for stangers; is that so?

A. He has written letters to me with the single word Secombe, his surname.

Cross-Q. 14. What would you take that word to be standing be-
3196 fore Secombe at the bottom of the letter, if you didn't know anything about Secombe's handwriting?

A. "Yours."

Cross Q. 15. You don't understand it, then, to be the initials of his Christian name?

A. No, sir.

Cross Q. 16. Does that word indicate the mode in which Mr. Secombe usually made the letter Y?

A. I don't know.

Cross-Q. 17. Do you think the last signature at the bottom of the exhibit handed to you is in the same handwriting as the signature at the end of the letter?

A. I do.

Cross-Q. 18. Do you think they were both written by Mr. Secombe?

A. I do, sir.

Cross-Q. 19. Look at that paper which purports to be an answer in equity in the case of Robertson vs. The Secombe Manufacturing Company, purporting to be filed in this court March 4, 1872, and state in whose handwriting the signatures are to the answer to the paper.

(Objected to as immaterial; 2d, that the rule in this State does not

allow the proof of handwriting by comparison unless the paper with which the controverted signature is compared is material to the case and properly in evidence.)

A. The one at the bottom I would say is W. W. Secombe's signature.

Cross-Q. 20. State in whose handwriting, if you know, is the signature to that paper written—William W. Secombe.

A. My judgment is that it was written by Mr. Secombe himself.

Redirect by ESEK COWEN, Esq.:

Redirect Q. 21. Have you ever seen Mr. Secombe make the initial S. of his surname as it is made in that letter?

3197 A. I have no recollection of seeing it.

Redirect Q. 22. Taking the whole writing together, have you any doubt that letter is in Mr. Secombe's handwriting?

A. I have not.

Cross-examined by Hon. G. H. WILLIAMS:

Cross-Q. 23. When did you first see that letter?

A. I saw that letter this afternoon, sir; about three hours ago.

Cross-Q. 24. Where did you see it?

A. In my office, at my place of business.

Cross-Q. 25. Where was that?

A. 39 John street, this city.

Cross-Q. 26. Who showed it to you?

A. A gentleman who was introduced to me by Mr. Clexton.

Cross-Q. 27. Do you remember the name of the gentleman?

A. No, sir; I do not.

Cross-Q. 28. Do you know Mr. Green?

A. I have a slight acquaintance with him.

Cross-Q. 29. Has he been to your office to see about evidence in this case?

A. He asked me if I could identify W. W. Secombe's handwriting or signature.

HORACE HOLT.

Sworn to before me this February 3, 1880.

J. M. DEUEL,
Examiner, etc.

WILLIAM DRINKER, a witness produced on the part of the defendants, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William Drinker; I am thirty-five years of age; I reside in the city of New York, and I am in the hand-stamp business.

3198 Q. 2. Were you connected in business with the late W. W. Secombe in his lifetime; if so, for how many years, and in what capacity?

A. I was, about six years; in the capacity of bookkeeper and cashier.

Q. 3. Are you well acquainted with his handwriting?

A. I am.

Q. 4. How frequently did you see him write while you were with him in business?

A. Almost daily.

(Counsel shows the witness the letter attached to Exhibit Secombe, original, without date, and addressed to Mr. Norton.)

Q. 5. Look at the letter now shown you, and state whether or not, in

your judgment, the said letter, including the signature, is in the handwriting of W. W. Secombe, deceased.

A. To the best of my judgment, it is.

Cross-examined by Hon. G. H. WILLIAMS:

Cross-Q. 6. What do you take the signature at the bottom of the letter to be?

A. "Yours, Secombe."

Cross-Q. 7. Is that the usual signature of Mr. Secombe?

A. This "S" is not the way he usually made it.

Cross-Q. 8. Is that the only difference you discover between that and his usual signature?

A. It is.

Cross-Q. 9. Did he usually write his name Secombe without the initials of his Christian name?

A. Being connected with him and having business transactions only together, I never saw his signature excepting with the initials before it.

WM. DRINKER.

Sworn to before me this February 3d, 1880.

J. M. DEUEL,
Examiner, etc.

3199 JANUARY 23, 1880—11 o'clock *p.* m.

Met pursuant to adjournment.

JEREMIAH D. GREEN, a witness produced on the part of the defendant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Jeremiah D. Green; I am sixty-eight years of age; I reside in Troy, N. Y., and have been employed for the last few years as an attorney in patents and claims most of the time.

Q. 2. Do you know Charles Eddy and Albert C. Corse and Marcus P. Norton, and did you know Jacob Shavor and William W. Secombe in their lifetime?

A. I know Charles Eddy, Albert C. Corse, and Marcus P. Norton, and did know Jacob Shavor and William W. Secombe in their lifetime.

Q. 2. In or about October, 1871, were you acting as attorney for Jacob Shavor and Albert C. Corse, in reference to their interest in Norton's patent for a post-office cancelling stamp?

A. I was.

Q. 4. Do you recognize the agreement marked "Secombe original," which I now show you?

A. I do.

Q. 5. Did you produce it to be used on this examination?

A. I did.

Q. 6. How long had it been in your possession before you gave it to Mr. Corse?

A. From about the last of March or first of April, 1872.

Q. 7. From whom did you receive it at the time spoken of in your last answer?

A. From Marcus P. Norton.

Q. 8. Was there anything annexed to the paper at the time you received it?

A. There was.

Q. 9. What was it?

3200 A. A letter from Mr. Secombe to Mr. Norton, and upon the back of the same sheet of paper was a note written by Mr. Norton and signed by him.

Q 10. State whether or not the letters you speak of are the same as are now attached to the agreement?

A. Yes.

Q. 11. Are you acquainted with the handwriting of William W. Secombe, deceased?

A. I think I am.

Q. 12. Have you seen him write?

A. Yes, sir.

Q. 13. State whether or not, in your judgment, the signature to the letter attached to this exhibit is in the handwriting of the late Mr. W. W. Secombe?

A. I think it is; I have compared it with several letters that I have received from him, and I have no doubt that it is his signature.

Q. 14. At the time you received this agreement from Mr. Norton, was there anything written on the face of the agreement; and, if so, what?

A. The same memorandum that is on the agreement now, with the exception of that which is in bluish ink, or purple ink, and signed by me; the erasures of names of parties to the instrument and the witnesses thereto; also the memorandum of the record of the Patent Office was the same as on the instrument now, at the time that I received it from Mr. Norton.

Q. 15. Then, if I understand you correctly, the instrument, at the time you received it, was in exactly the same condition as that in which it now appears, with the exception of the memorandum signed by you?

A. Yes, sir.

Q. 16. When did you add that memorandum?

A. Within twenty minutes from the time I received it.

Q. 17. By whose authority?

A. By the authority of Jacob Shavor and Albert C. Corse, as their attorney.

Q. 18. Had you consulted with them about the cancellation before it was made?

3201 A. I had in relation to the procuring of the document and its cancellation.

Q. 19. Were you a party to the negotiation which led to the execution of the original?

A. I was.

Q. 20. I wish you would state, as nearly as you can remember, the circumstances that led to the cancellation of this instrument; at whose request it was cancelled, if you know, and why the cancellation was asked for?

A. The cancellation was asked by Eddy, Shavor, and Corse, through me, as attorney, upon the ground that the conditions on which the instrument was made and signed were repudiated or refused to be carried out on the part of Mr. Secombe; I called upon Mr. Secombe along in the winter of 1872, and demanded a surrender of this agreement, as he was not willing to comply with the understanding and verbal agreement; I afterwards, in the month of March, 1872, in company with Albert C. Corse and Frederick G. Ransford, and then demanded the surrender and cancellation of that instrument, Mr. Secombe.

(Complainant's counsel objects to any statement made upon that occasion by Mr. Secombe.)

Mr. Secombe asked me if I made the demand as attorney for Shavor and Corse; I replied that I did; Mr. Secombe then asked Mr. Corse if I was attorney for him, Corse and Shavor; Corse replied that I was; he then stated that he would see about it right away, or very soon, something to that effect; I can't give the language.

Either that day or the next, Mr. Norton showed me the document and the letter which is now attached to it, which he said he had received from Mr. Secombe for cancellation, if he saw fit to do so.

He then, in my presence, and in the presence of Mr. Ransford, wrote the memorandums upon the letter from Secombe, and upon the agreement, and made the erasures as they now appear; he then gave the instrument to me with the letter attached, as it now is.

3202 Q. 21. Did I understand you to say that you were acting for Mr. Eddy, as well as Shavor and Corse, in demanding this instrument from Mr. Secombe?

A. I was.

Q. 22. What instructions, if any, did you have from Mr. Eddy in relation to that matter?

A. Mr. Eddy requested me to procure the surrender of that instrument; I had a memorandum at the time drawn up by Francis Rising, and signed by Rising, Eddy, Corse, and Shavor, setting forth in part the verbal agreement between the parties to this instrument, marked Secombe original; my instructions were to demand the surrender of this instrument.

Q. 23. What, if anything, did you say to Mr. Eddy about this cancellation after it was made?

A. I told Mr. Eddy that I had the instrument, and that it was cancelled.

Q. 24. What did he say, if anything?

A. He said he was very glad of it, and hoped that I would take good care of it; after that, some time, I took the instrument to the office of Eddy, Corse & Company, and showed it to each of them, Shavor, Corse, and Eddy.

Q. 25. Did you have a written power of attorney from either of the parties, and, if so, from whom?

A. I did, from both Shavor and Corse, but not from Eddy.

(Defendants' counsel offers in evidence the note without date, from Secombe to Norton, which is attached to the Exhibit Secombe Original, and the memorandum made by Norton on the back of said note.

Also, a memorandum dated April 3, 1872, and signed Marcus P. Norton, written across the face of said agreement.

Also, the memorandum dated March 30, 1872, and signed by J. D. Green.

Also, the cancelling marks at the end of the agreement.

Complainant's counsel objects to the evidence specified in the 3203 above offer, on the ground that it is incompetent to affect the validity of the original instrument, and is inadmissible to affect the rights of complainant in this suit.

Cross-examined by Hon. G. H. WILLIAMS:

Cross-Q. 26. Where did this transaction between you and Norton, as to the Exhibit Secombe Original, take place?

A. In the hotel Nos. 17-19 Park Row, in this city.

Cross-Q. 27. Was the paper delivered to you by Norton at that place?

A. It was.

Cross Q. 28. Why didn't you deliver this paper to Shavor and Corse and Eddy, the parties to whom it belonged, if it was cancelled?

A. I retained it as their attorney, and delivered it when I was asked for it, and, as I have stated before, had showed it to each of them.

Cross-Q. 29. When were you first asked, by either of the parties named, for this paper?

A. I can't tell the time when I was first asked.

Cross-Q. 30. Can you tell anywhere near the time?

A. I think it was not long after its cancellation.

Cross-Q. 31. Who asked you for the paper at that time?

A. I think it was Mr. Eddy; Shavor and Corse, I think, were present, but I won't be positive.

Cross-Q. 32. Did you refuse to give them the paper at that time?

A. I did not.

Cross-Q. 33. Why didn't they get it?

A. They did in a few days; I took it down to their office; they examined it, and I took charge of it.

Cross-Q. 34. When did they next demand the paper from you?

A. They never demanded the paper from me.

Cross-Q. 35. Have they, or either of them, since then asked you for the paper?

A. They asked me if I had the paper; I told them I had; Mr.
3204 Eddy replied, on one occasion, speaking of it, that he thought he had it; I told him no, that I had it.

Cross-Q. 36. When was that that you had that conversation with Eddy?

A. I can't tell the date.

Cross-Q. 37. Haven't you refused, since the commencement of this suit, to let one or all of these parties have this paper?

A. Not to my knowledge; I don't know why I should.

Cross-Q. 38. Have you had any conversation with either of them about the paper since the suit was commenced?

A. I think I have.

Cross-Q. 39. With whom and when?

A. I had with Mr. Eddy, and I had with Mr. Corse; I can't tell the time—I think within the last year.

Cross-Q. 40. When did you deliver this paper up, and to whom?

A. I delivered it to Mr. Corse; I can't tell how many weeks ago—whether six weeks or two months, or what time. I made no memorandum as to the date.

Cross-Q. 41. Am I to understand from your answers relative to your demand upon Secombe, that Mr. Shavor and Corse claimed that Secombe had not presented this claim against the government as he had agreed in the original agreement, and therefore that they desired to have it cancelled?

A. The demand was not made upon that ground, but on a refusal of Mr. Secombe to enter into an agreement as to the persons who should be trustees for the parties in interest, and the proportional amounts which each should receive from the avails of the different patents to be named in such agreement; such agreement was made in accordance with the understanding at the time this agreement, marked Secombe Original, was made, which last-named agreement Mr. Secombe refused to sign.

Cross-Q. 42. Then the controversy between the parties was about an agreement outside of the one marked Secombe Original in this case?

3205 A. It was but a part of the consideration and understanding at the time this Secombe Original was made.

Cross-Q 43. Do you know anything about an agreement between Mr. Eddy and Mr. Norton and Miss Ingalls, dated January 9, 1871, by which Eddy agreed to sell and transfer to said Norton and Ingalls his interest as trustee for himself and for Shavor and Corse in this and other patents for $30,000?

(Objected to as not the best evidence. The contents of a written instrument cannot be proved by parol.)

A. Only by hearsay.

Cross-Q. 44. You didn't act as attorney for Mr. Shavor and Corse in making any such agreement, did you?

A. I did not.

Cross-Q. 45. Did Mr. Eddy or Shavor or Corse ever tell you there was such agreement made?

A. I do not now remember.

Cross-Q. 46. What do you mean by saying in your answer before the last, "Only by hearsay"?

A. By hearing people in Washington talk about such an agreement.

Cross-Q. 47. Will you swear that neither Mr. Eddy, Mr. Corse, or Mr. Shavor never told you that there was such an agreement?

A. I could not; not now; I don't remember.

Cross-Q. 48. Did you ever show the original, marked Exhibit Secombe, to anybody except to Mr. Shavor, Corse, or Eddy?

A. Yes, sir.

Cross-Q. 49. Did you ever show it to Mr. Clarke, the counsel for Mr. James in this suit?

A. I think I did; also Mr. Secombe.

Cross-Q. 50. About what time did you show it to Mr. Clarke, if you remember?

A. I can't tell; it was after this suit was commenced; it was at my house, I think; it was at my house; it was also at my house I showed it to Mr. Secombe.

3206 Cross-Q 51. Was it before or after you were a witness in this suit that you showed Mr. Clarke the paper?

A. I cannot tell; it was after the time when I was a witness in this case that I showed it to Mr. Secombe—I mean a brother of W. W. Secombe.

Cross-Q. 52. Do you know whether or not Mr. Eddy, in June, 1878, knew of the alleged cancellation of this instrument?

(Objected to as immaterial.)

A. He must have known it before; he might have forgotten it at that time, for he had seen the instrument; I showed it to him.

Redirect by ESEK COWEN, Esq.:

Redirect Q. 53. You stated that you were a party to the negotiations which resulted in the original Secombe agreement, marked Exhibit Secombe, Original; I want to know if you had any consultation with Mr. Norton before this agreement was made in regard to making this agreement with Secombe?

A. Yes, sir; I had several.

Redirect Q. 54. What was the substance of those consultations?

A. That the several patents should be put into the hands of two trustees in trust for the others, and the manner of dividing the interest of each, or the amount that each should receive; and it was at Mr. Norton's suggestion that I should be one of the trustees; afterwards

Mr. Hatch, of this city, was named as trustee in my stead; I went with Mr. Secombe to Washington to confer with the firm of Mason & Holloway in relation to the amount that Secombe and Norton had promised to Holloway & Mason, or Mr. Mason, for services rendered or to be rendered.

Redirect Q. 55. Were the amounts agreed upon the same as are mentioned in this agreement, Secombe Original?

A. They were intended to be.

3207 Redirect Q. 56. Do you know whether this agreement, Secombe Original, was submitted to Mr. Norton at or before the time it was executed?

A. That I cannot now tell, but the substance and subject-matter was talked over with Mr. Norton, Secombe, and myself before its execution, and agreed to by Norton.

Recross by Hon. C. H. WILLIAMS:

Cross Q. 57. Mr. Secombe, as I understand you, refused to carry out that arrangement by appointing trustees, as agreed upon?

A. By appointing trustees; and there was also a disagreement as to the amount of moneys the different parties were to receive. At the time the agreement was presented to Mr. Secombe for his signature, there was no disagreement as to who should be the trustees, but the disagreement was in relation to the manner of dividing the interest and the amounts of money that each should receive; there may have been some other manner of objection at that time.

Cross-Q. 58. Was not the amount that each party was to receive fixed and stated in the original agreement, marked Secombe Original? And if so, how could controversy arise on that subject?

A. My present impression is that Mr. Secombe required a greater portion of interest than was supposed to be set forth in the original agreement; at any rate, he claimed a greater portion of interest for his trust; that was talked over and agreed upon between the different parties before and at the time of the making of this agreement marked Secombe Original.

3208 NEW YORK, *Jan. 27th*, 1880—12 o'clock m.

Met pursuant to adjournment.

Present, counsel as before.

Cross-examination of J. D. GREEN continued by complainant's counsel:

Cross Q. 59. Can you state at what time you first came to New York to see Mr. Secombe about the cancellation of the instrument dated October 7th, 1871?

A. I can't state now.

Cross-Q. 60. Can you state in what month, or season, or year it was?

A. I think it was in 1871; that is my present impression.

Cross Q. 61. Can you state about what time in 1871?

A. I could not with any degree of certainty without examining memoranda which I have at home; I think in the latter part of the year 1871.

Cross-Q. 62. Can you tell whether it was in the summer or winter?

A. I cannot, but think it was after February, 1871; my impression is, in November or December of that year.

Cross Q. 63. Who accompanied you at that time to see Mr. Secombe, if anybody?

A. I do not now recollect, but perhaps I could refresh my recollection on examination of papers which I have at home.

Cross-Q. 64. Do you know where Mr. Norton was at that time?

A. I can't say whether he was here or not; he may have been with me for aught I now remember.

Cross-Q. 65. How many times did you call on Mr. Secombe about cancelling the said instrument?

A. I should think some two or three times; three times, I should think, and perhaps more.

3209 Cross-Q. 66. Can you state whether or not Mr. Norton was with you at any time when you called on Mr. Secombe for the purpose of said cancellation?

A. I couldn't be positive now, at this time.

Cross-Q. 67. Did anybody accompany you at any of the times?

A. Yes, sir.

Cross-Q. 68. Who?

A. Frederick G. Ransford and Albert C. Corse.

Cross-Q. 69. When did they accompany you to see Mr. Secombe about that matter?

A. On the day or the day before the cancellation was made by Mr. Norton.

Cross Q. 70. Were they or anybody with you at the other times when you called on Mr. Secombe about the cancellation?

A. Yes, sir; not Corse; that was the only time that Corse was with me, that I remember; but Ransford was with me once or twice before; Mr. Shavor was with me once or twice at Secombe's.

Cross Q. 71. Did you have any conversation with Mr. Norton about having this instrument cancelled before the 30th March, 1872?

A. I think I did have.

Cross-Q. 72. Can you tell when and where and what it was?

(Objected to, as immaterial and irrelevant.)

A. The language I could not give or the exact times or place, without referring to papers I have at home, except at the time that Corse, Ransford, and myself went to make the demand; I think we asked Mr. Norton to go with us; I think his reply was that he thought it was not best, or something to that effect.

Cross-Q. 73. Do you wish to be understood as saying that you have papers at home that will show the exact language of Mr. Norton, in prior interviews that you had on that subject?

A. I could not tell that until I had made the examination.

3210 Cross-Q. 74. Without undertaking to state the exact language of Mr. Norton, in any of those interviews, can you remember the idea he conveyed as to the cancellation of this instrument?

(Objected to as immaterial and irrelevant, except as to the interview with Mr. Norton, when Mr. Norton cancelled the agreement, said cancellation being dated March 30, 1872.)

A. My idea is that he thought the instrument should be cancelled, inasmuch as there was a failure between Secombe and the other parties to the instrument to carry out the understanding and verbal agreement had between the parties at the time of its execution; that, I think, embodies the idea.

Cross-Q. 75. Can you tell whether any of those interviews took place in Troy, New York or Washington?

A. I don't know that I can state positive without examining my memoranda and letters, but I think at Troy, N. Y., and New York City.

Cross Q. 76. You stated, I think, that Mr. Norton was a party to the

negotiations which resulted in the instrument of the 7th October, 1871; did you?

A. I think that I had talked with him on the subject; he may have talked with others who were parties to the arrangement.

Cross Q. 77. When and where did you talk with him about it?

A. That I will not be positive until I examine my memoranda.

Cross-Q. 78. Suppose you are not positive, can you state within a year of the time, or a thousand miles of the place?

A. I can state within a year of the time; I have already stated it was in the year 1871; my impression is it was in the city of Washington, in September, 1871.

Cross-Q. 79. And the place?

A. That I must examine my memorandum before I can fix the place; but I can give my impression, if that will satisfy you.

3211 Cross-Q. 80. State, as near as you can, the place.

A. I think in Washington and in New York, and, perhaps, in Troy.

Cross-Q. 81. Can you come any nearer the time than to say it was in 1871?

A. I don't know that I can now; but I think in September of that year, perhaps before.

Cross-Q. 82. Did you know when you came to New York, this time, for what purpose you were coming?

(Objected to as immaterial.)

A. I think I did.

Cross-Q 83. State then, if you know, what the purpose was.

(The same objection.)

A. It was to identify the instrument cancelled in the latter part of March, 1872, and which I had been examined on in this cause.

Cross-Q. 84. Did you not know that you were called to prove the cancellation of that instrument?

(Objected to as immaterial.)

A. Yes.

Cross-Q. 85. State, then, if you have memoranda in your possession giving dates and facts upon that subject, why you didn't examine them before you came down, so as to be able to testify with some degree of accuracy in reference to dates and facts?

(Objected to—1st, as immaterial; and 2d, as there are too many conclusions in the question.)

A. I believe that the memoranda on the document were sufficient to identify the document and the time of its cancellation without further reference to other papers.

3212 Cross-Q. 86. You did not expect, then, that any questions would be asked you about interviews or negotiations prior to the making of the said memoranda upon said document, did you?

(Objected to as immaterial.)

A. I thought very likely there would be, but their nature I could not tell.

Cross-Q. 87. Will you swear that you did not examine any letters or memoranda in your possession for the purpose of refreshing your memory before you came here to be a witness at this time?

(The same objection.)

A. No, sir; I won't.

Cross Q. 88. Will you swear that you did examine such memoranda and letters before coming here as a witness?

A. Only partially, and that with a view of getting some of them together.

Cross-Q. 89. Do you mean to say that you didn't examine any letters or memoranda to refresh your recollection as a witness at this time?

A. No, sir; I didn't say so.

Cross Q. 90. Do you mean to say, then, that you did?

A. I say as I said before, that I examined them for the purpose of getting them together for future use if necessary, but I did not get my memoranda all together.

Cross Q. 91. What future use do you contemplate with those letters and memoranda after you have been a witness as to the matters to which they relate in this case?

(Objected to as immaterial.)

A. That would be a matter of my own and not pertaining to this case.

3213 Cross-Q. 92. You did not consider it of any consequence then, that you should be accurate here as a witness with reference to dates and facts connected with said cancellation, did you?

A. I did, most assuredly.

Cross-Q. 93. Why didn't you examine them, so as to be prepared to state within months or years of the time when conversations took place about said cancellation, or the places where said conversations occurred?

A. I didn't deem it necessary at that time; besides I had not got my memoranda all together, and want of time to get them together, and attending to other business that I had to attend to.

Cross-Q. 94. Did any one, attorney or party interested in this case, ever say anything to you about making such an examination?

(Objected to as immaterial.)

A. I think they did.

Cross-Q. 95. Who?

A. I think Mr. Caswell; whether Mr. Cowen did or not I do not now remember.

Cross-Q. 96. When did you deliver up this exhibit, filed with your testimony, and to whom did you deliver it?

A. I can't tell you the date whether it was a month or six weeks, or a less time; I delivered it to Mr. Corse, by the request of Mr. Caswell.

Cross Q. 97. You knew, then, didn't you, that it was to be used as evidence in this suit?

A. The purpose of delivering it up (as I understood it) was to send it to the Patent Office, to have the cancellation recorded; I had talked with Mr. Eddy some time before; he thought it had better be sent to the Patent Office for record; I did not know the relation of the parties in this suit—Corse or Caswell, or Eddy, in this suit—so as to be advised whether it would be necessary to use this exhibit in evidence at the time they called for it.

3214 Cross-Q. 98. Is there any evidence in this document that it has ever been in the Patent Office since the alleged cancellation was made?

(Objected to, on the ground that it has not been shown that the witness knows anything about recording of patents in the Patent Office, or of any paper ever having been in the Patent Office.)

A. I don't discover any evidence upon the document of its having been in the Patent Office for record since January, 1872.

Cross-Q. 99. State, if you please, under what arrangement you delivered up this paper to Mr. Corse, if any.

(Objected to as immaterial.)

A. Only as I have stated.

Cross-Q. 100. Has there been no direct or indirect understanding or agreement by which you were to receive anything from this suit if the parties interested in this paper succeeded in the case?

(Objected to as immaterial.)

A. Not since the suit was commenced, to my knowledge.

Cross-Q. 101. You would have known about it if there had been such an understanding, wouldn't you?

A. I should.

Cross-Q. 102. Was there nothing said about that, or any inducement or consideration held out to you to deliver up this paper?

A. Not to my knowledge.

Cross Q. 103. What is your interest in the event of this suit?

(Objected to as incompetent, so far as it affects the title of Clexton or Caswell.)

3215 A. That will have to be determined hereafter; by an article of agreement, which was made and entered into——

(Defendants' counsel interrupts the witness, and objects to any statement about the agreement, as the agreement speaks for itself.)

Witness withdraws that part of the answer after the word "hereafter."

Cross Q. 104. What interest do you claim in the event of this suit?

(Objected to as immaterial.)

A. That I am not prepared to say.

Cross-Q. 105. You don't know, then, what your claim is, or whether you have any or not, do you?

(The same objection.)

A. I am not prepared to say.

Cross Q. 106. State at what time in the month of March, 1872, and where you first saw Mr. Norton.

A. That is a pretty hard question to answer, judge; I may have seen him a dozen times in the month of March, 1872.

Cross-Q. 107. When did you first see him in that month in the city of New York?

A. Whether I saw him before the 28th or 29th of March, 1872, in the city of New York, I can't tell now.

Cross-Q. 108. Do you remember seeing him in Troy at any time in that month?

A. That I cannot tell now.

Cross Q. 109. Where did you see him in New York, the 28th or 29th March, 1872?

A. I saw him on the 29th or 30th of March, 1872, at the hotel, I think it is, 17 and 19 Park row; I may have seen him before in this city at that time.

Cross Q. 110. Did you call on him at that hotel?

3216 A. I think I was stopping there at the time; whether he was stopping there or somewhere else, I don't now remember.

Cross-Q. 111. How long did you stop there at that time?

A. I can't tell that; not but a short time; a few days.

Cross-Q. 112. Was anybody else from Troy stopping there at that time?

A. Yes, sir; Frederick G. Ransford; there may have been others.

Cross Q. 113. Where did you see Mr. Norton in that hotel?

A. In the sitting-room; in the office room; the room adjoining the office.

Cross-Q. 114. Did you see him more than once?

A. Yes, sir; I think I did.

Cross-Q. 115. Where did you see him on the 28th or 29th?

A. I don't remember of having seen him except at that hotel; yet I might have seen him elsewhere.

Cross Q. 116. Did he call on you at that hotel about this cancellation buisiness?

A. I can't tell you how that was; I can't say whether he was stopping there, or stopping at some other hotel; but I think the object of his business there was in part, if not in whole, in relation to this cancellation of this agreement, Exhibit Secombe Original, or the procurement of said document from Mr. Secombe.

Cross-Q. 117. Did you call upon him or did he call upon you about this cancellation matter at that time?

A. That I do not recollect; but I talked to him in relation to the matter either there or elsewhere before the document was sent to him.

Cross Q. 118. Did you always see him in that little office room to which you referred in your former answer?

A. That I can't say.

Cross-Q. 119. Who was keeping the hotel at that time?

3217 A. That I can't tell you; I think there was one of the men that is there now.

Cross Q. 120. You don't know whether you saw Mr. Norton in his room at that hotel or not?

A. I don't recollect.

Cross Q. 121. You don't know how many times you saw him there, do you?

A. No; I can't tell; at that time.

Cross Q. 122. Do you know on how many different days you saw him at that hotel at that time?

A. I can't tell whether it was one, or two, or more, as I have stated before.

Cross Q. 123. What took place between you and Norton in that little office room, where you say you saw him in that hotel?

A. It was not so very small, it's the room in which the office was situated; it is changed now; I think we asked Mr. Norton to go over with us to Secombe's office; he said, in substance, that he didn't think it was best; after that, either that day or the next, he said that he had the document from Secombe; he showed the document, and sat down and wrote the memoranda upon it, and then gave the document to me.

Cross-Q. 124. That was the first conversation that you had with him there on the subject, was it, when you asked him to go over to Secombe's with you?

A. I think not.

Cross-Q. 125. What else was said there at this time about this matter of cancellation?

A. I can't give the conversation; there was a good deal said in relation to the matter; I may be able to remember more after thinking it over.

Cross Q. 126. Have you stated now all you can remember at this time?

A. Substantially.

Cross-Q. 127. Why didn't Mr. Secombe, if he was willing to cancel this instrument, cancel it when you called upon him to do it?

A. I can't tell, unless he wished to consult Mr. Norton about it, as he sent the document to him.

3218 Cross-Q. 128. Did he tell you that he would or would not cancel it when you called on him?

A. He did not, but stated on the last time I called for it that he would attend to it, or see about it, or something of that character.

Cross-Q. 129. How far is this hotel from where his office was at that time?

A. Oh, a short distance, perhaps fifteen or twenty rods; his office was at No. 7 Park Place.

Cross-Q. 130. Why did Mr. Ransford accompany you, and what had he to do about it?

A. He was a party interested in the verbal agreement entered into at the time of the execution of this agreement, Exhibit Secombe Original, and was present when the arrangement was made.

Cross Q. 131. How was he interested?

A. As being a part owner of one of the patents that was to be put into the hands of the trustees for to obtain compensation from the government.

Cross Q. 132. How was he interested in the patent described in the instrument which you say was cancelled?

A. As I stated before, the two or more patents were to be put into the hands of two trustees, and the collection from the government was to be controlled and managed by them, and the avails of which should be divided between the parties interested; each trustee to have the control, each one half of any avails that might be received from any collection or sales of said patents.

Cross Q. 133. Can you tell of what advantage it was to Mr. Ransford to have this original exhibit cancelled?

A. Yes; substantially the same as to either of the parties to the agreement entered into on the occasion referred to in my last anwer, but perhaps not exact in amount.

Cross Q. 134. Was he in any way interested in the patent described in the original exhibit?

A. In the same manner that I have before stated.

3219 Cross-Q. 135. What interest did Mr. Ransford have in the patent that was issued to Norton, on the 14th April, 1863, and reissued to Helen M. Ingalls on the 4th October, 1870?

A. Only as I have before stated.

Cross Q. 136. You have not stated anything on that subject, as I unde'stand it; therefore, I would ask you to answer the question specifically, if you can.

A. My answer is the same as before; none to my knowledge, except as before stated at that time, at the time that he called upon Mr. Secombe with me.

Cross-Q. 137. Well, then, if this original exhibit was canceled relating exclusively to the patent issued to Norton, and reissued to Miss Ingalls, as above stated, Ransford had no interest, had he, in having it canceled or continued to exist?

A. His interest to have it cancelled was that the understanding and agreement was not carried out; I am not aware that Mr. Ransford ever had an assignment in a legal form of any portion of the patent issued to Marcus P. Norton, in 1863.

Cross-Q. 138. Mr. Ransford, then, was interested in having the parol agreement with Secombe carried out and not in having it rescinded; wasn't he?

A. He felt an interest in having the agreement cancelled when Mr.

Secombe refused to sign the instrument which was drawn up in accordance with the verbal understanding and agreement as before stated.

Cross-Q. 139. So it was a matter of sentiment or feeling on his part in going with you to Socombe; was it?

A. That he is better qualified to tell than I am.

Cross-Q. 140. Was there any table in this office at the hotel where you say you and Norton met?

A. I think there was a table or desk.

Cross-Q. 141. Did he sit down at that table or desk to do that writing?

A. I think he did.

Cross-Q. 142. Did you sit down with him?

A. I don't think I sat down at that time; I think I stood up by him or near him at that time.

Cross-Q. 143. Did you do your writing in that instrument at that desk or table?

A. I think not.

Cross Q. 144. Where did you do it?

3220 A. I can't tell you whether I did it in the office or whether I did it in my room.

Cross-Q. 145. You are positive, are you, that you made this endorsement on this instrument within 20 minutes after you received it; are you?

A. I think I did; I did it right away.

Cross Q. 146. What do you mean in that endorsement by saying on demand?

A. It would be more proper if I had said after demand; I received the document after I had demanded it; that is what I me'nt by the memoranda.

Cross-Q. 147. Did you mean by the demand from Norton or Secombe?

A. The demand on Secombe.

Cross Q. 148. You say in this memorandum written by you, this instrument was surrendered to J. D. Green, as attorney for J. Shavor and A. Corse, on demand and cancelled—what do you mean by saying cancelled there; or what did you do to cancel the instrument after you received it?

A. I did nothing to cancel it; I wrote the memoranda for a memorandum only.

Cross-Q. 149. Does not this memorandum clearly imply that this instrument was cancelled after you received it?

A. I think it does not; it was not intended to imply anything of the kind.

Cross-Q. 150. You say you received this instrument from Mr. Norton exactly as it now is, with the exception of your endorsement upon it, on the 30th March, 1872, at the hotel 17 and 19 Park Row, in the city of New York; can you tell why the endorsement on the original instrument, which was made in New York on the 30th March, 1872, was dated at Troy, N. Y., on the 3d day of the subsequent month?

A. I cannot say why Mr. Norton made the date at Troy, and on the 3d April; I was aware of the fact as soon as he handed it to me, and for that very reason I wrote the memorandum upon the edge of the instrument.

3221 Cross-Q. 151. Did you call his attention to the fact that the endorsement was dated at the wrong time and place?

A. I think I did.

Cross-Q. 152. What did he say?

A. I think he stated it made no difference as the instrument was thoroughly cancelled; I can't give the words, it was that in substance.

Cross-Q. 153. Did you observe upon the letter when it was delivered to you this endorsement: P. S.—I delivered the same to J. D. Green of Troy, N. Y., on the 3d day of April, 1872, for cancellation, &c.?

A. I think that must have been on it at the time.

Cross-Q. 154. Did you call Mr. Norton's attention to the fact that he had endorsed a false statement on this letter at the time that it was delivered to you?

A. I can't say whether I did or not.

Cross-Q. 155. This endorsement states that the same (referring to the contract) was delivered to you on the 3d day of April, 1872, for cancellation; does not that imply that the paper was not cancelled when it was delivered to you?

A. It would imply that had not Mr. Norton's attention been called to it at the time, and the memoranda that were written upon the letter and on the face of the instrument or contract; also the erasures were made by Mr. Norton, in my presence and that of Frederick G. Ransford, in the hotel before referred to, before its delivery to me.

Cross-Q. 156. What did Mr. Norton say when his attention was called to the fact that his endorsement stated it was to be delivered to you to be cancelled?

A. As near as I can get the substance of what was said when I called his attention to the date of the memorandum, that it made no difference —that it was pretty thoroughly cancelled.

Cross-Q. 157. Did you see Mr. Norton make these endorsements and these pen marks at the bottom of the original instrument at the same time while he was sitting at that desk at the office of the hotel before mentioned?

3222 A. Possibly he might have got up during the time, but it was done within a few minutes and before the document was given to me.

Cross-Q. 157½. Were they all done at the same place in the hotel?

A. In the room there at the table or desk.

Cross-Q. 158. Will you swear that these pen marks across the signatures to the original instrument, and the other defacing marks made at the bottom thereof, are written with the same ink that was used in making the endorsement on the original instrument purporting to be signed Marcus P. Norton, and dated April 3, 1872?

A. I will not, from the fact that there are usually a number of ink stands on a table or desk, but they were made before the paper was delivered to me.

Cross-Q. 160. Were they made at the same time?

A. What do you mean by the same time, or what am I to understand by the same time? The writing and the marks I have before described was made within the space of a few minutes or a short time.

Cross Q. 161. I mean to ask whether or not when Norton sat down at that table or desk as you say, to cancel this instrument, he then and there wholly cancelled it as it is, excepting your endorsement upon it?

A. He might have got up during the time, as I have stated before; that I would not say.

Cross-Q. 162. Do you think that after he made the endorsement upon the instrument he got up and went away, and then came back and took a pen and took ink from some other ink stand to make the pen marks and scrawls at the bottom of the instrument?

(Objected to as immaterial.)

A. As I have stated before he may have got up before finishing the cancellation and erasures, and may have taken a different ink or ink from a different ink stand from that which he used in writing the memorandums.

3223 Cross-Q. 163. Will you swear that across the name of Charles Eddy, Jacob Shayor, and Albert C. Corse there are not three straight lines made with the same ink as your endorsement is written with upon this paper?

A. I will not; there seems to be something of that character.

Cross-Q. 164. Can you give any reasons why those straight lines are drawn across those names and none across the name of Secombe?

A. I don't know of any.

Cross-Q. 165. Are you very confident that the signature to that letter attached to that original exhibit is the handwriting of W. W. Secombe?

A. I am quite confident that it is; I have compared it with signatures to letters written by him, and I think it would take an expert to make a signature to resemble his writing so closely; but I could not detect it on comparison with several of his letters.

Cross-Q. 166. Is there not a manifest difference between the signature to that letter and the signature to the original exhibit?

A. There is some difference in the general appearance, but it is manifestly written by the same person, in my judgment.

Cross-Q. 167. You stated that Mr. Norton suggested you as one of the trustees under that parol agreement that was made at the time the parties entered into this original exhibit; when was that?

A. I can't tell the date, but it was during the nego'tion.

Cross-Q. 168. Can you tell the month or year?

A. I can tell the year.

Cross-Q. 169. State as nearly as you can the time.

A. Well, it was in 1871, after February.

Cross-Q. 170. That is as near as you can come to it, is it?

A. Yes, without looking at some memorandums that I have.

Cross-Q. 171. You and Mr. Norton were on perfectly friendly terms at that time, were you?

A. During those negotiations I think we were.

3224 Cross Q. 172. Where do you stop in this city?

A. I stop in the International; I stopped there last night; a few nights before I stopped up town with Mr. Smith.

Cross-Q. 173. Is the International the same as used to be the hotel 17 and 19 Park Row?

A. Yes, sir.

Cross-Q. 174. Were you made aware of the fact that anybody had been there to examine their records to see whether Mr. Norton had been there the last of March or the first of April, 1872?

(Objected to as immaterial.)

A. I was made aware that Mr. Norton and some other had been there to inquire about the register of 1872. I was also informed that the register of 1872 had been broken up and destroyed, and that the only record was a transcript of part and portions of their register for that year and some other years.

Cross-Q. 175. Did the landlord or bookkeeper or other clerk tell you that he had no means of telling who was there in 1872?

(The same objection.)

A. Not entirely.

Cross-Q. 176. Did the books or papers which they have show that you were there in March, 1872?

A. Yes, sir.

Cross-Q. 177. Does that transcript show that Mr. Norton was there in 1872?

(Objected to, as the books are the best evidence.)

A. I am not aware whether it does or does not, but it's my impression that it does not, and that there are skips about dates where there is no transcript of persons who stayed there.

Adjourned to Friday, January 30, 1880, at 11 o'clock a. m.

3225 NEW YORK, *January* 30, 1880—11 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before.

Hon. George H. Williams, absent.

Cross examination of JEREMIAH D. GREEN, continued by MARCUS P. NORTON, Esq.:

Cross-Q. 178. I direct your attention to Defendants' Eddy's Exhibit Secombe Original, January 23, 1880, J. A. S., Ex'r, which I now hand you, and I call your attention particularly to the following words: "Troy, N. Y., Apr. 3, '72," on the same page upon which the signatures to this exhibit are found, and also to the following words: "Troy, N. Y., April 3, 1872," and inasmuch as you have already stated substantially that you stood near by and saw Norton write upon the letter attached to that exhibit, and also to writing on the back of it, each of which appear over his name, I now ask you to state whether the words that I have quoted in the question were written at the same time, or upon the same occasion, or at the same place, Nos. 17 and 19 Park Row, in this city, where you say you saw Norton do the writing which you allege he did do on that instrument and on the 30th day of March, 1872.

A. The words and figures referred to in the question, as well as the entire note or memorandum upon the back of the letter, and the words and figures referred to written across the body of the instrument termed in suit Secombe original, were written and made by Marcus P. Norton, on the 30th day of March, 1872, in the hotel No. 17 and 19 Park Row, in the office room of that hotel, or a room adjoining the office; but whether there may have been some little time intervening between the commencement and finishing of this writing, I cannot say; Mr. Norton attached the letter to the body of the instrument in that hotel at that time and day.

3226 Cross-Q. 179. In your last answer you use the following words, namely: "But whether there may have been some little time intervening between the commencement and finishing of this writing, I cannot say." Give your present best recollections on that subject.

A. I have already given my best recollections at this time in my last answer.

Cross Q. 180. And those recollections are as good and as correct, and the court may depend upon them for correctness and truthfulness, and no more so than any and all other matters which you have testified about with reference to that writing; I mean each and every thing you have testified about concerning it; is that it?

(Objected to as immaterial, incomprehensable and absurd.)

A. My statement in relation to it, sir, is true according to my best recollection at this time; I will not undertake to dictate to the court anything in this matter.

Cross-Q. 181. At the time you made answer to the last question, did

you comprehend and understand that question at that time, and while you were attempting to answer it?

A. My answer was in accordance with my understanding of the question.

Cross-Q. 182. You will please state your understanding of that question.

A. I have already stated it.

Cross-Q. 183. State it again.

A. I would like to know the object.

Cross-Q. 184. Do you decline to answer the question?

A. I ask for information; I do not decline anything; as a witness I have a right, if I do not understand the question, to have it explained, so that I may know how to frame an answer if the answer already given is not satisfactory.

3227 Cross-Q. 185. If, from the time the first cross-question was put to you on this cross-examination down to this present question, you have answered a single question during the cross-examination intervening that you did not fully and fairly understand at the time you made your answer to it or them in answer to this question; I ask you to state such question or questions by the number which stand to them on this record, and if you desire time for that purpose you may have all the time you require to ascertain about that matter.

A. I have not examined over the record of the cross-examination, neither do I know where the numbers, or what the numbers are to the several questions that have been put to me, and if I am to understand that I am requested to examine the record so as to be prepared to distinguish them by their numbers, I should require some time, or hours to do so, and to be furnished with a copy of the evidence or questions put to me on cross-examination in this case.

Cross-Q. 186. I now give you the opportunity to take the original record now before the examiner, of your cross-examination, together with all the time you desire, for the purpose of ascertaining whether you have answered any question on your cross-examination, or any question during your examination-in-chief that you did not at the time when you made your answer to each and every such question fully and fairly understand the same at the time the examiner read them to you, and at the time you were making your answers as they now appear upon this record, not only during your cross-examination but also during your direct examination. Do you desire the opportunity that I offer you for that purpose, and will you take the original record here in the presence of the examiner and take time sufficient to examine it to ascertain the fact whether any question was answered by you that you did not correctly understand at the time? I give you this opportunity and make you this offer in view of the answers you have made in answer to questions put to you to day.

3228 (Counsel for defendants Clexton and Caswell objects to this mode of examination, and especially to the proposal to take up further time in an examination of this testimony by the witness, and requests the witness not to avail himself of the offer of the counsel for the complainant.)

A. I will examine the record before I sign it and make explanation where I deem it necessary; I will not avail myself of the privilege offered by the counsel at this time.

Cross-Q. 187. You desire to be understood, then, that at this present time you cannot say whether you have answered any question, either

during your cross or direct examination, that you did not fully and fairly understand at the time when the examiner read them to you, and you answered them; is that it?

A. There may be something that I wish to explain; I can't say whether there is or not.

Cross Q. 188. You do not know, then, at this present time whether the answers you have made on cross-examination, as well as on your direct, are or are not correct in point of fact; is that it?

A. I think they are, in the main.

Cross-Q. 189. Your last answer contains all that you know with reference to the several matters about which you have testified on this examination; does it not?

A. With what I have said before in relation to examining the record and making such explanations as may occur to me at that time.

Cross-Q. 190. In your answer to Cross-Q. 178 you state: "Mr. Norton attached the letter to the body of the instrument in that hotel, at that time and day;" were you asked in Cross-Q. 178 anything concerning the subject matter I have quoted from your answer to it?

A. I think not.

Cross-Q. 191. Do you know whether there was or was not?

A. I did not discover it when the clerk read it now.

3229 Cross Q. 192. Did you discover any such thing when you answered that question as being called for by it?

A. Not directly.

Cross-Q. 193. Did you indirectly make any discovery of that kind at that time?

A. The same answer.

Cross-Q. 194. Being under cross-examination, and as by your last answer you have admitted under oath that you testified about matters and things which at the time you knew were not contained in the question submitted to you, I ask you why it was that you mentioned those things and directed the examiner to take them down as a part of your answer to that question, of which you knew at the time you were not inquired of concerning?

A. Because I considered it closely allied to the other part of the question, which was equally true in reference to the same document referred to in the question.

Cross-Q. 195. Paste and pasting a paper to another paper is the same as ink and the writing on a piece of paper, is it not?

A. No.

Cross-Q. 196. I request your attention again to this same exhibit, to the writing in purple ink, signed J. D. Green, and I ask you who wrote that, if you know?

A. I wrote it.

Cross-Q. 197. Is that the writing and that the signature which, in your direct-examination, you say you put there within twenty minutes after, as you say, Norton did the writing on that same paper of which you have spoken in both of your examinations?

A. That is the writing; I think it was put there within twenty minutes; it might have been put there within a shorter time, not much.

Cross-Q. 198. Have you any doubt whatever in your mind that you put that writing there, as you have stated, within twenty minutes of the time when you allege that you saw Norton do the writing that you have spoken of, in that hotel on the 30th March, 1872?

3230. A. I have no doubt at my present recollection; I know I wrote it and within a short time after Mr. Norton handed it to me, and

after his having written the memorandums before named, and signed by him.

Cross-Q. 199. Now give the time of day of that day when those several writings of which you have spoken took place at that hotel, as you have stated they did?

A. I cannot recollect.

Cross-Q. 200. Is this writing which is in your handwriting on that exhibit all the evidence or the data which you have by which you fix the 30th day of March as the time, and that hotel as the place where you say you saw Norton do this writing, and where, within twenty minutes thereafter you procured a bottle or inkstand containing purple ink and wrote that which appears above your name on that instrument?

A. I have other evidence.

Cross-Q. 201. You have?

A. Yes.

Cross-Q. 202. Now for what purpose did you do the writing which you say you did on that paper, and why did you write it on the margin at right angles with the signatures Eddy, Shavor and Corse and Secombe?

A. I wrote it as a memorandum which would show the date that it was delivered to me, and show its cancellation and date in the hands of other persons who might have it; I put it on the margin opposite the names of the parties to the instrument because it was a convenient place to put it.

Redirect by ESEK COWEN, Esq.:

Redirect Q. 203. Have you any distinct recollection as to who made the straight marks through the names of Eddy, Shavor and Corse, running through those signatures from end to end?

A. I have no distinct recollection; I may have done it myself before Mr. Norton made the diagonal or cross marks over these signatures.

3231 Redirect Q. 204. State whether or not those straight and cross marks were all on the paper at the time it was finally delivered to you by Mr. Norton.

A. They were, when it was finally delivered to me by Mr. Norton; I think that I examined the instrument before any cross marks or memorandums were written upon it.

Redirect Q. 205. (Envelope shown witness.) Do you recognize the envelope now shown you?

A. I do.

Redirect Q. 206. What was the enclosure of that envelope when you first saw it, and when, and where did you see it?

A. I saw it first at the hotel, 17 and 19 Park row, on the 30th day of March, 1872; it contained this Exhibit Secombe Original.

Redirect Q. 207. What, if anything, was written on the outside of the envelope at that time?

A. There was written the name of Marcus P. Norton, Esq.

Redirect Q. 208. That name appears to be struck out; who did that?

A. Mr. Norton made the cross marks across the name with a pen.

Redirect Q. 209. Who delivered it to you, and what, if anything, did it contain?

A. Mr. Norton delivered it to me on the day above referred to, and at the hotel referred to; it contained this Exhibit Secombe Original, in the same condition except wear, and the marginal note made by me.

Redirect Q. 210. Who wrote the direction that now appears on the outside of the envelope?

A. Mr. Norton.

(Envelope offered in evidence by defendants Clexton and Caswell, and it is marked Defendants' Exhibit Secombe Envelope, J. A. S., Ex'r.)

Redirect Q. 211. What, if anything, has been done with that envelope since you received it?

A. I have always kept the document Secombe original in it,
3232 except when I exhibited it to Eddy, Shavor and Corse, and until I delivered said document to Mr. Corse for his use.

Redirect Q. 212. Do you recognize the ink in which the memorandum of March, 1872, was written?

A. I do.

Q. 213. What ink do you think it was?

A. It is a species of purple ink, or a bluish purple ink; I think I made it myself, or made the mixture; I generally carried a small pocket inkstand filled with that or a similar ink.

Recross examination of the witness J. D. GREEN, by Marcus P. Norton, Esq.:

Recross-Q. 214. On your last redirect an envelope was shown you which you say contained the exhibit now under consideration, and which you say was delivered to you by Marcus P. Norton in the city of New York, at the hotel Nos. 17 and 19 Park row; was the paper in the envelope at the time that Norton delivered it to you, at that time and place?

A. It was.

Recross-Q. 215. Was that envelope sealed at the time he delivered it to you at that time and place?

A. My impression is it was not.

Recross-Q. 216. Was it ever sealed?

A. I am not positive.

Recross-Q. 217. But you have seen it to day, have you not?

A. I have.

Recross-Q. 218. According to your story concerning it to-day, it has been in your possession since the 30th of March, 1872; did you frequently see it during the period from that time till now?

A. It has been in my possession, with the exception of such times as it was in the hands of Eddy, Shavor, and Corse for examination, which was but a few minutes at a time, and until I delivered it to Mr. Corse a short time ago, I have seen it several times; I had it filed away with other papers where I knew it was safe: the number of times that I looked at it or examined it since it came into my possession I cannot state.

3233 Recross-Q. 219. Approximate the number of times you have seen that envelope and paper since the 30th day of March till to-day.

A. It would be only guess-work to attempt to approximate.

Recross-Q. 220. Since your evidence on this occasion shows that you are something of an expert at guessing, suppose you guess at this matter and state the number of times by the process of guessing that you have seen this envelope and paper during the time named, and particularly the envelope?

(Objected to, 1st, that the question is insulting; 2d, that the guess of the witness is not evidence.)

A. I do not claim to be an expert in guessing as the counsel intimates, and, as I said before, I can't tell the number of times that I have examined the envelope and the document which it contained.

Recross-Q. 221. Have you seen the envelope fifty times during the time inquired about?

A. I may have done, I can't say.

Recross-Q. 222. Do you know whether you saw it at all during that time?

A. Yes, I do.

Recross-Q. 223. When and where was that?

A. At my house a good many times, and at the office of Shavor & Corse.

Recross-Q. 224. For what purpose, if any, did you see and examine that envelope at your house for a great many times, as stated in your last answer, and during the time I am inquiring about?

A. I didn't say that I examined it a great many times.

Recross-Q. 225. Did you ever examine it during this time, at any time, and for any purpose?

A. I did.

Recross-Q. 226. About how many times and for what purpose?

A. Well, probably four or five times, for the purpose once or
3234 twice of showing it to Mr. Shavor at my house, I think, in connection with Mr. Ransford; I also examined it with Mr. Eddy and Mr. Corse, and I think Mr. Shavor, at the office of Eddy, Shavor and Corse; I also took it out and showed it to Mr. Secombe, the brother of W. W. Secombe, as I understand; we examined it together at my house; I also examined it with Mr. Clarke; I showed it to him at his request; and many other times have I seen it when I had been overhauling my papers.

Recross-Q. 227. At what time did you show it to Mr. Clarke at his request?

A. I can't say what time it was, but about or not far from the time they commenced taking testimony before Mr. Brown in Troy, in this case.

Recross-Q. 228. What Mr. Clarke do you refer to in your last answer?

A. Mr. Clarke, the defendant James' attorney.

Recross-Q. 229. Did you ever carry that envelope about your person for any purpose, in your pocket or otherwise?

A. Yes, sir.

Recross-Q. 230. Well, about how many times since March 30, 1872?

A. I carried it in my valise from New York to Troy; I carried it in my pocket from my house to the office of Eddy, Corse & Co.; I carried the document but not the envelope in my pocket from my house to the office of A. C. Corse; I do not know what the firm name is.

Recross-Q. 231. At what time did you carry that envelope in your valise, from New York to Troy?

A. I think I left New York on the night or evening of March 30, 1872, for Troy, but I can tell positively by examining my memoranda.

Recross-Q. 232. What memorandum do you refer to in your last answer?

A. Memorandum of expenses.

Recross-Q. 233. Where is that memorandum now?

A. I think I have got it here in New York; it is possible that I may not have it now.

Recross-Q. 234. Do you know where it is at this time?

A. I am not positive, as I said before.

3235 Recross-Q. 235. You are as positive about that as any matter you have testified about here, are you not?

A. I am not.

Recross-Q. 236. I ask you now to state whether, on the evening of the 30th March, 1872, you left New York for Troy?

A. It is my impression that I did; I can't say positively.

Recross-Q. 237. If you did not leave New York for Troy on the evening of 30th March, 1872, at what time did you?

A. My impression is, that is the time that I did leave.

Recross Q. 238. Are you willing to swear and do you swear that you left New York on the evening of the 30th March, 1872, for Troy, as you now remember it, or as your best present recollections as to that matter?

A. That is my best recollection at present.

Recross-Q. 238½. You are certain, however, that at that time or within 24 hours of it, you did leave New York for Troy, are you not?

A. I am very confident of it.

Recross-Q. 239. And you have no doubts on that subject, have you?

A. I haven't; as I said before, it is my best recollection.

Recross-Q. 240. That is not the question; the question is, have you any doubts in your mind that either on the 30th March, 1872, or else within 24 hours thereafter, we will say 48 hours thereafter, you left New York for the city of Troy in this State?

A. I have no doubt at preesnt.

Recross-Q. 241. Anybody with you on your journey from New York to Troy with whom you had personal acquaintance at the time referred to in my last previous questions?

A. I can't say positive, but I think Frederick G. Ransford was with me.

Recross-Q. 242. Do you know whether Ransford was with you or not on that occasion?

A. I wish to know what occasion.

3236 Cross-Q. 243. I mean on the occasion and during your journey from New York to Troy, either on the evening of the 30th March, 1872, or at some time subsequent thereto, and within 48 hours of that time when you say you went from New York to Troy; that is the time and occasion to which I now refer.

A. I think Ransford was with me, but I am not positive.

Cross Q. 244. Anybody else that you know on that occasion?

A. Not that I now recollect of; that may have been.

Cross Q. 245. After you arrived in Troy at the time referred to, how long did you remain there before going anywhere else out of the city?

A. Not but a few days.

Cross-Q. 246. Well, about how many days?

A. I couldn't tell exactly. But I was soon after in New York, and soon after that in Washington on about the 7th or 8th April, or thereabouts in Washington. That I can't say within a day or two or three. I may be mistaken as to that time coming to New York and going to Washington.

Recross-Q. 247. We will now return to the matter of the envelope which you have given testimony about to-day, and now I ask you again, whether you can say that that envelope was sealed with the Secombe exhibit, when or at that time you say Norton handed it to you on the 30th March, 1872?

A. I think it was not.

Recross Q. 248. If not sealed at that time, and should it now appear to be sealed, who sealed it, if you know?

A. If it is sealed now and was sealed when I received it, the end or

side was open when I received it. I did not break any seal myself to take out the instrument or for any other purpose.

Cross-Q. 249. Who ever charged you with having broken the seal to that envelope in the manner stated by you in the last part of your last answer, so as to take out the instrument that was in it?

A. I have not said that any one did or had.

3237 Recross-Q. 250. If you did not do just that very thing, why were you particular to state in your last answer that you did not do it, when no one had asked you a question concerning it?

A. I considered the questions put in relation to that matter as tending to imply indirectly to that point.

Cross-Q. 251. So you thought you would anticipate a question of that kind and make your answer before the question was put; is that it?

A. I answered the question in the manner I did because it was true, and for the reasons I stated in my last answer.

Cross-Q. 252. Now, I desire you to state whether that envelope was or is opened at the end or side, so that whatever paper it did contain might be removed?

A. It was when it left my hands.

Cross-Q. 253. At what time was that?

A. This afternoon.

Cross-Q. 254. Well, at which place was that opened; the end or along the side?

A. I can't say whether it was opened at the end of the envelope or at the side or edge. That I did not pay any particular attention to.

Cross-Q. 255. Whichever it may be, by whom was that opening made, and when, if you know?

A. I don't know. I don't recollect.

Cross-Q. 256. You don't know anything about it; is that it?

A. I will not be positive whether it was sealed or not, as I have said before, and I will not be positive whether or not Mr. Norton opened it at the edge or end.

Cross-Q. 257. You have stated on your redirect examination that that envelope has upon it the directions of "Charles Eddy, Troy, N. Y."; if you know, for what purpose were those words put there?

A. I suppose it was directed to Charles Eddy, in my care, Charles Eddy being one of the parties that had signed the instrument which the envelope contained, and one that had directed or requested me to procure its cancellation.

3238 Cross-Q. 258. Did you deliver that envelope and the instrument you say it contained to Charles Eddy, as directed to do on and by the envelope, namely, Charles Eddy, Troy, N. Y.?

A. I did.

Cross-Q. 259. When?

A. I can't tell the time, but I notified him of the fact of the cancellation of the instrument the first opportunity that I had.

Cross-Q. 260. I again ask you to state whether, on arriving at Troy at the time when you say you left New York for Troy on March 30, 1872, you obeyed the directions contained upon that letter, namely, the immediate delivery of the envelope and its contents to Charles Eddy, at Troy, N. Y.?

A. There was no such mandate on the envelope as immediate delivery.

Recross-Q. 261. What directions, if any, were upon that envelope which you were to follow in the delivery of it and its contents to anybody?

(Objected to, as the envelope shows for itself and is the best evidence.)

A. Nothing mandatory. It was directed to Charles Eddy, esq., Troy, New York, I think, by J. D. Green.

Recross-Q. 262. For what purpose were the words Charles Eddy, Troy, New York, put upon that envelope?

(Counsel for Clexton and Caswell objects; as the witness did not write the words he cannot know for what purpose they were written.)

A. I suppose for the purpose of showing Mr. Eddy when he received the document and envelope that he, Norton, had written that direction upon the envelope, as there could be no other possible motive that I could see, of his putting a direction upon the envelope, as I was then acting in behalf of, and for, Shavor, Corse & Eddy, and by their request.

3239 Recross-Q. 263. You were where, acting as agent for Shavor, Corse & Eddy?

A. In the city of New York, and at the time this inscription was put upon the envelope I was at the hotel No. 17 and 19 Park Row.

Recross-Q. 264. Now, at what time was that?

A. I think it was on the 30th day of March, 1872.

Recross-Q. 265. You say in your last two answers that you were here in New York, March 30, 1872, acting as the agent of Shavor, Corse & Eddy; what did they employ you to do as their agent at that time?

A. One of the things was to procure the cancellation of this agreement between Eddy, Shavor & Corse and W. W. Secombe, marked "Secombe original" in this cause.

Recross-Q. 266. You saw Mr. Secombe about that matter, did you?

A. I did.

Recross-Q. 267. Did he cancel it, as you had requested him to do?

A. Mr. Norton cancelled it.

Cross-Q. 268. Did Mr. Secombe cancel that instrument, as you had requested him to do, at that time? I demand of you an answer, yes or no.

A. I don't answer any question because of a demand, and I don't think it is gentlemanly in the counsel to demand an answer to any question; nevertheless, I will answer this: that I did not see Mr. Secombe cancel or obliterate the document referred to.

Recross-Q. 269. I again ask you whether W. W. Secombe, on that occasion, in any manner or form, cancelled the instrument referred to, and I again demand of you your answer to this question, either aye or nay to it?

A. I say nay, except through Mr. Norton.

Cross-Q. 270. Do you know the signature of W. W. Secombe?

A. I think I do.

Recross-Q. 271. As made by him on March, 1872?

A. I can't say from my present recollection that I have seen
3240 but one signature that was made purporting to be the signature of Wm. W. Secombe, and made the latter part of March, 1872.

Recross-Q. 272. I now show to you one of the records of this court, signed and sworn to by W. W. Secombe on the 4th day of March, 1872, and filed in this court on that day and year; take it, examine the signature, and see if that is the signature of Secombe.

(Objected to. In the first place, it has not been proved that the paper shown witness is a record of this court, or to have been filed in this court; secondly, that it is not the proper way of comparing handwriting.)

A. It resembles his handwriting, as I had seen it, very closely.

Recross-Q. 273. Upon this same court record, which is the answer of the defendants in the case of Thomas J. W. Robertson vs. The Secombe Manufacturing Company, and contains thirty-nine pages of printed matter, and marked upon its back, at the upper end, in blue pencil, the following number "5-344," and at the bottom the following words, "Filed 4th March, 1872," on page 38 appears, in two places, the name of Marcus P. Norton, in writing; look at those, and state whether they are the signatures of his, as made by him in March, 1872, if you know, and if you do not know, of course we don't expect you to say anything about it.

(Objected to. The same objections, and that it has not been shown that said paper is material to this case, and, therefore, it is improper to attempt to prove such signature in that way.)

A. Without examining the document, as requested in the question, the signatures in this paper of Marcus P. Norton resembles his signature very closely when written with a quill pen.

Adjourned to ten o'clock a. m., Saturday, 31st January, 1880, at same place.

3241 NEW YORK, *January* 31, 1880—10 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before.

Hon. G. H. Williams absent.

Cross-examination of JEREMIAH D. GREEN continued by MARCUS P. MORTON, Esq.:

Cross-Q. 274. I now hand to you from the files and original records of this court several separate papers, the first of which is a notice for the taking of testimony in the case of Robertson vs. The Secombe Manufacturing Company, fixing the time and place for those proceedings; it is signed Marcus P. Norton, and dated New York, the 12th June, 1872, and belongs to the file in the suit I have named; the other seven papers which I show you are original papers belonging to the files of this court in the case of The Union Paper Bag Machine Company, Ellis A. Hollingsworth and Leonard Whitney, jr., versus John L. Newell and George H. Mallory; the first of which is the original answer in that cause, signed and sworn to on the 7th July, 1873, endorsed and countersigned "Marcus P. Norton, solicitor and counsel, Troy, N. Y."; the next is dated May 26, 1873; it is signed "Marcus P. Norton," and addressed to the clerk of this court; the next is a paper signed "Marcus P. Norton," and is his appearance in that case coupled with notice of retainer and of appearance; the next is an affidavit made by Maurice Flaherty on the 15th September, 1873; the next is an affidavit made by Edward Stanley on the 16th September, 1873; and the next is an affidavit made by George H. Mallory on the 16th September, 1873, and containing thirteen pages of writing; and the next is dated the 24th March, 1874, signed "Marcus P. Norton," and is a notice addressed to George Harding, solicitor for complainants; take this package of several
3242 papers, eight in all, look at them under the dates that I have given, and state in whose handwriting they are, if you know; I mean the body of those papers, including the name of Marcus P. Norton, wherever it is.

(Defendants' counsel objects to the question on the ground that all said papers appear to be papers made in former suits in which said Norton was connected, and that none of them are at all material to this case.

A. The first and second page therein, together with the signature thereto, is in the handwriting of Marcus P. Norton, in my judgment; the answer in the case of the Union Paper Bag Company and others v. Newell & Mallory appears to be in the handwriting of Norton, as his signature as solicitor and counsel; the notice of motion for time to take proofs in said case, with the signature, appears to be in his handwriting; the notice of retainer to the clerk in said case is also in his handwriting and signed by him; also the notice of retainer to George Harding, solicitor, is also in his handwriting; also the deposition of Maurice Flaherty in said case is also in said Norton's handwriting, with the exception of the signature; also the deposition of Edward Stanley in the said case is in the handwriting of Mr. Norton, except signatures; the deposition of George H. Mallory in the same case is in the handwriting of Mr. Norton, except the signatures.

Cross Q. 275. I now show to you a letter dated August 23, 1871, the National Hotel, Washington, D. C., addressed to the Commissioner of Patents, and signed Marcus P. Norton; I also show to you an affidavit made by C. C. Callan, September 14, 1871, at Washington, D. C.; and I also show to you an affidavit made by Marcus P. Norton 22d August, 1871, before C. C. Callan, notary public, at Washington, D. C.; I also show to you a paper dated 23d February, 1864, signed Jacob Shavor and Albert C. Corse; also an affidavit dated 18th February, 1870, attached to that paper, and also another affidavit signed John T. Lamport, 18th April, 1870, before C. R. Ingalls, one of the
3243 justices of the supreme court of this State, each of which are exhibits in this cause and were used before this court at the final hearing of this cause; take them and look at them, and state in whose handwriting those several papers are, excluding the marks made by the examiner on them, and also each and every signature, either by Norton or anybody else, that appears upon them.

(Objected to as immaterial.)

A. The body of these documents are written in the hand of Marcus P. Norton.

Cross-Q. 276. Since you were cross-examined by Mr. Williams, complainant's counsel, the other day, have you been to your home at the city of Troy, or at the city of Troy, N. Y.?

A. I have.

Cross-Q. 277. During that cross-examination you spoke of the importance and the necessity of some kind of memorandum which you said you had at home, in order to enable you to give correct and positive answers to certain questions proposed to you by Mr. Williams; did you bring such memorandums with you on your return from Troy, when you last came from there; and, if you did, have you not the same with you?

A. I brought some memorandums with me, which I have in this city; others I had not an opportunity to get together for want of time.

Cross-Q. 278. Did you bring the ones which you had reference to in your answers to the questions put to you by Mr. Williams?

A. That I cannot determine until I have arranged such memorandums and examined the cross-examination so as to know which or what memorandum to refer to.

Cross-Q. 279. You understood my last question, did you not?

A. I think I understood it.

3244 Cross-Q. 280. Cross-Q. 278 is here again repeated to you, and I demand of you an answer either yea or nay; and I further de-

mand from you at this time and place the production of the memorandums inquired about, if you have any such.

(Objected to, and to the demand in it; that it does not specify any particular memorandum, and that it is impossible for the witness to understand what memorandums are referred to; if the counsel will specify any particular memorandum the witness will produce it.)

Complainant's counsel says that the questions put with reference to the memorandums show that the witness was inquired of only concerning that which, on a former cross-examination, he referred to in answer to questions put by Mr. Williams. To that memorandum or those memorandums this inquiry and this demand has reference, and to which both question and demand are limited.

Counsel for Caswell and Clexton takes a further objection. The witness did not swear from any memorandum, but merely intimated that he might be more definite on certain points if he had certain memorandums which were at home; that as he did not swear from the memorandums, or any of them, counsel for the complainant has no right to their production.

A. Witness makes the same answer, and declines to produce any memorandums at present.

Adjourned to February 3, 1880.

FEBRUARY 4, 1880—11 a. m.

Met pursuant to adjournment.

Mr. JEREMIAH D. GREEN recalled:

3245 Q. (The memorandum agreement between Norton and Green, without date, shown witness.) About what time, according to your recollection, was this agreement signed by you and Norton?

A. In the fore part or middle of September, 1871.

Q. Then the memorandum agreement was executed before the Secombe agreement of October 7, 1871?

A. Yes, sir.

Q. Do you remember where this memorandum agreement was executed?

A. I do; in the city of Washington, at the National Hotel.

Q. While you and Mr. Norton were having the negotiations which resulted in this agreement, was anything said between you about an arrangement with Secombe of the nature set forth in the agreement of October 7, 1871?

A. I think there was; and after this agreement was made Mr. Secombe and me went to Washington together and saw Mr. Norton in relation to the Eddy, Corse and Shavor interest; also called upon Judge Mason, of the firm of Mason & Holloway, in relation to the interest they claimed to have in the patent of 1863 for legal services, as employed by Norton and Secombe in the examination before the Third Assistant Postmaster-General, in the fore part of 1871 or 1870. I am not sure whether it was commenced in December, 1870, or the fore part of the year 1871; this matter had been talked over between Secombe and myself, Shavor, Corse and Eddy before we went down to Washington; the date that we went I cannot give now.

Q. Do you know why the provisions of this memorandum agreement were not carried out? And if so, state the reason.

A. Mr. Secombe refused to sign the agreement drawn up in accordance with this memorandum, and the understanding had between the parties to the Secombe original in this case, on the grounds of the in-

terest or amounts the different parties owning, or claiming to own, the patents of 1863, 1869, December 16, 1862, were too large. Mr. Secombe was not willing that the parties represented by the trustee,
3246 Hatch, who was named in my stead at the suggestion of Mr. Secombe and Mr. Chittenden, the legal adviser of Mr. Hatch, should have the control of the one-half of any amount of moneys or other property that should or might be received from such patents, or either of them, from the government, or from any other source; that is, in substance, the reason that final agreement was not consummated.

(The answer and the question and the paper referred to by the witness are each and all objected to as incompetent, irrelevant and immaterial for any of the purposes embraced under the order of court by which these proceedings are had.)

J. D. GREEN.

Sworn to before me this February 5th, 1880.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Friday, February 6, 1880, at 11 a. m.

JANUARY 23, 1880—11 a. m.

Met pursuant to adjournment.

ALBERT C. CORSE, a witness produced on the part of the defendants, being duty sworn, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. Albert C. Corse; I am fifty-six years of age; I reside in Troy, N. Y.; and I am a stove manufacturer.

Q. 2. In 1871 you were a member of the firm of Eddy & Corse, composed of yourself and Charles Eddy, and Jacob Shavor had formerly been a partner of yours and Mr. Eddy?

A. Yes, sir.

Q. 3. Did you, Mr. Shavor, and Mr. Eddy at that time have, or claim to have, an interest in the Norton patents for post-office cancelling-stamps?

3247 A. We did.

Q. 4. Did you then understand that William W. Secombe was assignee in trust for that portion of those patents which was not owned by Eddy, Shavor and Corse?

A. I supposed he had the title; I did not know what his special interest was.

Q. 5. Did you sign Exhibit Secombe Original, now shown to you?

A. I did.

Q. 6. If you were present at any interview between yourself, Eddy and Shavor, or either of you, and J. D. Green, in which the matter of obtaining a cancellation of this instrument was discussed, I wish you would state when and where that conversation was, and the substance of it, as near as you can recollect.

(Objected to as incompetent.)

A. As well as I recollect it, we had several interviews at the office of Eddy & Corse. Mr. Shavor, Mr. Eddy, Mr. Green and Mr. Norton and myself were present. Mr. Norton was complaining of the action of Mr. Secombe in the matter, and it was decided to demand a cancellation of the instrument. We all agreed to that.

Q. 7. Did you accompany Mr. Green and Mr. Ransford in making a call on Mr. Secombe?

A. I did.

Q. 8. What took place at that time?

A. Mr. Green made the demand of Mr. Secombe for the return or cancellation of the document. He asked Mr. Green if he acted as attorney for Eddy, Shavor and Corse; he said he did; Mr. Secombe then turned to me and asked if he was my attorney; I told him he was; he then said to Mr. Green that he would attend to the matter, as well as I recollect now.

Q. 9. How soon after that did you learn, if at all, that this Secombe agreement had been cancelled?

A. I think it was within a day or two.

Q. 10. Do you remember Mr. Green showing the cancelled instrument to you?

3248 A. I do.

Q. 11. Did he show it to any one else in your presence?

A. The first time I saw it I think Mr. Ransford was present; I saw it here in New York first; afterwards I saw it at the office of Eddy, Corse & Co., in Troy.

Q. 12. Was it shown to any one else there?

A. I have no recollection about its being shown to persons not parties to the contract; Eddy and Shavor were present, and saw it.

Q. 13. At any of these interviews before the paper was cancelled at which Norton was present, did he assert or state in any manner that the agreement Secombe Original was made by you without his knowledge, or that he had not consented to it?

A. He did not.

Cross-examined by Hon. G. H. WILLIAMS

Cross-Q. 14. You and Eddy and Shavor, as I understand, agreed with Secombe in the original marked Secombe Original to take from him, when he had collected it from the U. S., $30,000 for your interest in the patent for the post-marking and cancelling instrument?

(Objected to, that the instrument is the best evidence.)

A. We did.

Cross-Q. 15. You say Mr. Norton complained of what Secombe was doing; what complaints did Norton make?

A. That he was not pushing the matter to get anything from the government as he had agreed to or should, and that he was not willing to furnish him, Mr. Norton, sufficient funds to press the matter.

Cross-Q. 16. Do you know anything about the agreement dated January 9, 1871, made between Charles Eddy, as trustee for himself,

3249 and Jacob Shavor and Albert C. Corse, by which he agreed to convey their interest in the patent in question, and in other patents, to Marcus P. Norton and Helen M. Ingalls for the sum of $30,000?

(Objected to, that the agreement is the best evidence; and 2d, that the question is incompetent as it relates to evidence which, if it has any effect at all, is in violation of the stipulation by which Eddy was made a party to this action, and which fixes the rights of Eddy as defined by the agreement of October 23, 1869, or by that of October 7, 1871; and 3d, that the evidence is incompetent under the order of the court, which only permits evidence relating to the cancellation of the agreement of October 7, 1871, and that the question has no bearing upon such issue.)

A. I have no recollection of such an instrument now.

Cross-Q. 17. Did you ever hear Mr. Eddy say anything about it?

(The same objection as last above.)

A. I have no recollection of it now.

Cross-Q. 18. Have you stated all that took place at the time you interviewed Secombe as to the cancellation of the instrument in question?

A. There was some conversation between him and Mr. Green; Mr. Secombe was somewhat excited; he might have said the damn thing was not worth anything; he and Mr. Green had some conversation by themselves, and Mr. Secombe came over to the window where I was standing and showed me a window curtain that you could leave in any portion of the window; it was something new to me; I had never seen such before.

3250 NEW YORK, *February* 4, 1880—11 o'clock a. m.

Met pursuant to adjournment.

Present, counsel as before, Hon. George H. Williams being present.

ALBERT C. CORSE recalled:

Q. Look at the letter dated March 25, 1872, and marked J. A. S., exr., now shown you, and state whether or not you recognize that letter.

A. I do.

Q. When and where did you first see it?

A. Bridgeport, Connecticut; it was either the 29th or 28th March, 1872.

Q. How did you receive it at Bridgeport?

A. Through the mail.

Q. I see there is a memorandum on the outside of the letter signed Gus; by whom was that written?

A. It was written by my oldest son, Augustus P. Corse.

Q. What did you do upon receipt of that letter?

A. I came to New York and saw Mr. Jeremiah D. Green, Mr. Ransford, and Mr. Norton; I met Mr. Green on the street opposite 17 and 19 Park row; Mr. Ransford was with Mr. Green; we then went down Broadway to the office of a commissioner by the name of Kellock, I think; I gave Mr. Green a power of attorney; we then returned to the hotel, 17 and 19 Park row, where we met Mr. Norton; at Mr. Norton's request I went with Mr. Green and Mr. Ransford to the office of Mr. Secombe to confer with him about the cancellation of this Secombe agreement.

Q. Are you sure that that was the 29th March, 1872?

A. That is the date the instrument bears, and I think it must be that day.

Q. What instrument do you refer to?

A. The power of attorney I gave Mr. Green on that day; I have looked at it recently.

3251 (Objected to unless the power of attorney is produced.)

Q. Aside from that instrument, what is your best recollection, after seeing the instrument and having your memory refreshed by it, as to the day on which you and Ransford and Green met Norton at the hotel in Park row?

A. I know it was the last of March, 1872.

Q. Did Mr. Norton, at that interview, give any reason for not going himself to call on Secombe; and, if so, what?

A. He said he thought it was better for me to go with Mr. Green and Ransford, as he was attorney for Mr. Secombe.

Q. When and where did you first see the agreement Secombe Original after it was cancelled?

A. Mr. Green showed it to me either the same or the next day before I left New York on that occasion.

(Letter dated March 25, 1872, offered in evidence, and marked De-

fendant's Exhibit Letter Charles Eddy, dated March 25, 1872, J. A. S., ex'r.)

Cross-examined by Hon. G. H. WILLIAMS:

Cross-Q. Will you swear, Mr. Corse, that at the time you first saw that agreement after the alleged cancellation that it contained upon it all the writing and pen marks which appear upon it at this time?

A. I have a distinct recollection of the letter attached to it, also of the cancellation, and, to my best recollection, the last time I saw it it was in this room; it was in the same condition as it was when Mr. Green showed it to me, with the exception of some paper which appears to have been pasted on the document to hold it together; that is my best recollection.

3252 Cross Q. Are you sure that the papers that are pasted on it to hold it together were on it when you first saw it in this room?

A. I don't think they were.

A. C. CORSE.

Sworn to before me this February 4th, 1880.

JOHN A. SHIELDS,
Examiner, &c.

It is hereby admitted that Federick G. Ransford, a witness formerly sworn in this case, if produced by the defendants, Caswell and Clexton, would testify that he was at the hotel No. 17 and 19 Park row, New York city, on or about the 29th day of March, 1872; that on that day there was an interview between J. D. Green, Albert C. Corse, and said Ransford and Marcus P. Norton; that Green, Corse, and Ransford went to see W. W. Secombe, to obtain the cancellation of the Secombe agreement, at the request of Norton, who excused himself on the ground that he was counsel for Secombe; that the next day the same parties, with the exception of Corse, met at the same hotel, and Mr. Norton then wrote upon a written instrument across the lines thereof, and delivered the same, after writing upon it, to said J. D. Green.

And it is hereby stipulated that this statement shall be received and taken with the same effect as if said Ransford were sworn and had testified to the above facts, subject to any objection, by complainant as to the competency of said evidence, the same as if said Ransford had been called as a witness.

Defendant's counsel offers in evidence three letters heretofore marked by the examiner for identification, and they are marked respectively Defendant's Exhibit Norton Letter, August 29, 1871, J. A. S., ex'r, and Defendant's Exhibit Norton Letter, September 19, 1871, J. A. S., ex'r, and Defendant's Exhibit Norton Letter, October 5, 1871, J. A. S., ex'r.

Defendant also offers another letter marked for identification, and it is marked Defendant's Exhibit Norton Letter, September 29, 1871, J. A. S., ex'r.

3253 Defendant's counsel also offers in evidence the memorandum agreement without date heretofore marked for identification, and it is marked Defendant's Exhibit Norton & Green agreement, J. A. S., ex'r.

Defendant's counsel offers in evidence assignments from Albert C. Corse, of the city of Troy, N. Y., to Caroline G. Caswell, dated the 27th March, 1879, and acknowledged on the same day, and recorded in the Patent-Office at Washington, January 14th, 1880, conveying all his interest in the patent of April 14, 1863, upon which this action is brought.

Complainant's counsel objects to the introduction and reception of

the same as evidence in this matter, on the ground that the same is immaterial, irrelevant, and incompetent,

1st. Because the original records in the cause used at final hearing show that Mr. Corse had no interest whatever to transfer in the manner shown in the paper.

2d. Because under the order of this court by which these proceedings are being had the offer as well as the paper itself is neither admissible or permissible.

3d. Because upon the paper offered there is no certificate whatever showing that the paper offered has ever been recorded in the Patent-Office. It is objected to on each and all of the grounds that have been assigned.

Counsel for complainant now takes a further objection to that part of the paper offered beginning with the words "the interests" and ending with the words "notary public," and to that part the same objections are interposed that have been taken to the first paper called an assignment.

3254 Received and marked Defendant Caswell's Exhibit Corse Assignment, J. A. S., ex'r.

Counsel for complainant objects to the record just made by the examiner, and especially to the word "received," and assigns as objections each and every of those above stated.

Counsel for defendants Clexton and Caswell offers in evidence a certified copy of a general assignment dated March 31st, 1879, from Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., of the city of Troy, N. Y., composing the firm of Eddy, Corse & Company, to J. Albert Cipperly and Charles N. Stannard, conveying to them all the property of the said firm, and the individuals composing the same in trust for the *the* benefit of creditors. Recorded in the Rensselaer County clerk's office, April 1, 1879.

Complainant's counsel objects to the same being received as evidence, and assigns as reasons for those objections each and every of the objections taken as against the defendant Caswell's Exhibit Corse Assignment last above offered.

Received and marked Defendant Clexton's Exhibit General Assignment, J. A. S., ex'r.

To the same complainant's counsel objects in the manner and form last above stated.

Defendant Clexton also offers in evidence an assignment bearing date the 7th January, 1880, from J. Albert Cipperly and C. N. Stannard, the assignees named in the preceeding general assignment, to Samuel R. Clexton, conveying the interest of Charles Eddy, in and to letters patent of the United States, issued April 14, 1863, and all the reissues thereof. It is recorded in the Patent Office January 16, 1880.

3255 Complainant's counsel objects to the introduction and reception of the same in evidence, on the grounds already assigned against the other two papers that have been offered here this morning. in the manner stated in the record, and with the further objection that the letters patent granted by the United States, are only assignable by virtue of the patent act of July 8, 1870, and the amendments thereto, and,

2d. And further, letters patent of the kind stated can neither be sold under execution or by assignees under a general assignment under the laws of the State of New York, and not even by proceedings in bankruptcy, excepting as before stated under the act of July 8, 1870, and the subsequent act of Congress on that subject.

Received and marked Defendant Clexton's Exhibit Cipperly and Stannard Assignment, J. A. S., ex'r.

To the entries made by the examiner complainant's counsel interposes the same objections as last above.

Defendant Caswell now offers in evidence an assignment from Caroline G. Caswell to Herbert M. Caswell, dated 16th January, 1880, and acknowledged the same day, conveying all her interest in said patent and its reissues.

Complainant's counsel objects to the introduction and reception of the same in evidence, assigning therefor each and every of the grounds and reasons stated as objections to each and every of the other papers that have been made and produced, and further objects that if the general assignment of Eddy, Corse & Co. that has been produced here to-day be of any consequence whatever in these proceedings, it conveys in and by the terms thereof all the interest of Corse, if he had any, to Samuel R. Clexton, which was done previous to the alleged recording in the Patent Office of the pretended assignment of Corse to the Caswells,
3256 the patent law requiring that all deeds of assignment, if genuine, in order to be valid as against subsequent purchasers without notice must be recorded in the Patent Office within three months of the date thereof, a matter of which the records produced show was not done, and for this reason objection is taken to the same, in addition to the other objections, as it also appears from the papers produced that the so called Corse assignments were recorded within two or three days of each other in the Patent Office, which was a long time subsequent to the date of the general assignment, dated 31st March, 1879, and recorded in the clerk's office, county of Rensselaer, April 1, 1879. The date of the so-called Corse assignment, being on its face the 27th of March, 1879, about four days previous to the date of the alleged Corse assignment, previous to the date of the general assignment, by the firm of which Mr. Corse was at the time a member, as stated by opposing counsel, and, it is fair to presume, must have known of the embarrassments of that firm, and that they intended to make, as they did make within two or three days thereafter, a general assignment, as appears by the paper that has been offered on that subject.

Received in evidence and marked Defendant Caswell's Exhibit Caroline G. Caswell's Assignment, J. A. S., Ex'r.

The same objections to the entry the examiner has just made, as last above; and further objection is taken to the paper upon examining it since the objections were entered that this same Caroline G. Caswell, upon asking this court permission to become a defendant presented for the consideration of the court a pretended assignment of a much earlier date than this, as the records of the court will show, if I am not mistaken, and, further, that the paper has not been recorded in the Patent Office, which is necessary if the paper be of any consequence.

3257 Defendant Caswell offers in evidence an assignment from Herbert M. Caswell to the defendant Horace T. Caswell, dated January 16, 1880, and acknowledged on the same day, conveying all his right, title, and interest in said patent, and the reissues thereof.

Complainant's counsel objects to the introduction and reception in evidence, and assigns as the reasons therefor each and every that has been taken to the several papers that have to-day been offered and objected to in this record.

Received and marked "Defendant Caswell's Exhibit Herbert M. Caswell's Assignment, J. A. S., Ex'r."

Complainant's counsel objects to the introduction and reception in evidence, and assigns as the reasons therefor each and every that has been taken to the several papers that have to-day been offered and objected to in this record.

Testimony for defendants Caswell and Clexton closed February 7th, 1880.

3257*a* DEFENDANTS CASWELL'S AND CLEXTON'S EXHIBITS.

3258 *Defendant's Exhibit Norton Letter.—Aug.* 29, 1871.—*J. A. S., Exr.*

WASHINGTON, D. C., NATIONAL HOTEL,
August 29th, 1871.

J. D. GREEN, Esq.,
Troy, N. Y.:

DEAR SIR: I propose that an effort be made for a settlement of any and all differences in the stamp matter. Not because I do not firmly and truly believe that I am right in each and every position that I have heretofore taken, or that I have any doubt as to the result whenever I may get ready to move for final settlement by the government, but because I am convinced to-day that there is somebody at work trying to defeat us all. Now, if you represent the other parties in such a manner that what you do will be accepted by them in final settlement, and will come directly here to see me, I will meet you "on the square," and we will make an effort on both sides for a fair and satisfactory settlement of the whole matter. Let us come together in a spirit of kindness and fairness, and trust in the great and good Spirit to lead us to final and satisfactory results, and I have no doubt but you and I alone can fix up the whole matter. Let us avoid as much as possible all reference to the past, for I believe that I have been outraged and swindled, deceived and robbed, and so believing, it does me no good to refer to those things.

I therefore pledge you the word of a most sacred honor that I will meet you in a spirit of kindness, with the hope that we may agree upon terms of settlement that will be satisfactory to all, and if we can agree, then I will send for Mr. Secombe, and we will close it up now, and if we close up an agreement, then we will go at work at once to get ready for next session of Congress for our work to be done. It ought to be done at once if done at all, and such will do away with my plan to wait until the fourteen years expire, and then go in for an extension, as I
3259 had almost concluded to do. If we can agree, then there need be no delay for the seven years' term. There certainly can be no harm in an effort for a peaceful adjustment of the whole affair, which I think can be done in case you come here and meet me in same spirit as I will you, and for the time forget all of the past on both sides, and go about the work of a faithful settlement, so that we can truly say all our trouble is over, and we are united into one with no more unkind feelings, and in that spirit go before committee of Congress at the very beginning of the session.

If we agree, the papers will have to be signed by Mr. Secombe, and there is no doubt but that he will concede to my views and concessions. He and I will be agreed most certainly. I have not informed him of this letter and do not wish to until you shall have been here and come to conclusions for the interest of us all. If you come as proposed, and will telegraph me on the receipt of this letter, I will delay my papers in course of preparation, until we meet and have one sitting in our efforts for settlement. I make this proposition in good faith, and not for you

or me to say one of the other, there I have succeeded in my points, and, we are to do no such a thing. You better come entirely alone, or at least come and see me alone, and do not a thing on either side to provoke the other to unkind words. I am the one that has been so deeply wronged and outraged, and if I can come to friendly grounds, you ought to do nothing to drive me away from it. I must have all that is of an unkind nature laid aside with the view of terminating an unhappy controversy, because it is for the interest of us all to do so.

Now, sir, I will do my share for such conclusions. If you can meet me in the same spirit and on same grounds then I want you to come without a day's delay, and telegraph me on the receipt of this if you are to come so that I can get it to-morrow, and upon this letter I now ask the best and richest blessings of kind Heaven, and await your answer.

I am,

MARCUS P. NORTON.

3260 *Defendants' Exhibit Norton Letter.—Sept.* 19, 1871.—*J. A. S., ex'r.*

WASHINGTON, D. C., NATIONAL HOTEL,
September 19*th*, 1871.

J. D. GREEN, Esq.,
Troy, N. Y.:

DEAR SIR: I have written Eddy to-day about stamp. Please see him and he will tell you my plan and let you read the letter.

Let's put all the patents into one lot and then make a new and fair deal among all our interests, for we will make more money out of it. I will put in my New York interest into the same lot and you outside persons shall bear the expenses. My interest in the Secombe Company are quite large and valuable as you will see. And right there we can control a monopoly in the manufacture, and also manage to collect for past use and infringements R. R. Now, I will put this in too, but you must arrange for the necessary expenses to go on with the business, all I want in the whole is one-quarter free from all expenses and you outside people may have the rest, but you must aid me in those expenses for I am suffering for money now. We can be friends and labor together as one, and all get rich. Please say to Shavor and Ransford that I desire to let the past be past, and will join them heart and hand in doing right, and in doing justly by each other. God will bear me witness in all this, for it is well known that for a long, long time I have been trying to live the Christian's life. I have had great trials—I thought you all were trying to rob me, and that it was necessary to do all I have done, in good faith to save myself and property. But I have now no feelings. I love those whom I thought were doing me a great wrong, and now desire to meet you all on Christian grounds and will suggest a trusteeship of three persons, to wit: Chas. Eddy, J. D. Green and W. W. Secombe, to have all the patent titles to settle for the use, &c., &c., and to
3261 pay all expenses, and to help me out of my money needs at this time—I am willing to do anything that is right, just, and honorable in this business. Our contentions have done two things. First, made me very poor, and, second, increased the values from $100,000 to $1,000,000. Now, let us join in good faith, and all do right one with the other. This is now my prayer. Now, Green, think of it as you may. The spirit of the good Master is now struggling with me, and I with it, and I am a new and happier man. Now all meet me right there, and do right by me.

When will you be here? Please hasten your coming, for I am getting down sick here, and must go home at once.

In haste,

M. P. NORTON.

Defendants' Exhibit Norton and Green Agreement—J. A. S., ex'r.

MEMORANDUM AGREEMENT.

For the purpose of conducting to a final issue certain negotiations, arrangements and agreements of and concerning past disagreements, and differences between the persons and parties hereinafter set forth and named, we, the undersigned, having due and lawful authority so to do, hereby enter into this memorandum agreement, which shall be taken up and cancelled upon the making and signing of the permanent agreement by and between the same persons and parties, to wit, Marcus P. Norton, of the city of Troy, State of New York, for himself and for Helen M. Ingalls of same place, and Wm. W. Secombe, of the city of New York, parties of the first part by Marcus P. Norton, their attorney and counsel, and the inventor, patentee, and owners by certain assignments duly made and of record, of certain letters patent granted to said Marcus P. Norton, for "postmarking and for cancelling postage-
3262 stamps," dated as follows, to wit: December 16th, 1862, and No. 37,175, and April 14th, 1863, and No. 38175, and all reissues thereof, also, owners of one-fourth part of letters patent granted on the 9th day of August, 1859, and No. 25036, for "Improvement in Post-Marking Stamp," and Frederick G. Ransford and Jacob Shavor, of said city of Troy, and Peter Low, of the city of Cleveland, State of Ohio, and Wm. B. Hatch, of the city, county and State of New York, parties of the second part, by J. D. Green, of said city of Troy, their attorney and counsel, and owners by assignment so called, of one-fourth part each in the letters patent for "Improvement in Post-Marking Stamps," granted August 9, 1859, and No. 25036, and granted upon the application of Marcus P. Norton. Witnesseth, That the said persons composing the said first and second part hereby propose and consent to enter into agreement to put the said letters patent into the hands of trustees, to wit, William W. Secombe, of city of New York, for the party of the first, and Jeremiah D. Green, of said city of Troy, for the party of the second part. The said patents and all claims against the Post-Office Department for past and future use of the same, or of either of them, shall be managed by said trustees for the collection of compensation and settlement with the Government of the U. S. A. for the past and future use by the Post-Office Department of the said patent dated April 14, 1863, and the several reissues thereof, or of either of the other said patents, and whatever money shall be had, or other property shall be taken or obtained in such settlement shall be equally divided among the parties of the first and second part (after deducting the actual and necessary expenses in securing such settlement). And each party shall also furnish a person for the prosecution of said claim and for such settlement, who shall be Marcus P. Norton and Jeremiah D. Green aforesaid, and each party to bear their own expenses except Commissioners fees, and fees for witnesses in any suit in Court of Claims for such settlement, and other necessary expenses aside and apart from the
3263 services of the said persons so furnished and named as aforesaid, such last named expenses to be first deducted from the whole sum or amount received. The said party of the first part shall cancel any or

all claims of Charles Eddy and A. C. Corse, if there shall be any such now held in a lawful manner from or by any act on the part of Marcus P. Norton aforesaid, so that said Jacob Shavor shall not be liable therefor in any manner or form. The said party of the said second part will well and faithfully assign unto Helen M. Ingalls aforesaid, or to any one named by her, and said Marcus P. Norton, all and each and every right, title, and interest that they have or obtained by assignment from said Norton, or in any other manner whatever, to all the invention covered by the claims that were stricken from the application of June 15, 1859, upon which issued the patent of August 9, 1859, there being then in all, to wit, first, second, fourth, retaining in that application only that upon which was based the third claim for which said patent was granted, and they shall also release unto said Helen M. Ingalls, or any person or persons named by her, and said Marcus P. Norton, all and each and every claim they, or any of said party of second part may have to a certain patent granted to said Marcus P. Norton on the 14th day of January, 1862, and filed in Patent Office, August 8th, 1861, for improvements in hand stamps, or in post-office post-marking stamps, and now pending for reissue in the name of "Secombe Manufacturing Company," and the said Peter Low shall also release any and every claim he may have in a certain case or application known as the "Norton & Haskins" rejected and withdrawn case (and he shall also release said Norton from any and all indebtedness to him in case there shall be any such, and the said Shavor shall do likewise unto said Norton). Each and every party hereto shall enter into the final agreement in good faith, render all the aid in his or their power to maintain said patents and caveats on which the same were granted, and to obtain settlement and payment from the general Government as aforesaid.

3264 On pages 3 and 4 the red-pencil lines were made in lines 11, 12, and 13, page 3, and in lines 12, 13, 14, 15, and 16, page 4, as erasures before signing.

MARCUS P. NORTON.
J. D. GREEN.

The words so erased are included in ( ) in this printed testimony.

EDW. D. BETTENS,
Solicitor for Defendants Caswell & Clexton.

Defendant's Exhibit Norton letter.—Sept. 29, 1879.—*J. A. S., Ex'r.*

WASHINGTON, D. C., NATIONAL HOTEL,
September 29, 1871.

J. D. GREEN, Esq.:

DEAR SIR: I wrote you this morning quite fully, and I have thought that perhaps it is unnecessary for me to remain here away from my family when they are actually suffering for attention from me, while I am anxious to have stamp matter settled up fairly, and have been and am willing to make concessions whereby to get it done, I have also expected that I would be liberally and frankly met by your side of the case. You do not say one word about the aid I asked for, whether it is to be done or not. If not to be done, it is only right that you should frankly tell me so; then I will raise the money here, and go right square home, and will remain there and hold on to what we have, and of course would have to consent to a settlement until the 1859 patent runs out, unless I

now petition Congress to pay my family for that term, which of course would interfere with your first term. This plan would settle the whole thing, and compel Congress to say which patent is the one to set-
3265 tle under; but, on the other hand, if I am helped in my great distress for money just to live on, that is all I ask until we can get it through. I am ready to put the whole matter, extended term and all, right in, and also to work right along for full success, and I have many friends here and elsewhere who will aid me in getting it through, and so make but one settlement of it. Now I want you to say frankly by return of mail whether or not any provisions have been made for aid to me in funds for my family until we can finish a settlement.

If the patent is good for anything, it is good for something, and it is worth the aid I ask; if not, then you ought not to be in my way any longer. I hope you will see that I am not asking too much when I ask what I do. My deed of trust from Secombe for $\frac{2}{5}$ of the 1863 patent I have thought it best to put upon record, and when you are ready to do me exact justice, we are willing to sign papers which will reach the extended term, and also modify this $\frac{3}{5}$ arrangement, and never before. This I have from Miss Ingalls to-day; so you have only to come up to my proposition when you were here. I can raise money to go home, but I want to go on and help it through on the "combination," and, if met right, shall do so.

M. P. NORTON.

P. S.—If I have no answer to this letter by Tuesday morning, then I leave for home.

M. P. NORTON.

Defendants' Exhibit Norton letter.—October 5, 1871.—J. A. S, Ex'r.

WASHINGTON, D. C., NATIONAL HOTEL,
October 5, 1871.

J. D. GREEN, Esq.:

DEAR SIR: Your letter is at hand. It is not right for you to
3266 hinder me here from my family, from whom I have been gone over two months. They need me at home now, and are actually in want of money to keep them from cold and sickness. They think it strange that I do not come home, or send them money. They need it now—now. What use have I for a contribution, as you call it, unless I am to be benefited by it? None whatever. It is a full month since you went from here to do it all up inside of ten or twelve days. Mr. Green, I desire to do right, to be an honest man, and to live the Christian's life. I won't go into argument of the wrongs done me about this stamp, but I will say that I cannot and shall not remain here only a few days longer, because I can't let my family suffer longer, or be thrown out doors here because of non-payment of my bill. No; but I will send to my wife's relatives, and get money to go home, and then remain there, and sign no papers or allow any signed by my family. You must not call this threatening. If you are to do right by me, why don't your people do so, and do it now?

In haste,

M. P. NORTON.

Defendants' Exhibit Charles Eddy letter.—Dated March 25, 1872.—J. A. S., Ex'r.

METROPOLITAN HOTEL, TWEED & GARFIELD, PROPRIETORS,
New York, March 25, 1872.

CHAS. EDDY, Esq.:

DEAR SIR: Mr. Secombe and I have concluded it to be best for you to come here, to be present in our efforts to settle up matters between the patents of 1859 and 1863. You will need to be here on Wednesday morning, as we meet at this hotel for that purpose on that morning. In this settlement Mr. Secombe will desire to change his relation with
3267 you and those you represent, especially as the case must go into the Court of Claims, and I concur with him, as you have found some fault with me. To avoid hereafter any possible opportunity for any one to find fault, and to get this whole matter forever settled, it is much the better way to have all those present on that occasion who in any manner claim an interest. It is much the better way to go the entire ground over again, and begin new, and in that way have a friendly and satisfactory settlement, and then go on and get the money. Let us have some good trustees, and put the case into the Court of Claims at once, and we can get it through and get our money at this term of that court, which will be inside of three or four months. There is no use of employing any attorneys in the case either, for I can and will take all the proofs we may need, and prepare the case for presentation to the court, and then all it will cost will be the bare expenses of doing the same.

Don't fail to be at my room at this hotel early Wednesday morning next for the business above named. I must now go home, as my family are sick and in great need of me, and I want to get it settled so I can go Wednesday night. You can come down on the night train, and be here at six o'clock morning, or you can come the night before, to-morrow night. But don't fail to come, as it is arranged for all the parties to be here at that time. I write this after consultation with Secombe, and at his request, in which I concur.

In haste,

MARCUS P. NORTON.

Mr. Eddy says, if there's anything in this to attend to it; he hardly thinks it worth his while to go down.

GUS.

3268 *Defendants' Eddy's Exhibit Secombe Original.—Jan'y 23, 1880.—J. A. S.*

Whereas Charles Eddy, Jacob Shavor, and Albert C. Corse (formerly comprising the firm of Charles Eddy & Co., of the city of Troy, N. Y.), and William W. Secombe, of the city of New York, are together interested in the prosecution of a certain claim against the government of the United States, to recover certain moneys for the use of an improved patented cancelling stamp, known as the "Norton post-office cancelling stamp," invented and patented by Marcus P. Norton. And, whereas, the said William W. Secombe is also trustee for other parties interested in the prosecution of said claims to the amount of one-half of said claim: Now, it is understood and agreed by and between the said Charles Eddy, Jacob Shavor, and Albert C. Corse, parties of the first part, and William W. Secombe, trustee as aforesaid, party of the second part,

that the said parties of the first part will accept and receive in full payment and satisfaction of their claim and demand the sum of thirty thousand dollars.

It is further agreed that the said sum of thirty thousand dollars shall be paid by the party of the second part out of the moneys so received by said party of the second part, as trustee as aforesaid, provided his said trust fund amounts to the sum of sixty-two thousand dollars, and in case said trust fund does not amount to said sum of sixty-two thousand dollars, then the parties of the first part agree to take and receive in full satisfaction and payment of their said claim, the pro rata sum or amount of such sum as shall be received by the party of the second part, as trustee as aforesaid, in connection with Holloway & Mason, of the city of Washington, D. C., whose interest in said claim against the government is twenty thousand dollars, and William W. Secombe, whose personal claim therein is twelve thousand dollars, it being under-
3269 stood that each of the parties shall accept the said pro rata amount in full satisfaction of their several claims.

In witness whereof the parties have hereunto set their hands this seventh day of October, 1871.

CHARLES EDDY.
JACOB SHAVOR.
ALBERT C. CORSE.
W. W. SECOMBE.

In presence of Francis Rising, as to Shavor, Corse, & Secombe.
C. H. McGRATH,
Witness for Charles Eddy.

Received for record January 28th, 1872, and recorded in liber T 14, page 434 of Transfers of Patent.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] SAMUEL A. DUNCAN,
Acting Comm'r of Patents.

The letter pasted to Exhibit Secombe Original, page 113, is as follows (in evidence, see testimony of J. D. Green, page 45):

[W. W. Secombe, pres't. P. A. Curtis, sec'y. Office of Secombe Manufacturing Company, No. 7 Park place, New York.]

Mr. NORTON:

I have decided to send you the contract, and you can do what you are a mind to with it.

I shall leave my office soon, but shall wait till the boy comes back if you have any message.

Yours,

SECOMBE.

Endorsed on the foregoing letters are the following words (in evidence, see testimony of J. D. Green, page 45):

3270 TROY, N. Y., *April* 3, 1872.

I received this letter with the contract hereto annexed on the 30th day of March, 1872, for the uses and purposes as stated therein and herein.

MARCUS P. NORTON.

P. S.—I delivered the same to J. D. Green, of Troy, N. Y., on this 3d day of April, 1872, for cancellation, &c.

MARCUS P. NORTON.

Endorsed on the Exhibit Secombe Original are the following words (in evidence, see testimony of J. D. Green, page 45):

TROY, N. Y., *April* 3, '72.

This instrument was given to me by Mr. Secombe on the 30th day of March, 1872, for the uses and purposes as stated in the letter hereto annexed, also for cancellation if I deem it best so to do, which I do believe ought to be cancelled, and I do direct the same to be done by virtue of said letter hereto annexed.

MARCUS P. NORTON.

The following memorandum is also on said Exhibit Secombe Original (in evidence, see testimony of J. D. Green, page 45):

This instrument was surrendered to J. D. Green, attorney for J. Shavor and Corse, on demand, and cancelled March 30th, 1872.

J. D. GREEN.

Defendant's Exhibit Secombe envelope.—J. A. S., Ex'r.

(If not called for in ten days return to Secombe M'f'g Co., 7 Park place, New York.)

MARCUS P. NORTON, ESQ.,

CHARLES EDDY, Esq.,

TROY, N. Y.

By J. D. GREEN, ESQ.

3271 *Defendant's Exhibit Norton Letter.—August* 28, 1872.—*J. A. S., Ex'r.*

[Freese's Commercial Hotel, on the European plan. W. B. Pugh & Co., proprietors, 17 and 19 Park Row, opposite new post-office.]

NEW YORK, *August* 28, 1872.

A. C. CORSE, Esq., *Troy, N. Y.:*

DEAR SIR: As I came from your office on yesterday I called on Tibbetts & Butler to see about the time when they made for me the model of "reservoir" and "copper lining," or other lining that would not rust out, and that could easily be replaced, if necessary, for any cause, &c., &c., &c., and I find from their books that it was in January, 1868, which gives us more time than I told you. The model also with damper in flue strip principle was made at same time, while the entire stove model, with all my improvements, was made by them January, 1869. Tibbetts will have the account drawn off for me by Friday next, when I will be home and ready to put all those matters square through, as I proposed to you.

Ransford and Green are here with me, and we are fully determined on having the stamp business, when we at Troy can and will manage

and control. By to-morrow we will have all matters, when we can fully manage the same upon the plan and principle suggested by your Mr. Eddy, as we all fully concur in the same, and out this dishonest man, Secombe—a great fraud—must go, and we have the first successful move made to that end. We hope to leave here to-morrow night for Troy.

I thought it best to name the stove matter to you for consideration, with and by all your house, as well as the stamp business here.

I have other authorities to hold up each and every of my positions in the Stanley stove case, and it is stronger to-day than before. I have not yet seen Ruggles, and may not. All will depend upon cir-
3272 cumstances, for I am certain that we will defeat him on many points and grounds. I am fully satisfied, by recent authority found here to-day, that we can get this case re-opened for a rehearing. A similar case has just been done here, only not half as strong as the Stanley case.

I will see you all on my return home, and will be amply prepared to maintain my every position in all these matters.

In haste, &c.,

MARCUS P. NORTON.

Defendant's Norton Letter.—April 15, 1876.—*J. A. S., Ex'r.*

[National Hotel, F. Tenney & Co.]

WASHINGTON, D. C., *April 15th*, 1876.

CHARLES EDDY, Esq.:

MY DEAR SIR: Your letter of the 14th instant has come to me this evening, and I am glad that you are coming to the exact point. When I came on here and looked over matters I became satisfied that the bill introduced in the Senate by our friend Senator Ingalls, whom you will remember is an own cousin of Mrs. Norton's, was not broad enough to make all points sure. I then drew up another one and had Mr. Townsend introduce it in the House. Well, after that was in point I again became well satisfied that it ought to be further amended, which I done in the committee room. I met Mr. Green there and his bill, yet I went on with my argument as though we had never before met.

The committee were favorable to my bill as I had amended it. Mr. Green suggested some two or three amendments about title matter, and I at once accepted the same and would have had them all in, in the first place, had I not honestly thought the bill already covered those points.

That was one reason why I wanted you here, so that you might
3273 be satisfied with the bill either as it was or else as amended at your suggestion. The Green bill, as you call it, was taken from mine, but were it a law it would be useless to us for many legal reasons. Now, Mr. Eddy, I do not believe that there will be any more trouble about our stamp matter, for Green has come to his senses, and is acting like a man about it, and you at Troy have come to the exact line of right except you ought to do something on actual expenses—personal at that; not one cent is required for any other use, and would not be used by me if it were. We are perfectly right without any bribe money.

I enclose herewith printed report of "Secretary of War" on bill 2865. The bill as agreed on is printed with it, as you will see when I have marked it in red pencil. Please study this amended bill and see the points to provide for, and see how well it has been done. I can't see

how you can find any fault with it; if you do, let me know just what and where it is by return of mail, as the bill will be reported on "Wednesday" or "Friday" of next week.

I finished the committee report last night. I worked on it three days and one night, and Green also worked one day in looking up the cases we wanted to put in.

We went before the sub-committee last night, and the report was adopted by them without a single amendment.

This forenoon we took it to the "Secretary of War" for the Patent Committee, to see if it was right there, and the Secretary of War approved of every word of it, but made some additions to the last end of it on an important point, too. Now we have a most elaborate and perfect report. We prepared it for the committee, because it needed to be full and perfect, and would require much patient time; we have it, and right, too. It will go to the Public Printer on Monday or Tuesday and be printed in one day and night. We will send you copy of it. Mr. Green is pleased with it, he never asked to have me change but
3274 one or two words of it. We worked hard to get it just right on every point, so that when it is read in the House no one can assail it, and the "Committee on Patents" and the "Secretary of War" say that it is just the thing. Indeed, the Secretary of War told Mr. Green and myself to-day that I was "a very strong and able paper," which we took as a compliment.

Monday we meet the Patent Committee of House to arrange for passage of our bill.

It is expected that that committee will be called on for its bills reported on, some day next week. We mean to have everything ready to put our bill in its passage, if it goes through the House, as no doubt it will, it being so strongly backed by this new Secretary of War, also by the Attorney-General, and by the other departments in its present form. If we can't carry it without, we will have a special message from General Grant to Congress urging it as a public-measure and of necessity at that. It is all ready to go through the Senate, for their committee are for it. We meet Senate Committee on Patents on Thursday next for the purpose of having the bill all ready then to be passed by Senate as soon as House has passed it. By this there will be no delay.

I am so tired to-night over our work all the week that I can hardly write well enough for you to read this letter. I have three warm personal friends in the House, one of them an old classmate of mine in Union College, who have agreed to speak on the bill for us, too, so I have four such men now in the House. These are not on the Patent Committee. Then we have eleven on Patent Committee, so we think we can tide it through.

We are strong.

In the Senate we have a large number of personal friends. I spent an evening with Senator Conkling one week ago to-night and he is very friendly and will help if we need any in the Senate.

If this bill become a law, we can realize a handsome fortune each out of it, because it is right we should. You see there will be no de-
3275 lay about it, for we mean to have the cases preferred ones in each court, and we can take them up at the exclusion of all other cases or business. These are the amendments suggested by the War Department.

Now, I have given you the main features of the bill, of the report, and of what we are doing here, so you may approve or disapprove of the same.

It has been a great job to get a bill just right, so that everybody's rights shall be preserved, but we have it.

A hundred dollars for personal expenses will, I think, be enough if you could spare it, and not feel as though you were being robbed.

What say you? Secombe is up; he has gone into bankruptcy. I have twice written Lamport, John S., to send me certain papers which he has of mine, and he does not answer me; will you see him, and see if he has received my letters, and why he does not respond?

We are perfectly agreed about this matter of bill, reports, &c., &c., and I think Green will stand up to it like a man; if so, we will have money very soon, too, and in quantity to please us all.

I wish I had hit on this plan two years ago.

You can show this letter to whom you please, but answer at once, as I can't say on what day the committee will report, whether Wednesday or Friday, and I want to know your opinion of our bill.

I send you two.

Truly, &c.,

MARCUS P. NORTON.

Defendant's Caswell's Exhibit Corse Assignment.—J. A. S., Ex'r.

Know all men by these presents, that Albert C. Corse, of the city of Troy, county of Rensselaer, and State of New York, party of the first part, in consideration of the sum of one dollar, and other good valu-
3276 able, and sufficient consideration, to him in hand paid by Caroline G. Caswell, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over unto the said party of the second part all his right, title, and interest in and to certain patents of the United States for and improvements in certain postage-stamp cancelling apparatus, now in the name of Charles Eddy, trustee, in trust and for the benefit of said party of the first part and others, the same to be held by the said Caroline G. Caswell for her own use and behoof, and for the use and behoof of her legal representatives, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In witness whereof I have hereunto set my hand and seal this twenty-seventh day of March, in the year eighteen hundred and seventy-nine.

ARBERT C. CORSE. [SEAL.]

Signed and sealed in presence of,

STATE OF NEW YORK,
County of Rensselaer, ss:

On this twenty-seventh day of March, in the year eighteen hundred and seventy-nine, before me, the subscriber, personally came Albert C. Corse, to me known to be the person described in and who executed the within instrument, and who acknowledged that he executed the same.

EDWARD F. LEAHY,
Commissioner of Deeds, Troy, N. Y.

STATE OF NEW YORK,
City of Troy, Rensselaer County Clerk's Office, ss:

I, James Keenan, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby

certify that Edward F. Leahy, whose name is subscribed to the
3277 certificate of proof or acknowledgement of the annexed instrument, was, at the time of taking such proof or acknowledgment, a commissioner of deeds in and for said city, dwelling in said city, and duly authorized to take the same; that I am well acquainted with the handwriting of the said commissioner, and verily believe that his signature to the said certificate of proof or acknowledgement is genuine, and that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 12th day of December, A. D. 1879.

[L. S.] JAMES KEENAN, *Clerk.*

The interests assigned and intended to be assigned by Albert C. Corse to Caroline G. Caswell, by above instrument in writing, dated March 27, 1879, and acknowledged on the same day, before Edward F. Leahy, commissioner of deeds for city of Troy, are as follows: Letters patent of the United States, issued and granted to Marcus P. Norton, as the original and first invention for "improved postmarking and canceling hand stamps," dated respectively as follows, to wit: January 14th, 1862, No. 34184; December 16th, 1862, No. 37175; April 14th, 1863, No. 38175; reissued August 23d, 1864; reissued No. 1748, and August 3d, 1869, reissued No. 3586; also, patent for revenue cancelling stamps, dated August 16th, 1865, No. 49432; also patent for improvement in postmarking and cancelling hand stamps, issued July 13th, 1859, and dated June 10th, 1869, No. 92688; also all reissues of the above, and especially the reissue of patent dated April 14th, 1863, which reissue is to Helen M. Ingalls, dated October 4th, 1870, on "Division A," numbered 4143. The interests conveyed by Albert C. Corse to Caroline G. Caswell are particularly described in an assignment made by Marcus P. Norton to Charles Eddy, as trustee, dated Oc-
3278 tober 23d, 1869, and recorded in Patent Office, October 25th, 1869.

And I hereby sell and assign and transfer all my interests in said patents and their reissues to the said Caroline G. Caswell.

ALBERT C. CORSE.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this thirteenth day of January, in the year eighteen hundred and eighty, before me, the subscriber, personally came Albert C. Corse, to me known to be the person described in and who executed the above instrument, and acknowledged that he executed the same.

[L. S.] A. R. MOORE,
Notary Public.

STATE OF NEW YORK,
City of Troy, Rensselaer County, Clerk's Office, ss:

I, James Keenan, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that A. R. Moore, whose name is subscribed to the certificate of proof or ackn'wledgment of the annexed instrument, was, at the time of taking such proof or acknowledgment, a notary public of the county of Rensselaer, dwelling in said county, and duly authorized to take the same; that I am well acquainted with the handwriting of the said notary, and verily believe that his signature to the said certificate

of proof or acknowledgment is genuine, and that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 13th day of January, A. D. 1880.

[L. S.] JAMES KEENAN, *Clerk.*

Recorded Jan'y 14th, 1880. Liber V. 24, page 441.

3279 *Defendant's Caswell's Exhibit Caroline G. Caswell's Assignments, J. A. S., Ex'r.*

I hereby sell, assign, and transfer to Herbert M. Caswell, of Troy, New York, all my right, title, and interest, in law and in equity, in and to all those certain inventions and improvements in postmarking and cancelling stamps, and of and in and to letters patent of the United States of America issued therefor April 14, 1863, to Marcus P. Norton, and of and in to all the several and respective reissues and assignments thereof and agreements thereto, and of and in and to all and any rights, claims, and demands for the past and future use thereof, or for any infringements thereof.

CAROLINE G. CASWELL.

Signed, sealed, and delivered this 16th day of January, 1880, in the presence of—

H. S. HICKS.

STATE OF NEW YORK,
Rensselaer County, ss:

On this 16th day of January, in the year one thousand eight hundred and eighty, before me, the subscriber, personally appeared Caroline G. Caswell, to me known to be the same person described in and who executed the above instrument, and acknowledged that she executed the same.

H. S. HICKS,
Com'r of Deeds, Troy, N. Y.

STATE OF NEW YORK,
Rensselaer County, ss:

On this 20th day of January, 1880, before me personally appeared H. S. Hicks, to me known to be the person who took foregoing acknowledgment, and acknowledged that he took the same.

J. M. LANDON,
U. S. Commissioner, N. Dist. N. Y.

3280 STATE OF NEW YORK,
City of Troy, Rensselaer County, Clerk's Office, ss:

I, James Keenan, clerk of the said county and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that H. S. Hicks, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, was at the time of taking such proof or acknowledgment a commissioner of deeds in and for said city, dwelling in said city, and duly authorized to take the same; that I am well acquainted with the handwriting of the said commissioner and verily believe that his signature to the said certificate of proof or acknowledgment is genuine, and that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 27th day of January, A. D. 1880.

[L. S.] JAMES KEENAN.

Defendants' Caswell's Exhibit Herbert M. Caswell Assignment, J. A. S., Ex'r.

I hereby sell, assign, and transfer to Horace T. Caswell, of Troy, N. Y., all my right, title, and interest in law and in equity in and to all those certain inventions and improvements in postmarking and cancelling stamps, and of and in and to letters patent of the United States of America issued therefor, April 14, 1863, to Marcus P. Norton, and of and in to all the several and respective reissues and assignments thereof and agreements thereto, and of and in and to all and any rights, claims, and demands for the past and future use thereof or for any infringements thereof.

HERBERT M. CASWELL.

Sealed and delivered this 16th day of Jan., 1880, in the presence of—
H. S. HICKS.

3281 STATE OF NEW YORK,
Rensselaer County, ss :

On this 16th day of January, in the year one thousand eight hundred and eighty, before me, the subscriber, personally appeared Herbert M. Caswell, to me known to be the same person described in and who executed the above instruments, and acknowledged that he executed the same.

[L. S.] H. S. HICKS,
Commissioner of Deeds, Troy, N. Y.

STATE OF NEW YORK,
Rensselaer County, ss :

On this 28th day of January, 1880, before me, personally appeared H. S. Hicks, to me known to be the person who took foregoing acknowledgement, and acknowledged that he took the same.

J. M. LANDON,
U. S. Commissioner, N. Dist., N. Y.

STATE OF NEW YORK,
City of Troy, Rensselaer County, Clerk's Office, ss :

I, James Keenan, clerk of the said county and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that H. S. Hicks, whose name is subscribed to the certificate of proof or acknowledgement of the annexed instrument, was at the time of taking such proof or acknowledgment a commissioner of deeds in and for said city, dwelling in said city, and duly authorized to take the same; that I am well acquainted with the handwriting of the said commissioner, and verily believe that his signature to the said certificate of proof or acknowledgment is genuine and that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 27th day of January, A. D. 1880.

[L. S.] JAMES KEENAN.

3282 *Defendant's Clexton's General Assignment Exhibit.—J. A. S., Ex'r.*

This indenture made and entered into this 31st day of March, 1879, by and between Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., of the city of Troy, in the county of Rensselaer, and State of New York, copartners doing business at said city of Troy, un'er the firm-name of Eddy, Corse and Company, and individually, parties of the first part, and J. Albert Cipperly and Charles N. Stannard, of the same place, parties of the second part, witnesseth: That whereas the said parties of the first part are indebted to divers persons in sundry sums of money and being unable to pay the same in full, are desirous of making a proper provision for the payment thereof, so far as is possible, and of making a just and proper distribution of their property among their said creditors: Now, therefore, the said parties of the first part, in consideration of the premises and of one dollar to each of them in hand paid by the said party of the second part, the receipt whereof is hereby duly acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, convey, bargain, sell, assign, transfer, and set over unto the said party of the second part all and singular their copartnership and individual estate and property, real and personal goods, chattels, effects, credits, accounts, debts, dues, demands, choses in action and property of every name and kind whatsoever, whether held by and in the name of said parties of the first part, and each and either of them, or by and in the name of any other person for them or either of them, except such property, if any held or owned by said parties of the first part, separately and individually, as is exempt by law from levy and sale under execution; to have and to hold the same unto the said party of the second part, their heirs, executors, administrators, and assigns. In trust, however, to take possession
3283 of the same with all reasonable dispatch, and to sell and convert the same into money; also to sue for, collect, and receive all such debts, accounts, demands, choses and things in action hereby assigned as may be collectible, and with and out of the proceeds of such sales and collections first to pay and discharge all the just and reasonable expenses, costs, and charges of executing and perfecting this assignment and of carrying into effect the trust hereby created, together with a lawful commission to the party of the second part for their services in executing said trust; second, with and out of the net proceeds of the separate and individual property of each of the said parties of the first part to pay in full his separate and individual debts and liabilities; if the net proceeds of the separate and individual property of each or either of the said parties of the first part is insufficient to pay his separate and individual debts and liabilities in full, then the proceeds of the individual property of the said party of the first part so insufficient to pay his debts and liabilities in full shall be applied pro rata to the payment of the said party's separate and individual debts and liabilities; if, however, any surplus remains of the net proceeds of the said separate and individual property of either of the said parties of the first part after payment of his separate and individual debts and liabilities in full, the said surplus shall be applied towards the payment of the copartnership debts and liabilities of the said parties of the first part in the manner and as hereafter provided and set forth; third, the net proceeds of the said copartnership property together with the surplus, if any, of the proceeds of the individual property of the said parties of the first part, or either or each of them, shall be used and applied to first pay in full all and sin gular the debts and liabilities of said first parties set

forth and enumerated in a schedule hereto annexed marked Schedule A, and hereby made a part of this assignment, in full, with interest, if the residue of such proceeds shall be sufficient for that purpose, and if the same be not sufficient, then the said parties of the
3284 second part shall pay and apply the said net proceeds or residue thereof to and in payment of the said debts and liabilities ratably and in proportion to the respective amounts thereof after payment in full of all the debts and liabilities designated, enumerated, and set forth in said schedule A, as above directed; and provided the said party of the second part shall pay all and singular the debts and liabilities, and after fully paying and discharging all the aforesaid debts and liabilities as above provided, the said party of the second part shall pay all and singular all other debts and liabilities of the parties of the first part, and if such residue be not sufficient to pay and discharge all such debts and liabilities in full, then the said party of the second part shall pay and distribute the said proceeds among all the aforesaid other creditors of the said parties of the first part ratably and in proportion to the respective amounts thereof; and if, after the payment of all the said debts and liabilities in full, there shall be a remainder or residue of said property or proceeds, to repay and return the same to the said parties of the first part, their executors, administrators, and assigns; and in furtherance of the premises, the said parties of the first part doth hereby make, constitute, and appoint the said parties of the second part, their and each of their true and lawful attorneys, irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover, sue for and receive of and from all and every person or persons all property, debts, demands due, owing, and belonging to the said party of the second part, and to give acquittances and discharges for the same; to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances; and the parties of the first part do hereby authorize the parties of the second part to sign the copartnership name of the parties of the first part to any check, draft, promissory note, or other
3285 instrument in writing, for the payment of moneys which is payable to the order of the parties of the first part in their copartnership name, and to sign the copartnership name to any instrument of any name, kind, or nature, which may be necessary to more fully carry into effect the object, design, and purpose of this trust; and the said parties of the first part respectively, in their individual capacities, do hereby make, constitute, and appoint the parties of the second part the attorney of each and every of them, and do hereby authorize him or them to sign the name of each and any of them to any check, draft, or promissory note, or other instrument in writing, which is payable to the order of each or any of the parties of the first part, or to sign the name of each or any of the parties of the first part to any instrument in writing whenever it may be necessary to do so to the carrying into effect the object, design, and purpose of this trust; and the said party of the second part do hereby accept the trust created and imposed upon them by this instrument, and covenants and agrees to and with the said parties of the first part that they will faithfully and without delay execute the trust created according to the best of their skill, knowledge, and ability.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

CHARLES EDDY. [L. S.]
ALBERT C. CORSE. [L. S.]
AUGUSTUS P. CORSE. [L. S.]
GEORGE C. BALDWIN, JR. [L. S.]
CHARLES N. STANNARD. [L. S.]
J. ALBERT CIPPERLY. [L. S.]

Sealed and delivered in the presence of—
A. E. WOOSTER.

3286 STATE OF NEW YORK,
Rensselaer County, ss:

On this 31st day of March, 1879, before me came Charles Eddy, Albert C. Corse, Augustus P. Corse, George C. Baldwin, jr., and Charles N. Stannard and J. Albert Cipperly, to me each personally known, and known to me to be the persons mentioned and described in and who executed the foregoing instrument, and each for himself severally and duly acknowledged that he executed the same.

A. E. WOOSTER,
Notary Public, Rens. Co., N. Y.

Schedule A referred to and forming a part of the annexed assignment, containing a statement of the names of the creditors first preferred in such assignment, the general nature of such indebtedness, and the amount thereof: William Eddy, of the city of Troy, N. Y., amount due and unpaid to him on one promissory note for borrowed money made by said Eddy, Corse & Company, January 1st, 1878, four thousand and one hundred dollars, with interest thereon from January 1st, 1879. John M. Earl, of the city of Troy, N. Y., amount due and unpaid on the several promissory notes for borrowed money, twenty-seven hundred dollars, with interest thereon from June 1st, 1878. David M. Green, of the city of Troy, amount due him for borrowed money, thirteen hundred dollars, with interest thereon from July 1st, 1878. S. R. Clexton & Son, of the city of Troy, amount due them for borrowed money, seven hundred dollars, with interest thereon from . Charles N. Stannard, of the city of Troy, N. Y., amount due him for work, labor, services, and casting, nine hundred and fifty-three dollars and fifty-six cents, with interest from January, 1878. Mrs. Horace T. Caswell, of the city of Troy, N. Y., amount due for borrowed money, one thousand two hundred and twenty-two $\frac{6}{100}$ dollars. Isaac S. Caproon, of the city of Troy, amount due him for work, labor, and services as an em-
3287 ployee, thirteen dollars. Hiram Eddy, of the city of Troy, N. Y., amount due him for borrowed money, work, labor, and services, three hundred and twenty-one dollars, with interest from . J. Albert Cipperly, of the city of Troy, N. Y., amount due him on a promissory note made to him by said Eddy, Corse & Company, for work, labor, and services; money paid and advanced by him as an attorney and counsel in and about their matters and business, and for costs, charges, and expenses of suits, &c., for which he is liable, and for counsel, twenty-four hundred and forty-seven $\frac{8}{100}$ dollars. Liberty Gilbert, of the city of Troy, amount due him for borowed money, eight hundred dollars, with interest, from Liberty Gilbert; and promissory note for money lent and advanced January 1st, 1877 eight hundred dollars, and interest from January 1st, 1878. Andrew B. Fales, of Troy,

N. Y., on account merchandise purchased and received of him, during the year 1878, five hundred and fifty dollars, and interest from January 1st, 1879. Caleb Merritt, on account, for money lent and advanced, three hundred dollars. Gilbert Geer, jr., of the city of Troy, N. Y., on account for money lent and advanced, the sum of four hundred dollars. James Kelly, of Troy, on account for work, labor, and services as an employee, forty-five dollars. William Smith, of Troy, for services as employee, thirteen dollars.

CHARLES EDDY. [L. S.]
ALBERT C. CORSE. [L. S.]
AUGUSTUS P. CORSE. [L. S.]
GEORGE C. BALDWIN, JR. [L. S.]

Witness—
A. E. WOOSTER.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this 31st day of March, in the year one thousand eight hundred and seventy-nine, before me, the subscriber, personally came Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., to me known to be the persons described in and who executed the within instrument, foregoing schedule, and severally duly acknowledged that they executed the same.

3288

A. E. WOOSTER,
Notary Public.

Recorded April 1st, 1879, at 9 h. 30 m. a. m.
JAMES KEENAN, *Clerk.*

Book 182, page 260.

STATE OF NEW YORK,
Rensselaer County, Clerk's Office:

I hereby certify that I have compared the annexed copy, gen'l asst. and schedule, with the record thereof, remaining in this office, and that the same is a correct transcript therefrom and of the whole of said record.

In testimony whereof I have hereunto set my hand and affixed my official seal this 27th day of January, 1880.

JAMES KEENAN, *Clerk.*

Defendants' Clexton's Exhibit Cipperly and Stannard Assignment.—J. A. S., Ex'r.

Whereas Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., individually, and as constituting the firm of Eddy, Corse, & Co., doing business at the city of Troy, N. Y., heretofore made and executed a general assignment for the benefit of their creditors, bearing date on or about the 31st day of March, 1879, to and which assignment was accepted by the undersigned, J. Albert Cipperly and Charles N. Stannard, who thereupon duly qualified and entered upon the discharge of their duties as assignees thereunder; and the said assignees having given due notice of this sale to the creditors of the said Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., and the persons interested in the premises:

3289

Now, this indenture witnesseth that for and in consideration of the sum of ($2,500) two thousand and five hundred dollars to us, the said

J. Albert Cipperly and Charles N. Stannard, as such assignees as aforesaid, in hand paid, the receipt whereof is hereby acknowledged, we, the said J. Albert Cipperly and Charles N. Stannard, as assignees aforesaid, have sold, assigned, and transferred, and by these presents do hereby sell, assign, transfer, and set over unto Samuel R. Clexton, of the city of Troy, county and State aforesaid, and his heirs, assigns, and lawful representatives. all the right, title, and interest of the said Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., and of each of them respectively, and of said firm of Eddy, Corse & Co., which they, or either of them, had at the time of said general assignment, and which by virtue thereof passed to and became vested in such assignees as aforesaid, in law or in equity. of, in. and to all those certain inventions and improvements in postmarking and cancelling stamps, and of, in, and to letters patent of the United States of America, issued therefor April 14, 1863, to Marcus P. Norton, and of, in and to all the several and respective reissues and assignments thereof, and agreements relating thereto, and of, in, and to any and all rights, claims, and demands which we have as such assignees for damages, profits, royalties or otherwise, for the past and future use thereof, or for any infringements thereof which in any manner passed to or became vested in us, said assignees, by virtue of said general assignment as aforesaid, to have and to hold the same unto him, the said Samuel R. Clexton, his heirs, assignees, and lawful representatives, to the
3290 full end of the term for which said letters patent are granted, as fully and entirely as the same would have been held by us as such assignees a saforesaid had this assignment and sale not been made.

In testimony whereof we have hereunto set our hands and affixed our seals this 7th day of January, 1880.

J. ALBERT CIPPERLY, [L. S.]
Assignee.

C. N. STANNARD, [L. S.]
Assignee.

Sealed and delivered in the presence of—
C. D. KELLUM and
LEVI SMITH.

Recorded January 16, 1880, liber J 24, page 268.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields and Joseph M. Deuel, examiners in equity, duly appointed, qualified, and sworn in the circuit court of the United States for the southern district of New York, in the second circuit, do hereby certify that the foregoing are the proofs for final hearing taken before us in the cause in the caption named on the part of the defendant, Charles Eddy, under and pursuant to the 67th rule of the Supreme Court of the United States in equity, as amended.

And we do further certify that we have been attended by Hon. George H. Williams and Marcus P. Norton, esq., on the part of the complainant, and by Esek Cowen, esq. and Edward D. Bettens, esq., on the part of the defendant, Charles Eddy, on said examination.

And we do further certify that we are not of counsel nor attorney for either of the parties in the said proofs and caption named, nor in any way interested in the event of the cause named in said caption.

JOHN A. SHIELDS,
J. M. DEUEL,
Examiners.

3291 Circuit court of the United States, southern district of New York.
In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell and Samuel R. Clexton.

Please to take notice that all the depositions and exhibits taken and offered in evidence by the defendants, Horace T. Caswell and Samuel R. Clexton, before the examiner, John W. Shields, esq, under and pursuant to the order of this court, dated December 23, 1879, and granted herein at a stated term of this court presided over by Judge Hoyt H. Wheeler, have been filed in the office of the clerk of this court.

Dated New York, February 10, 1880.

Yours, &c.,

EDWARD D. BETTENS,
Solicitor for defendants, Horace T. Caswell and Samuel R. Clexton.

To MARCUS P. NORTON, Esq.,
Solicitor for Complainant.
STEWART L. WOODFORD, Esq.,
U. S. Attorney and Solicitor for Def't, James.

Service of copy of within is admitted, February 3, 1880.

MARCUS P. NORTON,
Solicitor for Complainant.
STEWART L. WOODFORD,
Solicitor for Defendant James.

(Endorsed:) U. S. circuit court. Filed February 13, 1880. John I. Davenport, clerk.

3292 U. S. circuit court, southern district of New York, in equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell and Samuel R. Clexton.

Please to take notice that on Tuesday, March 9, 1880, at 12 o'clock noon of that day, or as soon thereafter as counsel can be heard, at a stated term of this court, presided over by Judge Hoyt H. Wheeler, to be held at the United States court house, in post-office building, in the city and State of New York, on all the pleadings and proceedings in this suit, and on all the proofs taken and filed in this suit by the complainant, and by the defendant James, and also on the proof taken and filed under and pursuant to an order of this court, dated December 23, 1879, and also on the proofs taken and filed under and pursuant to an order of this court, dated January 24, 1880, this suit will be brought on for the final hearing, adjudication and determination by this court, of the rights and interests of Charles Eddy, as a trustee for himself, Jacob Shavor and Albert C. Corse, and as trustee for Samuel R. Clexton and Horace S. Caswell, in and to the subject matter of this suit,

3293 and the rights and interests therein of said Caswell and Clexton.
March 6, 1880.
Yours,

EDWARD D. BETTENS,
Solicitor for Horace T. Caswell and Samuel R. Clexton.

To MARCUS P. NORTON, Esq.,
Complainant's Solicitor.
STEWART L. WOODWARD, Esq.,
Solicitor for Defendant James.

(Endorsed:) U. S. circuit court. Filed Mar. 8, 1880. John I. Davenport, clerk.

At a stated term of the circuit court of the United States, held in and for the southern district of New York, at the court rooms, in the post-office building in the city of New York, on the 11th day of March, 1880.

Present, Hon. Hoyt H. Wheeler, circuit judge.

CHRISTOPHER C. CAMPBELL
agst.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell and Samuel R. Clexton.

The parties being before the court by their respective counsel, and the counsel for Samuel R. Clexton having offered an assignment from Jonathan Richardson, administrator, and Charlotte S. Shavor, administratrix of Jacob Shavor, deceased, to said Clexton of all their right, title and interest in and to letters patent mentioned in the complaint in this case:

It is ordered that the said assignment be, and the same is hereby, admitted in evidence in this suit, and filed with the o her testimony.

(S'd) HOYT H. WHEELER.

(Endorsed:) Filed in court, March 11, 1880. U. S. circuit court. Filed March 11, 1880. John I. Davenport, clerk.

3294 Whereas, at various times and under several and different dates, the letters patent of the United States were issued upon the application and petition of Marcus P. Norton, of the city of Troy, County of Rensselaer, and State of New York, for and upon improvements in post-office postmarking and cancelling hand stamps, and printing, dating, and cancelling hand stamps, among which were letters patent of the following dates and numbers, to wit, August 9th, 1859, No. 25,036, and its extension January 14th, 1862, No. 34,184; December 16th, 1862, No. 37,172; April 14th, 1863, No. 38,175, reissued August 23rd, 1864, No. 1748; of reissued patents, August 15th, 1865, No. 49.432; and for improvements in post-office way bill envelopes, June 10th, 1862, No. 35,539, and any and all legal reissues or extensions of the abovenamed letters patent; also a patent granted to J. T. A. Robertson for improvements in hand stamps, September 22d, 1857, No. 18,249. And whereas the aforesaid improvements and letters patent were duly assigned and conveyed (either in whole or in part) to Jacob Shavor (now deceased) and Albert C. Corse, or to the firm of Charles Eddy & Co., which firm was composed of Charles Eddy, Jacob Shavor and Albert C. Corse, each of whom were then residents of the city of Troy, County and State aforesaid. Which several deeds of assignment were duly re-

corded in the United States Patent Office, to which record reference is now hereby had, for a more full and perfect description thereof.

And whereas Jonathan Richardson, of the city, county and State aforesaid, is the administrator, and Charlotte S. Shavor, of the town of Ghent, county of Columbia, and State of New York, is the administratrix of the estate of the said Jacob Shavor, deceased;

And whereas Samuel R. Clexton, of the city of Troy, county and State aforesaid, is desirous of purchasing, and has purchased, from us, all the right, title and interest which we have in and to the above-named letters patent, as administrators of the said estate of Jacob Shavor, deceased:

Now, therefore, in consideration of the sum of five dollars, to us in hand paid by said Samuel R. Clexton, the receipt whereof is hereby acknowledged, and in the further and other valuable considerations, the receipt of which is hereby duly acknowledged, we have sold, 3295 assigned and transferred unto said Samuel R. Clexton and his legal representatives, all the right, title and interest in and to each and all of the above-recited letters patent, their reissues and extensions, as fully and entirely as the same are vested in us, as administrators of the estate of Jacob Shavor, as aforesaid, to have and to hold the same as fully and entirely as the same would have been held and enjoyed by the aforesaid estate, if this assignment had not been made.

And we also sell and assign to said Samuel R. Clexton, or his legal representatives, all the right, title and interest, which we have, as administrators of the estate of Jacob Shavor, deceased, in and to all and any compensation for the past use of said improvements and letters patents, or their reissues or extensions, as hereinbefore stated, whether such use was by the Government of the United States, or any other party or parties. And said Clexton is hereby fully authorized to collect and receipt for the same, and to do all acts that may be necessary to be done in relation to said patents, or pertaining to collections for past use or for intringements on said patents, as fully and entirely as we, the said administrators, could do, had this assignment and transfer not have been made.

In witness wheref we, the said administrator and administratrix, have hereunto set our hands and seals this 3d day of March, A. D. 1880.

(S'g'd) JONATHAN RICHARDSON.
CHARLOTTE S. SHAVOR.

In presence of—
(S'g'd) ESEK COWEN.
JOHN J. HASSETT.

STATE OF NEW YORK,
Rensselaer County, ss:

On this 3d day of March, 1880, personally appeared before me, Jonathan Richardson, administrator, and Charlotte S. Shavor, administratrix, &c., of Jacob Shavor, deceased, to me known to be the same 3296 persons named in and who executed the above assignment, and severally acknowledged that they had executed the same.

[NOTARIAL SEAL.] CHARLES D. KILBURN,
Notary Public, Renss. Co., N. Y.

(Endorsed:) U. S. Patent Office. Received for record, Mar. 5, 1880. Recorded liber F 25, page 191. U. S. circuit court. Filed Mar. 11, 1880. John I. Davenport, clerk. Filed March 11, 1880 (in court), pursuant to order of same date on file.

At a stated term of the circuit court of the United States, held in and for the southern district of New York, at the court-room, in the post-office building, in the city of New York, on the 12th day of March, 1880.

Present, Hon. Hoyt H. Wheeler, judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES ET AL. } In equity.

The parties being before the court by their respective counsel, and the counsel for Horace T. Caswell having offered an assignment from Albert C. Corse to Samuel R. Claxton of all his right and title herein, and also an assignment from said Clexton to Horace T. Caswell of said interests, and the assignments of Caroline G. Caswell to Herbert M. Caswell, and Herbert M. Caswell to Horace T. Caswell, having been recorded since the taking of the testimony under the order of December 23d, 1879,

It is ordered that the said assignments be, and the same are hereby, admitted in evidence in this suit, and filed with the other testimony.

(Endorsed:) Filed in court August 17, 1880. U. S. circuit court, Filed August 17, 1880. John I. Davenport, clerk.

3297 The said assignments are as follows:

I hereby sell, assign, and transfer to Herbert M. Caswell, of Troy, New York, all my right, title, and interest in and to certain letters patent of the United States, issued and granted to Marcus P. Norton as the original and first inventor for "Improved Marking and Cancelling Hand stamps," dated respectively as follows, to wit, January 14th, 1862, No. 34184; December 16th, 1862, No. 37,175; April 14th, 1863, No. 38175; reissued August 23d, 1864, reissued No. 1748, and August 3d, 1869, reissued No. 3586. Also patent for revenue cancelling stamp, dated August 15th, 1865, No. 49432; also patent for improvement on postmarking and cancelling hand stamps, issued July 13th, 1869, and dated June 10th, 1869, No. 92688; and also of and in and to all the several respective reissues and assignments and agreements thereof and thereto; and of, in, and to all and any rights and claims and demands for the past and future use thereof, or for any infringements thereof.

In witness whereof I have hereunto set my hand and seal, this 10th day of February, 1880.

CAROLINE G. CASWELL. [SEAL.]

UNITED STATES OF AMERICA,
Northern District of New York, ss.:

On the 10th day of February, 1880, before me personally came Caroline G. Caswell to me known to be the individual described in, and who executed the above instrument, and acknowledged that she executed the same for the purposes therein mentioned.

J. M. LANDON,
U. S. Commissioner, Northern District New York.

U. S. Patent Office. Received for record February 17, 1880. Recorded, E 25 liber, page 192. Exd. F. C. T.

I hereby sell, assign, and transfer to Horace T. Caswell, of Troy, New York, all my right, title, and interest to and in certain letters patent of

the United States, issued and granted to Marcus P. Norton, as the original and first inventor, for "Improved Postmarking and Cancel-
3298 ling Hand stamps," dated respectively as follows, to wit, January 14th, 1862, No. 34184; December 16th, 1862, No. 37175; April 14th, 1863, No. 38175; reissued August 23d, 1864; reissued No. 1748, and August 3d, 1869, reissued No. 3586. Also patent for revenue cancelling stamp, dated August 15th, 1865, No. 49432; also patent for improvement on postmarking and cancelling hand stamps, issued July 13th, 1869, and dated June 10th, 1869, No. 92688; and also of, and in, and to all the several and respective reissues and assignments and agreements thereof and thereto; and of, in, and to all and any rights, claims, and demands for the past and future use thereof, or for any infringements thereof.

In witness whereof I have hereunto set my hand and seal this 10th day of February, 1880.

HERBERT M. CASWELL. [SEAL.]

UNITED STATES OF AMERICA,
Northern District of New York, ss:

On this 10th day of February, 1880, before me personally came Herbert M. Caswell, to me known to be the individual described in and who executed the above instrument, and acknowledged that he executed the same for the purposes therein mentioned.

J. M. LANDON,
U. S. Commissioner Northern District New York.

U. S. Patent Office. Received for record February 17, 1880. Recorded E 25 liber, page 192. Exd. F. C. T.

In consideration of the sum of one dollar, to me in hand paid by Samuel R. Clexton, the receipt whereof is hereby acknowledged, and for other valuable consideration, I hereby sell, assign, and transfer unto said Samuel R. Clexton, of Troy, New York, all my right, title, and interest in and to certain letters patent of the United States, issued and granted to Marcus P. Norton as the original and first inventor for Improved Postmarking and Cancelling Hand-stamps, dated April 14, 1863, No. 38,175, and its reissues and assignments, and the agreements re-
3299 lating thereto, and all the rights, claims, and demands which I have for damages, profits, royalties or otherwise, for the past and future use thereof, or for any infringement thereof.

In witness whereof, I have hereunto set my hand and seal this first day of March, 1880.

ALBERT C. CORSE.

STATE OF NEW YORK,
City and County of New York, ss:

On the 9th day of March, in the year 1880, before me personally came Albert C. Corse, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and to me acknowledged that he executed the same.

[SEAL.] CORNELIUS D. GOULD,
Notary Public, New York Co.

U. S. Patent Office. Received for record March 15, 1880. Recorded liber page .

Whereas Albert C. Corse, of Troy, New York, heretofore, on or about March 31st, 1879, sold, assigned, and transferred to J. Albert Cipperly

and Charles N. Stannard, all his right, title, and interest in, and to all those certain inventions and improvements in postmarking and cancelling hand-stamps, and of, in, and to letters patent of the United States of America, issued therefor April 14, 1863, to Marcus P. Norton, and of, in, and to all the several and respective reissues and assignments thereof, and agreements relating thereto; and of, in, and to any and all rights, claims, and demands, profits, royalties or otherwise, for the past and future use thereof, or for any infringements thereof; and

Whereas the said J. Albert Cipperly and Charles N. Stannard, on or about January 7, 1880, by an instrument in writing, recorded in the Patent Office January 16, 1880, liber J 24, page 268, and to which reference is made for more particularity, sold and assigned to Samuel R. Clexton, of Troy, New York, all of the said right, title, interest, claims, demands, profits, and royalties acquired by said Cipperly and Stannard from said Corse; and

Whereas the said Albert C. Corse, by an instrument in writing, dated March 1, 1880, and confirmatory of the above assignments, has sold, assigned, and transferred to the said Samuel R. Clexton all of his
3300 right, title, and interest in and to said patent, issued April 14, 1863, to said Norton, and of, in, and to all the several and respective reissues and assignments thereof, and agreements relating thereto; and of, in, and to any and all rights, claims, and demands of his for damages, profits, royalties, or otherwise, for the past and future use thereof, or for any infringements thereof:

Now, therefore, I, the said Samuel R. Clexton, in consideration of the premises, and in consideration of the sum one dollar, to me in hand paid, and for other valuable consideration, do hereby sell, assign, and transfer unto Horace T. Caswell, of Troy, New York, all of the right, title, and interest acquired by me from said Corse, in manner above stated, in and to said patent, issued April 14, 1863, to said Marcus P. Norton, and in and to the several and respective reissues and assignments thereof, and agreements relating thereto; and of, in and to all rights, claims, and demands for damages, profits, royalties, or otherwise, acquired by me from said Corse, in manner above stated, for damages, profits, royalties, or otherwise for the past and future use thereof, or for any infringements thereof. To have and to hold the same unto him, the said Horace T. Caswell, his heirs, assigns, and lawful representatives, to the full end of the term for which said letters are granted. The interests, and the only interests assigned, and intended to be assigned by these presents, are the interests in said patent, its reissues, assignments, agreements, and in the rights, claims, and demands for damages, profits, royalties, or otherwise for the past and future use thereof, or of any infringements thereof which said Corse had therein in March, 1879, prior to said assignment to said Cipperly and Stannard, or which I now have through said Corse; and I particularly exclude from the force and the effect of this assignment all the interests in said patent, its reissues, assignments, agreements, and all the rights, claims, and demands for damages, profits, royalties, or otherwise for the past and future use thereof, or of any infringements thereof, which Charles Eddy and Jacob Shavor, or the personal representatives of said Shavor, had therein in March, 1879, prior to said assignment to said Cipperly and Stannard, or which I now have and own through said Eddy and Shavor, or the personal representatives of said Shavor.

S. R. CLEXTON. [SEAL.]

Witness my hand and seal March 9, 1880.

3301 STATE OF NEW YORK,
City and County of New York, ss:

On this 9th day of March, in the year 1880, before me personally came S. R. Clexton, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and to me he acknowledged that he executed the same.

[SEAL.] CORNELIUS D. GOULD,
Notary Public New York County (29).

U. S. Patent Office. Received for record March 13, 1880. Recorded , liber , page .

3302 At a stated term of the circuit court of the United States for the southern district of New York, held on the 11th day of March, 1880, at the city of New York.

Present, Hon. Hoyt H. Wheeler, justice.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. CASWELL, and SAMUEL R. CLEXTON. } In equity.

On reading and filing the affidavit of Horatio F. Averill, and notice of motion made by Charles Eddy for leave to have Horatio F. Averill, esq., substituted herein in the place and stead of Edward D. Bettens, esq., as the solicitor of Charles Eddy, as trustee for himself, Jacob Shavor, and Albert C. Corse, and as solicitor of Charles Eddy, so far as Eddy has any individual interests herein, and after hearing George F. Betts, esq, of counsel in support of said motion, and Francis C. Barlow, esq., of counsel in opposition, now, on motion of Horatio F. Averill, esq., it is ordered that said Horatio F. Averill is substituted in this suit as the solicitor of said Eddy, so far as said Eddy may have individual interests herein, and the appearance of Edw. D. Bettens
3303 is limited to that extent; and on motion of Edward D. Bettens, esq., it is ordered that said Eddy's motion for leave to substitute said Horatio F. Averill, esq., in the place and stead of said Edward D. Bettens, esq., as solicitor herein for said Charles Eddy, as trustee for other persons than himself, as aforesaid, be, and the same is hereby, denied until the further order of this court, and without prejudice to further motion.

HOYT H. WHEELER.

EDW. D. BETTENS,
Solicitor for Caswell and Clexton.

(Endorsed:) Filed in court March 11, 1880. U. S. circuit court. Filed March 12, 1880. John I. Davenport, clerk.

3304 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the 11th day of March, in the year of our Lord one thousand eight hundred and eighty.

Present, the honorable Hoyt H. Wheeler, circuit judge.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, ET AL. }

The above cause coming on for argument on exceptions to the master's report filed therein by the respective parties:

Mr. George H. Williams is heard in support of exceptions filed in behalf of complainant.

Mr. Stewart L. Woodford, U. S. attorney, is heard in support of exceptions filed in behalf of the defendant.

Mr. Esek Cowen is heard in support of exceptions filed in behalf of the defendant.

Cur. adv. vult.

3305 United States circuit court, southern district of New York.—In equity, February term, 1880.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell, Samuel R. Clexton.

This cause has now been heard upon the report of the master and exceptions thereto as to the liability of the defendant James; and upon the stipulations under which the other defendants became parties, and by which their rights, as between themselves and the plaintiff, were submitted to the court, and the evidence in support of their respective claims as to those rights.

From the report it appears that the defendant James became postmaster at the city of New York on the 1st day of April, 1873, while the patent in suit was owned by Helen M. Ingalls, and commenced using the patented invention, and has ever since continued the use in performance of his duties; that on the 2d day of January, 1877, she conveyed the patent to the plaintiff, and assigned to him her claims for past infringement; and that the gains and profits to the defendant James in the saving of salaries of clerks to perform the duties required of him by the Post-Office Department have been sixty-three thousand dollars, due to his infringement.

3306 The principal and controlling questions arising upon the report and exceptions are whether the plaintiff is entitled to recover in this suit, as well for the infringement before the assignment to him as for that after, and whether the defendant James is liable to account for the gains and profits received by him as postmaster, either as such or as damages.

It is not pretended by or on behalf of the defendant but that an assignee of such claims may maintain a suit upon them in his own name in equity, 2 Story's Eq., § 1007; but it is insisted that the bill in this cause does not cover such claim, and that the evidence does not show an assignment of such claim from Miss Ingalls to the plaintiff. It is true, as was stated when this cause was decided on the former hearing, that the pleader does not appear to have framed this bill with that aspect in mind, but what was said then was not said upon examination and deliberation as a full disposition of the question, but only in passing as illustrating the other question then being considered; so the question is open now whether the bill is sufficient to cover that claim. As to that, the bill sets forth the infringement by the defendant while the patent was owned by Miss Ingalls, and sets forth in haec verba the assignment from her to the plaintiff of the patent, also of "all the right, interest and claim for and to the past use of said invention and improvements under the said letters patent;" and, besides praying for an injunction and for an increase of damages, "in addition to the profits and gains to be accounted for by the defendant," has a prayer for "such other and

further relief as shall be agreeable to equity." This, meagerly, it is true, but, after all, substantially sets forth the claim and assignment, and a prayer for relief, as applicable to that as to the other part of the case. Perhaps there should be a special prayer for an account as to either aspect; but if one is required it is quite strongly hinted at, if not very aptly inserted. The proof of the assignment consists of the instrument set forth; and that seems to be amply sufficient to cover this claim. The plaintiff is entitled to recover for the whole time, if any one is, as the case now stands, and it appears that he can recover it in this suit, if anywhere, without doing violence to any of the settled rules of pleading.

The other is much the more important question.

3307 Whatever question there might be, if the subject was new, it now seems to be settled that savings in cost by infringement of a patent may be recovered as profits, Carwood Patent, 94 U. S., 695; Elizabeth *vs.* Pavement Co., 97 U. S., 126. The defendant saved the sum named by using the patented invention. It is said that the master erred because the defendant might have used another form of stamp which would not have been an infringement, and that the saving by using the patented invention, instead of that, would have been much less than the saving reported. It does not appear, however, but that such use of the other form would have been an infringement; and if that appeared, it appears that the other form was not known to the defendant, and that the saving reported was, in fact, saved by substituting the patented improvement for what was known and would probably otherwise have been used. The saving therefore appears to be wholly due to the infringement.

It is said, too, that this patent is for a device that can only be used in the postal service, which is wholly monopolized by the Government of the United States, which could send letters without postmarking them at all, or lessen the frequency of the mails, so that the postmarking could be done separate from the cancellation of the stamps by the old method without increase of clerical force, at its pleasure, thus leaving this patented invention subject as to use or value entirely to the will of the Post-Office Department, so that the use of it in the postal service would not deprive the owner of any opportunity to have it used otherwise, and could not damnify him, and that therefore no damages can be recovered in this case; and that no profits can be recovered because there is no party before the court, or that can be brought before the court, who has received any. If it was true that, because those who can make use of a patented invention could also do without it, would show that no injury resulted to the owner of the patent from such use, and cut off all claim for damages, there are probably few inventions that would sustain claims for damages at all. People could do as well before the discovery and leave the inventor to the enjoyment of his invention by himself. But the master has not reported any damages beyond the profits, and it does not seem that the defendant can be held liable for damages if he cannot be for profits, unless it may be for taking the profits and placing them beyond the reach of the plaintiff.

3308 The Post Office Department required the mails to be sent with certain frequency, and that the postage be paid by stamps on letters, and that the letters should be postmarked and the stamps cancelled separately, and required that the defendant should do this at the New York office, either himself or by the employment of clerks. The defendant says in his testimony that the clerks are paid by the government. This is, doubtless, true in practical effect, so far as he is con-

cerned; still it is to be presumed that the business is done according to the law, and he probably did not intend to testify that it was in any respect done contrary to the law. The law is that the Postmaster General may allow to the postmaster at New York City, and to certain others, out of the surplus revenues of their respective offices, that is to say, the excess of box-rents and commissions over and above the salary assigned to the office a reasonable sum for the necessary cost, among other things, of clerks—to be adjusted on a satisfactory exhibit of the facts, Rev. Stats., sec. 3860. The defendant is therefore to be taken to have made this saving out of moneys actually received into his hands from the profits of his office. He saved it by using the invention in the performance of duties which he was required to do and had just so much more money left in his hands by reason of the infringement when the duties were done. He did this as postmaster, but he was not obliged to do it. He could have refused the office, or resigned it, or have let this invention alone. He was not subject to any restraint, physical or moral, that he could not make subservient to his own choice. His choice was to use this invention and make this gain. When made it belonged to the orator. He paid it over to the government, and it passed beyond his reach and the orator's, unless it is recovered in this suit and reimbursed to him under the law. He has not these profits now, and would not have them if he had cast the money into the sea; he has had them as he would have had them then. The situation of the defendant is very different from that of the City of Elizabeth in Elizabeth *v.* Pavement Co., 97 U. S., 126. The city had not saved or made anything by the infringement and was not liable for profits in any view, whether any-one else was or not, and never had been. Here the defendant has paid over to the government what belonged to the owner of the 3309 patent, but that is no just answer to the claims of the owner, now belonging to the orator. Justice can only be done by requiring the defendant to restore the gains to those to whom they belong, and leave him to be protected as the law provides; and in doing this no injustice will be done to any one. That his official character did not excuse the infringement has already been held upon what seems to be abundant authority in this case. If he is liable as an infringer as if he were an ordinary individual, he must be liable to the extent of the consequences as an ordinary individual would be without regard to his reckoning over with the government. His official character is not any shield against the owners of the patent, although it may be a source of indemnity against the consequences. The other questions relate to who, as between themselves, have the right to recover what is recovered, or the right to control the disposition of what is recovered, in which apparently the defendant James has no interest. These questions are of two kinds; one of the kinds is of questions relating to the right when the suit was commenced, the other relating to rights since acquired. It is said by counsel for some of the claimants that this court has not jurisdiction of all these questions because some of them rest upon contracts between the parties, not citizens of different States, and do not involve any questions under the patent laws of the United States. The suit was brought by the plaintiff alone against the defendant James alone. Objection was made by the defendant that Charles Eddy was an owner of an interest in the patent, and that the suit could not properly proceed without him, whereupon Eddy appeared and became a party to the suit under a stipulation stating that he claimed his rights were fixed and determined by an assignment of one-third of the patent to him, and a contemporaneous agreement, dated October 23d, 1869, and the plaintiff that they were

determined by an agreement in writing among the owners of the patent dated October 7th, 1871, and that the cause should proceed upon the evidence taken, unless the court should otherwise direct, to a decree ascertaining the rights and interests of Eddy. This agreement as to what the court should decide did not enlarge what would have been before the court, with Eddy as a party defendant, without such an agreement, for it would all the while be necessary to determine his
3310 rights, in order to settle what would be left to the plaintiff as the foundation of any decree that might be made in his favor. The court has directed further evidence to be taken as to whether the instrument of October 7th, 1871, is still in force or has been cancelled, and such evidence has been taken. Eddy was a trustee for Jacob Shavor and Albert C. Corse. Since the commencement of the suit the personal representatives have conveyed his title; Corse has conveyed his; and Eddy and Corse have made an assignment for the benefit of creditors, which the assignees and those claiming under them insist carried the patent, and Eddy insists that it did not.

It is quite obvious, from this statement, that all these questions are questions of title to the patent which arise under the patent laws. The whole question as to the instrument of October 7th, 1871, according to the claims of counsel on each side of that question, is as to whether it affected the title by operating to convey a part or not, which is necessarily a question of title; and it seems to be agreed on all hands that if it did not affect the title, the question as to cancellation of it afterwards would be quite different from what it would be if it did; for if it conveyed title, cancellation of it would not reinvest the title, and if it was only an executory agreement as to the division of money it might well be cancelled by the parties to it. And if the court is to take notice at all of rights acquired since the suit was brought, those rights arise upon the acquisition of title, if they arise at all, so that all questions concerning them arise upon the title to the patent, and the right to recover for an infringement of it under the patent laws of the United States. It has never been doubted but the circuit courts have jurisdiction of all such questions, whatever the doubts and decisions may have been when neither the title itself, nor any question as to whether there was an infringement, was before the courts. Hartell vs. Tilghman, 99 U. S., 547.

Conveyances pendente lite do not all affect the litigation as between the parties to the original controversy, unless there are special statutes or circumstances to control; but courts of justice, even courts of law, and especially courts of equity, often protect the rights of the real owners to the fruits of a recovery, as against those who are nominal but not real owners, whenever their rights may have been acquired.
3311 All parties claiming to have derived any title or right from the owners of the patent, according to the decision in the principal case since the commencement of the litigation, have become parties to the record and submitted the evidence of their claims, and the questions arising thereupon are to be considered. This is not in any wise contrary to the stipulation made under which Eddy became a party to the suit; for these claims all arise under the right of Eddy as reserved to him in the stipulation, and when that right is ascertained and distinguished from the plaintiffs, the plaintiff has no right nor apparent interest as to where it shall go, whether to Eddy himself, for himself, and those for whom he was trustee, or to those to whom he and his cestuis que trust may have conveyed that right.

As the case stands, on October 20th, 1869, Norton owned and held

the title to the patent. He made an agreement in writing with Eddy that he would convey one-third of it to Eddy in trust for himself, Shavor, and Corse, and that $20,000.00 of the first money received on account of the patent should be received by Eddy for himself, and them to settle all claims between them and Norton; and that one-third of all further receipts should be received in like manner by him, and the other two-thirds by Norton. On the same day, or on the 20th, the copies differ as this date and the originals are not here, he conveyed the patent to Miss Ingalls. The conveyance to her was not recorded until after the other, and probably was not intented to be, for she mentioned it in an agreement with W. W. Secombe, dated October 4th, 1870, as having been left unrecorded for a time and afterwards recorded, in order that the patent might be reissued to her, and it is not to be presumed that such a fraud was intended as would result from a conveyance of a third to Eddy after the whole had been conveyed to her. Whatever its date in fact was, whether the 20th or the 23d, it was not recorded until August 1st, 1870, more than three months after its date, and it became subject to the conveyance to Eddy. Rev. Stats., sec 4898. The parties concerned appear to have understood that her conveyance was so subject. On the 15th day of August, 1870, Norton made an agreement in writing with Secombe that he should have the sum of $2,500 advanced, and to be advanced on account of the patent,
3312 with ten per cent. interest, out of any sum of money paid by the Postmaster-General for the use of the patent, and that if Norton should succeed in obtaining the one-third interest conveyed to Eddy in trust for himself, Shavor, and Corse, Secombe should have only six per cent. interest, but should have one-fourth of the patent. On the 4th day of October, 1870, Miss Ingalls made an agreement in writing with Secombe referring to this agreement between Norton and him, and ratifying and confirming it as if made by her. The patent was reissued to her on that day, and on the 4th day of March, 1871, she conveyed to him all her right, title, and interest in and to the patent in trust for herself and the wife and children of Norton, with full power to sell and assign and to grant licenses and manufacture under the patents, to pay the expenses of the trust, reserve his compensation as trustee, and pay over the balance according to a declaration of trust, which he then executed to her, by which he was to have two-fifths of the proceeds and she the other three fifths in trust for herself and the wife and children of Norton. In this state of the title the agreement of October 7th, 1871, was made and signed by Eddy, Shavor, Corse and Secombe. There had been a suit against the government in the Court of Claims, for compensation for the use of the patent, which had failed because no contract had been proved, and the matter had been before Congress for an appropriation to make compensation, which had not been disposed of by final action. The meaning and effect of the agreement are to be judged of in the light of this situation. It recited that the parties to the agreement were interested in the prosecution of a certain claim against the government for the use of this invention, and stated that it was understood and agreed between them that Eddy, Shavor, and Corse would "accept and receive in full payment and satisfaction of their claim and demand the sum of thirty thousand dollars," to be paid out of the monies to be received, provided it should amount to $62,000; and a pro rata sum if it should not amount to the sum stated with parties whose interest was $20,000, and Secombe, whose claim was $12,000. It is argued on the one hand that this was a conveyance which would cut the rights of Eddy, Shavor, and Corse in the patent down to $30,000;

and on the other, that it is a mere executory agreement. All interests in patents are assignable by instrument in writing. No
3313 particular form is required; but still there must be some operative words expressing at least an intention to assign in order to constitute an assignment. There are no such words in this instrument. There is no consideration stated for their agreement to accept that sum in satisfaction when received; there is not even an agreement to pay it. The substance is that if it is paid they will so receive it. Neither is there any consideration proved. They received no compensation or forbearance, nor Secombe any detriment that is shown. It would not be even an accord and satisfaction of the claim, if Secombe had received the money, and could not even be pleaded as such, for it is a mere accord without satisfaction, which is never a bar. It is wholly executory in character as to whatever it applies to, depending on future events and not presently operating on anything. But if it was an assignment of anything it makes no allusion to a patent further than to mention a claim for the use of a certain patented cancelling stamp invented and patented by Norton. It is plain that the claim referred to is under the patent, but a conveyance of the claim would not carry the patent. The patent would still be left, so far as this instrument in any view is concerned. This agreement was held by Secombe until the latter part of March, 1872, when, at the request of the other parties, he delivered it up to be canceled, and it was canceled. It was a mere agreement in the first place, and it required nothing more solemn than a mere agreement to end it. Such an agreement fully acted upon is fully and satisfactorily proved. The conveyances afterwards, until they reached the plaintiff, of the patent without the interests of Eddy, Shavor, and Corse, and their interests remained intact as they were under the assignment of one-third to Eddy in trust, October 23d, 1869. It is suggested that this agreement was recorded, and that the record of it may have misled the plaintiff, but this is not at all probable, and the result is not chargeable to Eddy or his cestuis if it did. That it was recorded would not make it an instrument of title, but would only complete its effect if it was one. If the plaintiff learned of the record he is to be taken to have learned of it as it was, and to have known that it
did not affect the title. According to these views the plaintiff is
3314 entitled to a decree for the payment by the defendant James to him of two-thirds of the sum reported by the master, namely, $42,000.

This conclusion would dispose of the whole case as it was originally brought; but when the defendant objected that all the parties in interest were not before the court, so that complete justice could be done, and the whole controversy disposed of, he set out the conveyance to Eddy as trustee for himself, Shavor, and Corse, as showing an outstanding interest, and prayed that Eddy, as trustee, might be made a party to the cause prior to the final hearing. It was the duty of the defendant in making that objection to set forth what parties were wanting that the plaintiff might supply them. This is required in pleadings at law to give the plaintiff a better writ before abating the one he has. The same is required in proceedings in equity, although not with the same strictness. Story's Eq. Pl., § 543. In complying with this requirement the defendant set forth who was lacking, and whose presence as a party was desired by him, namely, Eddy, as trustee, and that party was added accordingly, as he had prayed; since then all parties whose presence was desired by others have been before the court. It is not important in equity proceedings, for every purpose, that all the parties

to the controversy should be upon opposite sides in the formal pleadings. It is sufficient that they are citizens of different States on opposite sides of the dispute although not on opposite sides in the pleadings for the removal of the cause to the Federal court. Meyer vs. Delaware Railroad Cons. Co., S. C. U. S., Oct. term, 1879, Chicago Leg. News, Jan. 3, 1880. That the rights of the parties could be determined in the cause notwithstanding their position would seem to be a necessary ground to that conclusion. In this cause the pleadings cover all the grounds of claim upon and defence by the defendant, as well as to that part claimed by Eddy, as in respect to that by the plaintiff, and the evidence has been taken in respect to all the *the* issues made, and considered as bearing upon them. Under these circumstances, at least, it seems proper that the rights of Eddy and of those claiming under him as trustee, to the fruits of the infringement of the defendant, should be considered and determined. All the parties, except the defendant James, have insisted upon this course, and he has only insisted
3315 that the proceedings should be such as to protect him from further suits for the same cause. These proceedings, with these parties to them, appear to be ample for that purpose.

Eddy was trustee by name in the conveyances for himself, Shavor, and Corse. The presumption would be, in the absence of all proof, that he was trustee for himself and them in equal proportions. Whatever proof there is shows them to have been equal partners in cognate matters, and intensifies rather than rebuts the presumption. He could not be trustee for himself in any proper sense of the term, and must have been an absolute owner of his share of the third he held, or one-ninth of the whole. Shavor and Corse were equitable owners of their share, or one-ninth each of the whole. Shavor died, and his personal representatives, by leave of court, became parties to the suit under the rights represented by Eddy. On the 27th day of March, 1879, Corse assigned his right to Caroline G. Caswell, and she became a party in like manner. Corse and Eddy were partners with others, and they and their co-partners each as partners and as individuals, on the 31st day of March, 1879, assigned to J. Albert Cipperly and Charles H. Stannard "all and singular their co-partnership and individual estate and property, real and personal, goods, chattels, effects, credits, accounts, debts, dues, demands, choses in action, and property of every name and kind whatsoever, whether held by and in the name of said parties of the first part, and each and either of them, or by and in the name of any other person for them, or either of them, except such property, if any held or owned by said parties of the first part individually, as is exempt by law from levy and sale under execution," in trust, to be converted into money for the payment of the debts of the firm and its individual members. These assignees, assuming that the assignment covered the patent rights, have assigned them to Samuel R. Clexton, who has become a party to this suit. The personal representatives of Shavor have assigned his right to Clexton. The rights of Caroline G. Caswell to the share of Corse, all rights of Corse, if there were any remaining to him after his assignment to her and the assignment to trustees, and all rights acquired by Clexton through the trustees, have been transferred to Horace T. Caswell, who has become a party to this suit also. So all
3316 the rights of Corse, without reference to the fairness of his conveyance to Caroline G. Caswell so near to the time of the conveyance to trustees for the benefit of creditors, and without reference to whether that conveyance would pass any of these rights, have become vested in Horace T. Caswell, and all the rights of Shavor have become

vested in Clexton, and the only question remaining is whether the rights of Eddy passed to the assignees, and thence to Clexton, or remained to himself. All these assignments covered the claims for past infringement as well as the title to the shares of the patent.

The infringement of the defendant has been ripening into a cause or causes of action, all the while from the time when he began to infringe to the time of the assignment in favor of Eddy. Eddy's right to recover upon these causes of action, so far as they had accrued up to that time, was a chose in action. Choses in action are expressly named in the assignment to trustees, and by force of those words it would carry this claim. But his title to the patent remained, and the further question is as to what became of that. The words of the assignment are probably broad enough to cover it. Similar words were held to be sufficient for such a purpose in Railroad Co. vs. Trimble, 10 Wall., 367. Still there is excepted out of the individual property of the assignors all property exempt by law from levy and sale under execution. If this means such property as is specially exempt by express provisions of the statutes, the right to the patent is not included among the classes of such property. But the exception is not of the property exempt by statute, but of the property exempt by law. Property can be levied upon and sold under execution at all only by force of law. Such property as cannot by law be taken is by law exempt. This patent right could not by law be so levied upon and sold, and was therefore by law exempt. This conveyance, too, is understood to be such a conveyance for the benefit of creditors as the law of New York sanctions and upholds for appropriating the property of debtors to the payment of their debts in place of legal proceedings to judgment, execution, and levy for that purpose. It is to be construed like other written instruments in the light of the circumstances and its professed object for the purpose of ascertaining the intention of the parties. In this view it may well be understood that the intention was to place in the hands of the as-
3317 signees what the creditors could otherwise reach, and to except out by this clause what they could not reach. This consideration aids the conclusion that this patent right was excepted and not conveyed. Probably these distinctions were not actually thought of, and very likely the actual effect of the instrument upon other property was not, but the instrument was probably made in that way because the assignors were willing to stand by its effect upon their property of various kinds, situated under various circumstances, whatever the effect might turn out to be. And an assignment of what by law could be taken was all the creditors had a right to claim. So Caswell is entitled to one-ninth of the whole sum reported by the master, seven thousand, dollars and Clexton is entitled also to one-ninth and so much of the profits of one-ninth as accrued before March 31st, 1879, in addition, and Eddy is entitled to the profits of the same ninth which accrued subsequently to that time.

The profits allowed consist in money saved from salaries at a uniform rate, so that the amount due to the ninth share of Eddy for the time before March 31st, 1879, and for the time subsequent is readily computed. For the time before it is $6,125, and for the time subsequent, $875.

Therefore, of the profits reported by the master the orator is entitled to	$42,000 00
Samuel R. Clexton to	13,125 00
Horace T. Caswell to	7,000 00
Charles Eddy to	875 00

The defendant James has moved for a stay of proceedings in this cause, on account of a suit brought in this court against him, for the same infringement, by the personal representative of William W. Secombe under whom the plaintiff claims title, in which it is alleged that the title to this patent did not pass from Secombe because the deed from him did not in terms cover it; and that, if it did, the contract pursuant to which the deed was made was that this patent should not be conveyed, and that the deed should be reformed to that extent. This motion has been heard at the same time with the exceptions to the master's report. As the cases now stand, this plaintiff cannot be affected by any parol contract between the parties to that deed, as to
3318 what it should cover. He is a purchaser for valuable consideration without notice of any such outstanding equitable claim to the patent, if it exists. The laws srelating to patents require the title to the patent to be shown by the records of the Patent Office, and he had a right to rely upon the title there shown. That the deed did carry this patent has already been determined in this case, upon a full argument and consideration.

There is no apparent ground upon which this motion can justly be sustained, and it must be denied.

On account of the number of those found to be entitled to share in the avails of the recovery, and of the conflicting claims between them, it may be preferable to the defendant James, equally advantageous to those entitled, and perhaps more proper as the case is made up, that he should have opportunity to make payment into the registry of the court, for the benefit of those entitled, instead of being compelled to pay their shares to them severally.

The exceptions to the master's report are overruled; the report is accepted and confirmed and a decree ordered to be entered that the defendant James pay to the clerk of this court the sum of sixty-three thousand dollars mentioned in the master's report, within twenty days from the entry of the decree, for the benefit of the other parties to this suit—forty-two thousand dollars for the plaintiff, thirteen thousand one hundred and twenty-five dollars for Samuel R. Clexton; seven thousand dollars for Horace T. Caswell; and eight hundred and seventy-five dollars for Charles Eddy, and for execution thereof in default of such payment, and for costs to the plaintiff, to be taxed.

HOYT H. WHEELER.

3319 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES, CHARLES EDDY ET AL., defendants.

To EDWARD D. BETTENS, Esq.,
Solicitor for Samuel R. Clexton and Horace T. Caswell, defendants:

SIR: Please to take notice that on Thursday, the 17th day of August, 1880, at 11 o'clock forenoon of that day, or as soon thereafter as counsel can be heard by the court, and before honorable Hoyt H. Wheeler, one of the judges of this court, I shall make a motion in which I shall ask the court for an allowance for counsel and solicitor fees under the stipulations with the defendant Eddy in June, A. D. 1878, and an order

made by this court on or about the 24th day of January, A. D. 1880, by which the said Clexton and Caswell became and were made defendants in this cause.

3320 There having been an adjustment and settlement of such matters and things as came directly under and within the order of this court dated the 23d day of December, A. D. 1879, and the same having been satisfied and accepted by complainant any and all notices having reference to said order are now and hereby re'cinded and discontinued.

Of these, and each of these several matters you will please take due notice.

MARCUS P. NORTON,
Solicitor for Complainant.

Dated this 12th day of August, A. D. 1880.

To EDWARD D. BETTENS,
Solicitor for Caswell and Clexton.

(Endorsed:) U. S. circuit court. Filed August 17, 1880. John I. Davenport, clerk.

3321 Circuit court of the United States, southern district of New York. In equity. February term, 1880.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, AND others.

This cause has been further heard upon the motion of the defendant, James for a rehearing in chief upon the question of prior knowledge and use at the Philadelphia post-office, and upon the exceptions to the master's report; upon the motion of the defendants, Clexton and Caswell, for a rehearing upon the question as to the passing of the title of Eddy to the patent by his assignment for the benefit of his creditors; upon the *the* motion of the plaintiff for a rehearing upon the question as to the passing of Eddy's right to recover gains and profits already accrued by the same assignment; and upon the motion of the plaintiff for an increase of damages to be recovered.

3322 The motion for a rehearing in chief is based upon some inaccuracies in the statement of the age of a witness in the former opinion and upon the supposition that, because some of the testimony, and of the reasons leading to the finding are stated, the other evidence was overlooked, and no other reasons were considered. This supposition is not well founded. There was no attempt to review all the evidence, or to state all the reasons bearing upon that question of fact, in the opinion.

Nothing material not before considered has been suggested as ready to be offered in respect to the exceptions to the master's report, nor in respect to the passing of Eddy's title to the patent by his assignment.

It is urged that the right to recover gains and profits would not pass without the right to the patent itself. This is probably true, at law, but perhaps not so in equity. The right to recover them by the assignee in the name of the assignor has not been denied in any case cited in argument or that has been seen. In this case as it stands the form of

3323 the recovery in one name or another is not at all in question. The right to the gains and profits as between the defendants other than James, themselves, when recovered, only is in controversy. The

right of the plaintiff to the share of Eddy has been acquired since the decree, as a part of a sum already recovered, and not as a right of recovery acquired before recovery had. There appears to be no obstacle in the way of acquiring such a right. No damages have been found in this case, and there are none as such to be increased. The statute authorizes an increase of damages, not an increase of gains and profits to be recovered. (Rev. Stats., sects. 4919, 4921.) If damages existed to be increased the circumstances of this case would not warrant any increase. There has been no wanton invasion of the rights of the owners of the patent by the defendant. The use of the invention in such manner as to be accountable for the profits has been rather desired than otherwise. This is shown by the evidence as well as by the fact that no injunction has been asked for.

3324 The motions are denied.

HOYT H. WHEELER.

For plaintiff, Marcus P. Norton, George H. Williams.
For defendants, Samuel B. Clarke, ass't U. S. att'y.
Edward D. Bettens.
Esek Cowen.

(Endorsed:) U. S. circuit court. Filed Sept. 14, 1880. John I. Davenport, clerk.

3325 JAMAICA, *Sept.* 21, 1880.

DEAR SIR: Enclosed I return your draft of decree made to conform to my views and signed. You may have it re-engrossed and return it to me for signature, or file it as it is, as may be preferred. In either case please call the attention of the complainant's solicitor to it before filing it.

As the cancellation of the instrument of October 7th, 1871, is but a step in the proceedings, I think the statement of the conclusion as to that alone is out of place, and therefore I have erased it.

Yours, truly,

H. H. WHEELER.

EDW. D. BETTENS, Esq.,
Counselor, &c.

(Endorsed:) U. S. circuit court. Filed Sept. 23, 1880. John I. Davenport, clerk.

3326 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES AND OTHERS.

BLATCHFORD, J.:

This is a suit in equity for the infringement of a patent. A final decree has been entered in it, adjudging that the plaintiff recover from the defendant James personally a sum of money for such infringement, and awarding execution against him personally therefor. The infringement was committed by the use by the defendant James, in the post-office at the city of New York, while he was postmaster there, and in the business of such post-office, of an apparatus for stamping letters with a postmark and cancelling postage-stamps, in infringement of said pat-

ent. On behalf of the defendant James a motion is now made to this court to grant a certificate under § 989 of the Revised Statutes of
3327 the United States. That section is as follows: "When a recovery is had in any suit or proceeding against a collector or other officer of the revenue, for any act done by him, or for the recovery of any money exacted by or paid to him, and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the direction of the Secretary of the Treasury, or other proper officer of the government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury."

The first question which arises is, whether the defendant James, as such postmaster, was such an officer of the revenue as is meant by the expression "other officer of the revenue" in the section. The section is taken from § 12 of the act of March 3d, 1863 (12 U. S. Stat.
3328 at Large, 741). Such § 12 runs in these words: "In all suits or proceedings against collectors or other officers of the revenue for any act done by them, or for the recovery of any money by or paid to such officer and by him paid into the Treasury of the United States, in the performance of his official duty, in which any district attorney shall be ordered to appear on behalf of such officer by the Secretary or Solicitor of the Treasury, or by any other proper officer of the government, such attorney shall be allowed such compensation for his services therein as shall be certified by the court in which such suit or proceedings shall be had to be reasonable and proper, and approved by the Secretary of the Treasury; and where a recovery shall be had in any such suit or proceedings, and the court shall certify that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury or other
3329 proper officer of the government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury."

So much of said § 12 as is not to be found in § 989 of the Revised Statutes is found in §§ 827 and 834.

The above § 989 is found in Title 13 of the Revised Statutes, entitled "The Judiciary," and in Chapter 18 thereof, entitled "Procedure." It is provided by § 5595 of the Revised Statutes that the 73 Titles thereof embrace the Statutes of the United States, general and permanent in their value, in force on the 1st day of December, 1873, as revised and consolidated by commissioners appointed under the act of June 27th, 1866 (14 U. S. Stat. at Large, 74). Section 5,600 of the Revised Statutes provides that the arrangement and classification of the several
3330 sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title under which any peculiar section is placed.

The act of March 3d, 1863, is entitled "An act to prevent and punish frauds upon the revenue, to provide for the more speedy and certain collection of claims in favor of the United States, and for other purposes." In section 2 are found the words "frauds upon the revenue"; in sections 3, 4, and 6 the words "any officer of the revenue"; in section 5 the words "the revenue laws"; in section 7 the words "any fraud on on the revenue"; in section 11 the words "the revenue laws," and in

sections 12 and 13 the words "collectors or other officers of the revenue." It is clear that the word "revenue" in all these forms of expression means only the revenue from customs. The act does not
3331 relate to revenue from any other source. So far as it relates to revenue from any source it relates only to revenue from customs.

The words "officers of the revenue," in section 12, mean officers of the revenue from customs. The words "officer of the revenue," in § 989 of the Revised Statutes, which is a mere revision or reprint of § 12 of the act of 1863, can have no different meaning from what it would have had if there had been no revision or reprint. Under said § 12, the words "other officers of the revenue" would never have been construed to mean a postmaster. Therefore they cannot be so construed in § 989 of the Revised Statutes. The revision cannot change the meaning of the same words by displacing the enactment from the connection in which Congress originally placed it.

This is the view held by the Post-Office Department itself; for on the report of the Postmaster-General to the President, of November 8th, 1879, reference is made to this suit and to the decision in it, by the interlocutory decree, adverse to the defendant James, and it is
3332 stated that "there is no provision of Federal law to secure 'certificates of probable cause' to the United States officials other than Treasury officials, in cases of adverse judgments for acts done in their official capacity."

This is unquestionably a correct view. For what acts done in their official capacity "Treasury officials" may have such certificates granted to them under the statute, and whether such acts can ever include the act of infringing a patent are questions not involved in this case.

The motion is denied on the ground above stated.

Stewart L. Woodford (district attorney) and Samuel B. Clarke (assistant district attorney) for the motion.

Marcus P. Norton opposed.

3333 (Indorsed:) Circuit court of the United States for the southern district of New York. Christopher C. Campbell vs. Thomas L. James and others. Decision. May 26th, 1880. U. S. circuit court. Filed May 26, 1880. John I. Davenport, clerk.

3334 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

At a stated term of the circuit court of the United States held in and for the southern district of New York at the court-house in the city of New York, on the 18th day of August, 1880.

Present, the honorable Hoyt M. Wheeler, judge.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
vs.
THOMAS L. JAMES AND CHARLES EDDY AND others.

On reading and filing the annexed stipulation, together with a copy of the agreement of March 20, 1880, in said stipulation mentioned, and also the annexed assignment of Charles Eddy to Albert E. Woos-
3335 ter, and reference being had to the decision of the court now on file respecting the matter of the judgment in said stipulation mentioned,

And on motion of Horatio F. Averill, esq., solicitor for the defendant Charles Eddy, it is ordered that out of the judgment obtained by the complainant, Christopher C. Campbell, in the above entitled action when realized, there be paid to Albert E. Wooster, as assignee of Charles Eddy the sum of five thousand dollars, for services rendered and to be rendered to said Eddy in said suit, as his agent, attorney, solicitor, and counsel therein, and his employment of and liability to other persons and counsel therein; and that there be further paid out of said judgment when realized to said Charles Eddy, or to his duly constituted agent or assignee, the further sum of five thousand dollars.

And it is further ordered that if the amount of the judgment in the above entitled cause be paid into court, by the defendant, the sum of five thousand dollars be paid to Albert E. Wooster, as assignee
3336 of Charles Eddy, as above mentioned, and to said Charles Eddy, or to his duly constituted agent or assignee, the further sum of five thousand dollars (making in the total ten thousand dollars) out of the amount adjudged to be due to the complainant Christopher C. Campbell.

And, on like motion, it is further ordered that, by virtue of the instrument in writing, dated March 20, 1880, in the annexed stipulation referred to, there be paid to the complainant, Christopher C. Campbell all sums that may be adjudged to be due the defendant, Charles Eddy, in this suit.

And this order is made without prejudice to the rights of any parties in interest, except those who have signed the agreement of March 20, 1880, and the assignment from Eddy to Wooster.

HOYT H. WHEELER.

3337 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT & assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY & others.

It is hereby stipulated that out of the judgment obtained against Thomas L. James in the above-entitled action, there be paid to Charles Eddy, his executors, administrators, or assigns, the sum of ten thousand dollars, if that amount be realized in said suit, and that an order to that effect may be entered at any time without further notice, pursuant to an instrument in writing dated March 20, 1880, executed by and between Charles Eddy and Christopher C. Campbell. The said order is not to be entered until after the decision of the court respecting the matter of said judgment, now pending before it.

3338 Dated March 26th, 1880.

CHARLES EDDY.

Witness:
N. L. BOYDEN.
F. G. BASS.

STATE OF VERMONT,
Orange County, ss:

At Randolph, this 26th day of March, A. D. 1880, personally appeared Charles Eddy, and acknowledged the above by him subscribed to be his free act and deed.

Before me.

N. L. BOYDEN,
Master in Chancery.

CHRISTOPHER C. CAMPBELL,
Complainant, &c,

MARCUS P. NORTON,
Solicitor for Complainant.
GEO. H. WILLIAMS,
Of Counsel for Complainant.
HORATIO F. AVERILL,
Solicitor for Charles Eddy.
GEO F. BETTS,
Of Counsel for Charles Eddy.

(Endorsed:) U. S. circuit court. Christopher C. Campbell vs. Thomas L. James & others. Stipulation.

3339 Whereas, on the 14th day of April, 1863, the letters patent of the United States of America No. 38175 were granted and issued to Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, upon new and useful improvements in post-office postmarking and postage cancelling hand stamps, which letters patent were first reissued on the 23rd day of August, A. D. 1864, and were numbered 1748, and were again reissued to Marcus P. Norton on the 3rd day of August, A. D. 1869, and were numbered 3586, and thereafter, and for the third and last time, were reissued, and to Helen M. Ingalls, assignee of the said Marcus P. Norton, bearing date the 4th day of October, A. D. 1870, in two divisions, viz, "Division A," No. 4143, and "Division B," No. 4144, which said letters patent, on the 1st day of September, A. D. 1879, were by Judge Hoyt M. Wheeler, sitting as and with the powers of a circuit judge in the circuit court of the United States in and for the southern district of New York, in the suit of Christopher C. Campbell, complainant and assignee in trust, against Thomas L. James and Charles Eddy, defendants, pronounced to
3340 be good and valid letters patent in and by an interlocutory decree or decretal order made by said judge on the day and date above stated in that suit, in conformity to and with an opinion and decision in writing that had previously been made by said Judge Hoyt M. Wheeler, and filed in said court, in the clerk's office thereof, some time in the month of August, A. D. 1879:

Now, therefore, this agreement made between Charles Eddy, now or late of the city of Troy, in the State of New York, party of the first part, and Christopher C. Campbell, of East Chatham, Columbia County, State of New York, individually and as assignee in trust, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to him in hand paid by said party of the second part, and of the covenants and provisos as to the payment to him of the further sum of twenty thousand dollars hereinafter contained, doth hereby convey, assign, and transfer unto the said party of the second
3341 part, all the right, title and interest of the said party of the

first part of every name and nature of, in, and to the said letters patent hereinbefore described, and to any or either of them, and of, in, and to the said letters patent hereinbefore described, and to any or either of them, and of, in, and to all and any and every claim and demand of said party of the first part for or by reason of any infringement of said letters patent, or of any use of articles described in or covered by said letters patent, and as well against the United States or any department of the government thereof, or any postmaster or other person or persons infringing said patents or either of them, or to any sum that may be provided for by act or resolutions of the Congress of the United States as against any individual persons or corporations or persons holding official positions under the said government.

To have and to hold the same to said party of the second part in trust for Mrs. Minnie D. Norton, wife of Marcus P. Norton, and their daughters, viz, Ada Lavinia Norton, Helen Grace Norton and Estelle May Norton, their heirs, assigns, or lawful representatives, with the same force
3342 and effect as if no conveyance or assignment of any interest in said letters patent, or of any claim or demand for infringement thereof had ever been made by any person heretofore at any time to said party of the first part.

And the said party of the second part doth hereby covenant and promise to and with said party of the first part that he will pay or cause to be paid to said party of the first part, his executors, administrators, or assigns the sum of twenty thousand ($20,000) dollars in manner following, viz, ten thousand dollars to be paid out of the judgment obtained against Thomas L. James in the suit above mentioned, if that amount be realized in said suit; but if not, then in the first suit or suits brought for infringement of the above recited patents or either of them in which said sum is first or soonest realized.

The remaining sum of ten thousand dollars is to be paid out of the sum first realized in any suit or suits (besides the aforesaid suit now pending against said James), which shall be brought for infringe-
3343 ment of said letters patent or either of them; and in the said suit now pending against said James, or in any of the suits hereinbefore referred to, the said party of the second part doth hereby covenant and agree that the court may by order direct the payment of the sums hereby promised to be paid to the said party of the first part, or to his executors, administrators, or assigns. And in case the Congress of the United States shall make an appropriation or provision for the purchase of said letters patent, or either of them, or for the settlement of claims or demands for the infringement thereof, or if such purchase or settlement be made in any manner, then there shall be paid to said party of the first part, or to his executors, administrators, or assigns, the said sum of twenty thousand dollars or so much as shall be necessary with whatever may have been paid in suits as above recited to make up the said sum of twenty thousand dollars, provided that said payments shall not in the whole exceed the sum of twenty thousand dollars.

It is understood between the parties hereto that this conveyance
3344 shall and does hereby embrace, assign, and convey to the party of the second part, in trust as aforesaid, on the conditions above set forth, each and every letters patent and invention of every name and nature whatsoever patented to or invented by Marcus P. Norton in which the said party of the first part has any right, title, or interest whatever, whenever or howsoever the same may have been acquired.

In witness whereof the parties to these presents have hereunto set their hands and seals this twentieth day of March, A. D. 1880.

CHARLES EDDY. [L. S.]
CHRISTOPHER C. CAMPBELL. [L. S.]

In presence of—
N. L. BOYDEN.
HORATIO F. AVERILL.

And as to Campbell—
HORATIO F. AVERILL.
GEO. H. WILLIAMS.

3345 STATE OF VERMONT,
Orange County, ss:

At Randolph, in said county, this 20th day of March, A. D. 1880, personally appeared Charles Eddy, and acknowledged this instrument by him subscribed to be his free act and deed. Before me—

N. L. BOYDEN,
Master in Chancery.

STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-third day of March, A. D. 1880, before me personally appeared Christopher C. Campbell, to me known, and known to me to be the individual of that name mentioned and described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

[SEAL.] HORATIO F. AVERILL,
Notary Public, N. Y. Co.

I, Helen M. Ingalls, do hereby assent to and approve of the foregoing instrument. Dated March 20, 1880.

HELEN M. INGALLS. [L. S.]

In presence of—
HORATIO F. AVERILL.

3346 I, Minnie D. Norton, wife of Marcus P. Norton, do hereby assent to and approve of the foregoing instrument.
Dated March 20, 1880.

MINNIE D. NORTON. [L. S.]

In presence of—
DANIEL B. INGALLS.

We, Ada L. Norton, Helen Grace Norton, and Estelle May Norton, daughters of Marcus P. and Minie D. Norton, do hereby assent to and approve of the foregoing instrument.
Dated March 20, 1880.

ADA LAVINIA NORTON. [L. S.]
HELEN GRACE NORTON. [L. S.]
ESTELLE MAY NORTON. [L. S.]

In presence of—
DANIEL B. INGALLS.

I, Marcus P. Norton, do hereby assent to and approve of the foregoing instrument.
Dated March 20, 1880.

MARCUS P. NORTON. [L. S.]

In presence of—
GEO. H. WILLIAMS.
HORATIO F. AVERILL.

(Endorsed: U. S. circuit court, 2d circuit. In equity. Christopher

3347 Know all men by these presents that I, Charles Eddy, one of the defendants in the suit now pending in the circuit court of the United States for the southern district of New York, wherein Christopher C. Campbell, assignee in trust, &c., is complainant against Thomas L. James and others, defendants, for and in consideration of one dollar to me in hand paid by Albert E. Wooster, of the city of Troy, county of Rensselaer and State of New York, and of services rendered and to be rendered to me in said suit, and in respect to the agreement hereinafter mentioned, and matters therein mentioned by the said Albert E. Wooster, as my agent, attorney, solicitor and counsel therein, and of his employment of and liability to other persons and counsel therein, have sold, assigned and conveyed, and by these presents do sell, assign and convey unto the said Albert E Wooster, and to his executors, administrators and assigns, such portion of the judgment recovered in said suit in my favor, or such portion of the judgment made or to be made under an agreement executed between said Christopher
3348 C. Campbell and myself, bearing date the 20th day of March, 1880, as shall first realize on my behalf the sum of five thousand dollars.

And I hereby direct that out of the moneys first realized in my behalf under said judgment, or under said agreement, there be first paid to the said Albert E. Wooster the said sum of five thousand dollars.

And I hereby give to the said Albert E. Wooster a lien for the said sum of five thousand dollars upon the said judgment, and upon the said agreement, and upon the moneys realized in my behalf, from or by virtue of them, or either of them.

And in case more than fifteen thousand dollars shall be realized in my behalf in said suit, or under and by virtue of said agreement, then, and in that case, in consideration of the premises aforesaid, I, the said Charles Eddy, have also sold, assigned, and conveyed, and by these presents do sell, assign, and convey unto the said Albert E.
3349 Wooster, and to his executors, administrators and assigns, all such portions of said moneys as shall be realized in my behalf on said judgment or said agreement over and above the said sum of fifteen thousand dollars.

It being hereby intended, and I hereby direct that out of the moneys realized in my behalf under said judgment and under said agreement, in addition to the five thousand dollars herein first above mentioned, and after deducting the further sum of ten thousand dollars realized in my behalf as aforesaid, there be paid to the said Albert E. Wooster the further sum of five thousand dollars, or so much thereof as shall be realized as aforesaid, over and above the said sum of fifteen thousand dollars.

And I hereby give to the said Albert E. Wooster a lien upon the said judgment and agreement, and upon the moneys realized in my behalf therefor, after the said sum of fifteen thousand dollars shall be realized and obtained as aforesaid.

In witness whereof I have hereunto set my hand and seal this
3350 16th day of April, in the year one thousand eight hundred and eighty.

CHARLES EDDY. [L. S.]

In presence of—
N. L. BOYDEN.
G. M. CARLETON.

(Endorsed:) Agreement between Charles Eddy and Albert E. Wooster.

Personal service hereof is, this 14th day of June, A. D. 1880, hereby

(Endorsed:) U. S. circuit court, 2d circuit. In equity. Christopher C. Campbell, as assignee, &c., vs. Thomas L. James, &c., & o'rs. Order respecting the payment of moneys out of judgment under stipulations. Horatio F. Averill, sol'r for def't Eddy, No. 120 Broadway, New York. U. S. circuit court. Filed Aug. 18, 1880. John I. Davenport, clerk.

3351 In the circuit court of the United States, in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT assignee in trust,
versus
THOMAS L. JAMES AND CHARLES EDDY ET AL., defendants.

To STEWART L. WOODFORD,
United States Attorney, and Solicitor and of counsel herein for the defendant Thomas L. James:

SIR: Be pleased to take due notice that on Wednesday, the 23d day of June, A. D. 1880, at 10 o'clock forenoon of that day, or as soon thereafter as counsel can be heard by the court, and at the United States court-house at Rutland, county of Rutland, in the State and district of Vermont, and before Hon. Hoyt H. Wheeler, one of the judges of this court, and in the court-room in said court-house where he usually holds court as such judge, I shall move the court to increase the sum or amount of damages found and allowed by the master in this cause
3352 and duly confirmed by this court upon exceptions taken to the report of the master duly filed in court by him, from the sum and amount of $63,000 ℔—, to twice that sum and amount, namely, to the sum and amount of $126,000 ℔, one hundred and twenty-six thousand dollars, exclusive of "costs, charges, and disbursements" allowed in and by the decretal order of this court made on the first day of September, A. D. 1879, and thereafter duly filed in court.

Such motion will be founded upon the statutes of the United States of America passed by the Congress of said United States, and approved on the 8th day of July, A. D. 1870, and the same may be found at sections 4919 and 4921 of the Revised Statutes of the United States, approved on the 22d day of June, A. D. 1874, also August 15th, A. D. 1876, to which your attention is requested.

Such motion will also be founded upon each and every paper on file in this court in this cause, as well also upon the practice had in this cause, and also upon each and all proceeding in this cause, so that the whole case and matter may be brought to the attention and consideration of this court, in order that said court may be the better pre-
3353 pared to determine whether this motion ought or ought not to be granted.

You will also take notice that I shall then and there ask of the court an order allowing and directing that an execution be issued by the clerk of this court, and under its seal and in the usual manner, to collect and to enforce the payment of such judgment as this court may, upon this motion, determine against the said defendant, Thomas L. James. Of each of these matters you will please to take due notice.

Dated this 14th day of June, A. D. 1880.

MARCUS P. NORTON,
Solicitor for Complainant, Troy, N. Y.
GEORGE H. WILLIAMS,
Of Counsel for Complainant, Washington, D. C.

Personal service hereof is, this 14th day of June, A. D. 1880, hereby admitted by copy of the same.

STEWART L. WOODFORD,
U. S. Att'y, for Def't.

C.

3354 (Indorsed:) In the circuit court of the United States in and for the southern district of New York, second circuit. In equity. Christopher C. Campbell versus Thomas L. James et al. Notice of motion to increase the damages in this cause from $63,000 to $126,000, as by law provided. Marcus P. Norton, solicitor for complainant, Troy, N. Y. George H. Williams, of counsel, &c. U. S. circuit court. Filed Aug. 18, 1880. John I. Davenport, clerk. Original.)

3355 To Marcus P. Norton, esq., solicitor for complainant; Stewart L. Woodford, esq., solicitor for Thomas L. James; Horatio F. Averill, esq., solicitor for Charles Eddy:

You and each of you will please to take notice that the following proposed decree, a copy of which is herewith served on each of you, will be mailed on the 17th day of September, 1880, at the New York City post-office, to the honorable Hoyt H. Wheeler, at Jamaica, Vermont, for his approval and acceptance, as the final decree in this suit.

Dated New York, September 16th, 1880.

Yours, &c.,

EDWARD D. BETTENS,
Solicitor for Samuel R. Clexton and Horace T. Caswell, and Charles Eddy, their Trustee.

3356 Service of a copy of above proposed decree and notice is hereby admitted.

Dated New York, September 17th, 1880.

MARCUS P. NORTON,
Complainant's Solicitor.

Solicitor for Thomas L. James.
H. F. AVERILL,
Solicitor for Charles Eddy.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Edward D. Bettens, being duly sworn, says that on the 17th day of September, 1880, at New York City, New York, in the office of Stewart L. Woodford, in the post-office building, he personally served a copy of the above notice and within proposed decree on the solicitor of Thomas L. James by delivering to and leaving with Albert B. Herrick, assistant U. S. attorney, and then in charge of said solicitor's office, a
3357 true copy of said notice and proposed decree; that at the time of said service both Stewart L. Woodford and Samuel B. Clarke were absent from said office.

EDWARD D. BETTENS.

Sworn to before me this 17th day of September, 1880.

THOS. B. CLIFFORD,
Notary Public, City & Co. of New York.

3358 *Final decree, February term*, 1880.

In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell, and Samuel R. Clexton, defendants.

This cause came on to be heard at this term of this court, as to the rights herein of Christopher C. Campbell, Charles Eddy, Horace T. Caswell, and Samuel R. Clexton, as between themselves; also upon exceptions taken and filed in court by the defendant, Thomas L. James, and the complainant, to the final report made in this by Kenneth G. White, one of the masters of this court, dated the 2nd day of January,
3359 1880, and by him filed in court, on the 12th of the same month and year, and thereupon argument thereof was duly had to the court, by counsel for the respective parties to the suit; whereupon, and upon due consideration thereof by the court, it is now ordered, adjudged, and decreed as follows, that is to say:

First. That Christopher C. Campbell, the complainant herein, is the owner in trust of an undivided two-thirds part of the letters patent "Division A," numbered 4143, and reissued to Helen M. Ingalls on the 4th day of October, 1870, being for letters patent, numbered 38175, granted and issued on the fourteenth day of April, 1863, to Marcus P. Norton, subject to the rights of Helen M. Ingalls. That Charles Eddy, individually and as trustee for Horace T. Caswell and Samuel R.
3360 Clexton, is the owner of an undivided one-third part of said letters patent, "Division A," numbered 4143.

Second. That the exceptions, and each thereof, of the complainant to the master's report be, and the same are hereby, overruled.

Third. That the exceptions, and each thereof, of the defendant, Thomas L. James, to the master's report be, and the same are hereby, overruled.

Fourth. That the report of the master in this cause be, and the same is hereby, in all respects ratified and confirmed and accepted.

Fifth. That the gains, profits, savings, and advantages which have been made, or "which have arisen or accrued on account of the
3361 infringements" upon and in violation of the rights under and secured by the letters patent, "Division A" numbered 4143, and reissued to Helen M. Ingalls on the 4th day of October, 1870, being for letters patent numbered 38175, granted and issued on the fourteenth day of April, 1863, to Marcus P. Norton, of the city of Troy, county of Rennselaer and State of New York, in this cause, are the sum of sixty-three thousand dollars ($63,000.00).

Sixth. That the complainant do recover from the said defendant, Thomas L. James, the sum of forty-two thousand dollars ($42,000,00), besides his charges and disbursements, herein taxed at the sum of one thousand four hundred and seventy $\frac{40}{100}$ dollars ($1,470.40), making in all the sum of forty-three thousand four hundred and seventy-one $\frac{40}{100}$ dollars ($43,471.40).

3382 That Charles Eddy, individually and as trustee for Samuel R. Clexton and Horace T. Caswell, do recover of the said Thomas L.

James the sum of twenty-one thousand dollars ($21,000.00). That of the said sum of $21,000, the said Clexton is entitled to thirteen thousand one hundred and twenty-five dollars ($13,125) thereof; and the said Caswell to seven thousand dollars ($7,000) thereof; and the said Eddy to eight hundred and seventy-five dollars ($875) thereof assigned to the complainant since the interlocutory decree, as appears by assignment on file.

Seventh. That the said defendant, Thomas L. James, within twenty days from the entry of this decree, pay to the clerk of this court the sum of sixty four thousand four hundred and seventy-one $\frac{40}{100}$ dollars ($64,-
3363 471 $\frac{40}{100}$) and interest thereon from the entry of this decree to the date of said payment to said clerk for the benefit of the complainant, and Samuel R. Clexton, and Horace T. Caswell, and Charles Eddy, and the complainant, his assignee. That upon said payment to said clerk of said sum of $64,471.40, and interest as aforesaid, the said clerk shall forthwith pay, to the said Christopher C. Campbell, the sum of ($43,471.-40, forty-three thousand four hundred and seventy-one $\frac{40}{100}$ dollars, and interest thereon from the date of entry of this decree, to the date of said payment to said clerk; and to the defendant, Samuel R. Clexton, the sum of ($13,125.00) thirteen thousand one hundred and twenty-five dollars and interest thereon, from date of the entry of this decree to
3364 the date of said payment to said clerk; and to the defendant Horace T. Creswell, the sum of (7,000) seven thousand dollars, and interest thereon, from the date of said entry of this decree to the date of said payment to said clerk; and to the complainant, assignee of Charles Eddy ($875.00) eight hundred and seventy-five dollars, and interest thereon, from the date of the entry of this decree to the date of said payment to said clerk.

Eighth. In default of the payment by the defendant Thomas L. James to the clerk of this court, within twenty days from the entry of this decree, of the said sum of $64,471.40, and interest as aforessaid, then that Christopher C. Campbell, as assignee in trust, and Charles Eddy, individually and as trustee for Samuel R. Clexton and Horace T.
3365 Creswell, have execution against the said Thomas L. James for the sum of ($64,471.40,) sixty-four thousand four hundred and seventy-one $\frac{40}{100}$ dollars, and interest thereon from the date of the entry of this decree. That the moneys collected under said execution, less the marshal fees, be forthwith paid by the marshal collecting the same to the clerk of this court, for the benefit of the complainant and and Samuel R. Clexton and Horace T. Caswell, and the complainant, assignee of Charles Eddy; and that said clerk thereupon forthwith pay such portions of said money to said complainant, said Samuel R. Clexton, and said Horace T. Caswell, and said complainant, assignee of Charles Eddy, respectively, as the said Campbell, Clexton, Caswell, and
3366 Eddy are each respectively entitled to under sixth paragraph of this decree.

Dated this 21st day of September, 1880.

HOYT H. WHEELER.

(Endorsed:) U. S. circuit court. Chistopher C. Campbell vs. Thomas L. James, et al. Proposed final decree, and notice of settlement. Edward D. Bettens, solicitor for Caswell, Clexton, and Eddy, their trustee, 206 Broadway, New York. U. S. circuit court. Filed, Sep. 23, 1880. John L. Davenport, clerk.

3367 The circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell, and Samuel R. Clexton, defendants.

Paragraph first. It is now and hereby stipulated and agreed that the defendant Thomas L. James may appeal this case to the Supreme Court of the United States without giving any bond or security whatever on said appeal as to the other parties to the suit, provided such ap-
3368 peal is taken by said James in time for and placed on the calendar of the October term, 1880, of said Supreme Court.

Paragraph second. It is also further stipulated and agreed that in case such an appeal is taken in time for and placed on the calendar of said October term, 1880, of said Supreme Court, no execution or other process for enforcing the final decree or judgment herein shall issue on behalf of any party to the suit against said defendant James prior to the first day of January, eighteen hundred and eighty-one, and that no attempt to obtain execution or other process against said defendant James shall be made by any of the parties to this suit prior to the first day of January, eighteen hundred and eighty-one, provided,

3369 First, that the Attorney-General shall, on the first day o the October term, 1880, of the said Supreme Court, or as soon thereafter as he can be heard, move the Supreme Court to advance the said appeal upon the calendar of said Supreme Court, and shall use his utmost endeavors to obtain such advancement, so that said appeal may be argued and heard during the month of November, 1880, in said Supreme Court; and provided, also,

Second. That if the said appeal shall not be argued and heard in said Supreme Court before December 1st, 1880, then this paragraph (that is to say, paragraph second) of this stipulation shall be null and void on and after January 1st, 1881; and all parties to this suit on and after January 1st, 1881, shall have the same rights to obtain, vacate,
3370 or suspend an execution, or other process for enforcing the final decree or judgment herein that they would have if this stipulation (contained in said paragraphs first and second) had not been made.

Dated New York, this 31st day of August, 1880.

MARCUS P. NORTON,
Solicitor for Complainant.
H. F. AVERILL,
Solicitor for Def't Chas. Eddy.
EDWARD D. BETTENS,
Solicitor for Defendants Horace T. Caswell & Samuel R. Clexton.

On the conditions above stated the Attorney-General will move to advance this cause upon the calendar of the Supreme Court as indicated.

Signed this 31st day of August, 1880, by authority of the letter of the Attorney-General to Samuel B. Clarke, ass't U. S. att'y, dated Aug. 26, 1880, and on file in the district attorney's office.

STEWART L. WOODFORD,
U. S. Attorney,
By S. B. CAPT.

3371 (Endorsed:) U. S. circuit court, southern district of New York. Christopher C. Campbell vs. Thomas L. James et al. Stipulation as to execution & appeal. U. S. circuit court. Filed Aug. 31, 1880. John I. Davenport, clerk.)

3372 POST-OFFICE DEPARTMENT,
Washington, D. C., Sept. 26, 1879.

SIR: In the matter of the case of Christopher C. Campbell vs. Thomas L. James and Charles Eddy, in the circuit court of the United States for the southern district of New York, wherein a decree has been rendered in favor of the complainant and against the defendants, you are hereby directed to take such steps, by appeal or otherwise, as may be required by law, to have said decree reviewed by the Supreme Court of the United States, to the end that the same may be modified or reversed.

Respectfully,
(Signed) D. M. KEY,
Postmaster-General.

Hon. THOS. L. JAMES,
Postmaster, New York City, N. Y.

Correct copy.

T. L. JAMES,
Postmaster.

3373 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. CASWELL, & SAMUEL R. CLEXTON, defendants.

CITY AND COUNTY, SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas L. James, one of the above-named defendants, being duly sworn, says I have been directed by the Post-Office Department of the United States to appeal the above cause to the Supreme Court of the United States, as will appear from the true copy of such directions hereto annexed. Said directions were received shortly after the rendition of the interlocutory decree herein, have never been revoked, and the execution thereof has been deferred only till the final decree should be entered, which was done on the 23d day of September, 1880.

THOS. L. JAMES, *P. M.*

Subscribed & sworn to before me this 25th Sept., 1880.
[L. S.] ANTHONY YEOMAN,
Notary Public (8).

3374 (Endorsed:) Affidavit of Mr. James as to instructions to appeal. Rev. Stats., §§ 1000, 1001, 1007, 1012. U. S. circuit court. Filed Sept. 28, 1880. John I. Davenport, clerk.

3375 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN trust, complainant,
vs.
THOMAS L. JAMES, CHARLES EDDY, SAMUEL R. Clexton, and Horace T. Caswell, defendants.

To the honorable the Supreme Court of the United States:

The appeal of Thomas L. James, one of the above named defendants and appellants, respectfully showeth:

I. That on the 4th day of June, 1877, the above-named complainant filed his bill in the circuit court of the United States for the south-
3376 ern district of New York against this appellant; that process thereupon issued against this appellant, and having been duly served therewith, this appellant entered his appearance in said circuit court on the 3rd day of July, 1877.

II. That upon the 26th day of July, 1877, in pursuance of a stipulation entered into by the respective solicitors of the above-named complainant and this appellant, said complainant filed his amended bill in said circuit court against this appellant in place and stead of said original bill, in which amended bill said complainant alleged in substance as follows: that on the 14th day of April, 1863, the letters patent of the United States, numbered 38175, for a certain new and useful improvement in post office postmarking and canceling hand stamps, were duly issued to Marcus P. Norton, as the true, original and
3377 first inventor of said improvement; that on or about the 20th day of April, 1863, by an assignment in writing bearing that date, said Marcus P. Norton sold, assigned and transferred unto Jacob Shavor and Albert C Corse in trust, all his right, title and interest in and to said letters patent and invention, which assignment was thereafter recorded in the patent office; that on the 23rd day of August, 1864, upon a surrender of said original letters patent, new letters patent, numbered 1748 of reissued letters patent, being for the same invention upon reformed and amended specifications and claims, were duly issued to said Shavor and Corse; that on or about the 23d day of February, 1864, said Shavor and Corse, by a deed of assignment bearing that
3378 date, sold, reassigned and reconveyed the aforesaid letters patent, and any and all reissues thereof, to said Marcus P. Norton, which assignment was recorded in the Patent Office on the 24th day of July, 1869; that on the 3d day of August, 1869, upon a surrender of said reissued letters patent, new letters patent for the same invention, upon reformed, corrected and amended specifications, numbered 3586 of reissued letters patent, were duly issued to said Norton; that on the 20th day of October, 1869, said Norton, by an assignment in writing of that date, sold, assigned, and transferred said letters patent to Helen M. Ingalls, which assignment was recorded in the Patent Office on the 1st day of August, 1870; that on the 4th day of October, 1870, upon a surrender of said last reissued letters patent, new letters patent (the specifications, draw-
3379 ings and claims or summary of invention therein being the same as those contained in said last reissued letters patent) numbered 4143, Division A of reissued letters patent, were duly issued to said Helen M. Ingalls; that on the 4th day of March, 1871, by an assignment in writing of that date, said Helen M. Ingalls conditionally assigned and trans-

ferred to William W. Secombe (in trust according to the terms and conditions of a deed of trust, bearing the same date, signed, executed, and delivered by said Secombe to said Ingalls as a part of said conditional assignment) all her right, title, and interest in and to said last reissued letters patent, Division A, which assignment was recorded in the Patent Office on the 11th day of March, 1871; that said Se-
3380 combe wholly and entirely failed to keep and maintain the terms and conditions stated in said deed of trust, and that said assignment to him long since became utterly void and of no effect either in law or in equity; that on the 10th day of July, 1873, by deed of assignment bearing that date and recorded in the Patent Office, said Secombe, with whom joined the Secombe Manufacturing Company, assigned, transferred, and reconveyed to said Helen M. Ingalls all the right, title, interest, claims, or demand of them, or either of them, to or under said patent of April 14th, 1863, or its aforesaid reissues; that on or about the 2d day of January, 1877, by an assignment in writing of that date, said Helen M. Ingalls sold, assigned, and conveyed in trust unto the said complainant, Christopher C. Campbell, all her right, title,
3380*a* and interest in and to the said letters patent and invention so as aforesaid patented, reissued, and last reissued as number 4143, Division A, which assignment has been duly recorded in the Patent Office; that said patented invention and improvement is of very great utility and value, and has been in extensive public use; that this appellant, being postmaster of the United States at the city of New York, has at divers times since the first day of January, 1872, wrongfully made, used, and sold said patented invention to the great injury of said complainant; and in & by said amended bill said complainant prayed in substance for a writ of subpœna ad respondedum against this appellant, for writs of injunction, preliminary and perpetual, against this appellant, and that this appellant might be compelled to
3381 account for and pay to the complainant the profits acquired, and the damages in addition sustained by the complainant by reason of the said infringements.

III. That on the 3d day of December, 1877, this appellant filed his answer in said circuit court, and on the 24th day of January, 1878, his amended answer to complainant's said amended bill, in which said answer and amended answer it was alleged in substance as follows: That complainant was not the owner of and had no title to said last reissued letters patent, "Division A. No. 4143"; that said Shavor and Corse did not reassign to said Norton, as stated in said bill; that said Secombe did not reassign to said Ingalls, as stated in said bill; that said assignment from said Ingalls to said Secombe did not become null and
3382 void as stated in said bill; that on the 23d day of October, 1869, said Norton assigned one third of his right, title and interest in and to said letters patent to Charles Eddy as trustee for himself, Jacob Shavor & Albert C. Corse, which assignment was recorded in the Patent Office on the 25th day of October, 1869, and that said Charles Eddy, as trustee, should be a party to the suit; that none of the said reissues were duly and lawfully made, or were for the same invention as that described in said original patent; that said Marcus P. Norton was not the true, original and first inventor of the improvement described and claimed in said original letters patent, or of any material or substantial part thereof; that said improvement had been patented (in let-
3383 ters patent described) prior to said Norton's supposed invention or discovery thereof; that said improvement had been known and used by others (named and described) prior to said Norton's supposed

invention or discovery thereof; that said improvement had been publicly used and sold by persons and at places named and described for more than two years before said Norton made his application for said original patent; that such public use and sale was with said Norton's consent and allowance; that said Norton had abandoned said improvement to the public before his application for said original patent; that this appellant had not infringed upon said last reissued letters patent, Division A, No. 4143; that this appellant had never used any
3384 instrument or device for postmarking letters & canceling postage stamps thereon, either directly or by subordinates, except as an officer and agent of the United States in his office of postmaster at the city of New York, and that all such official use by him was with the consent, approbation and approval and under the direction of the Postmaster General, and that, therefore, this appellant was not liable to suit for his action in the premises.

IV. That on the 4th day of December, 1877, said complainant filed in said circuit court his replication to this appellant's said answer, and on the 25th day of January, 1878, his replication to this appellant's said amended answer.

V. That thereafter upon the pleadings aforesaid and upon cer-
3385 tain mutual stipulations and upon certain orders of said circuit court proofs were taken by and on behalf of said complainant and this appellant, and were filed in said circuit court.

VI. That thereafter, on the 13th day of September, 1878, on motion of said complainant's counsel, founded upon this appellant's said amended answer, and upon a certain stipulation entered into by said Charles Eddy & said complainants, said Eddy was, by an order of said circuit court, made a party defendant in the suit as well for himself as in trust for said Jacob Shavor and said Albert C. Corse.

VII. That thereafter this cause came on to be heard upon pleadings and proofs before said circuit court, and after argument thereof
3386 and consideration by said circuit court it was interlocutorily adjudged and decreed in substance as follows: that the said letters patent, Division A, numbered 4143, reissued to said Helen M. Ingalls on the 4th day of October, 1870, are good and valid; that said Marcus P. Norton was and is the original and first inventor of the said improvement described and claimed in said original letters patent and in the several reissues thereof; that Christopher C. Campbell, the said complainant, is the exclusive owner in trust of said reissued letters patent numbered 4143, subject to the rights of Helen M. Ingalls and of Charles Eddy thereto, if any; that this appellant has infringed upon said reissued letters patent by causing to be manufactured and by using and by causing others to use the said improvement as specified
3387 and charged in said complainant's bill; that an account be taken of the profits, gains, and advantages which have been in any wise received or made, or which have arisen or accrued by reason of the infringements aforesaid, and also of the damages in addition thereto, if any, which said complainant has sustained by reason of the infringments aforesaid; that said complainant recover of this appellant his costs, charges and disbursements to be taxed; that it be referred to Kenneth G. White, esq., to ascertain and take and state and report to the court an account of profits and damages.

VIII. That thereafter upon their own petition (under a claim of interest in said letters patent and in demands for infringements thereof, through and under said Charles Eddy, Jacob Shavor and Albert
3388 C. Corse), by an order of said circuit court granted on the terms

therein stated, Samuel R. Claxton and Horace T. Caswell were made parties defendants, and by leave of said circuit court proofs, as well between them of the one part and Charles Eddy of the other part as between them and Charles Eddy of the one part and said complainant of the other part, were then taken and filed in said circuit court.

IX. That on or about the 12th day of January, 1880, upon the proofs submitted by said complainant and this appellant, said master, Kenneth G. White, esq., found and reported in writing to said circuit court in substance as follows: that the gains and profits which have arisen or accrued to this appellant under the interlocutory decree in
3389 the saving of salaries amounts to the sum of $63.000.00, and with his said report said master filed the said proofs and all thereof.

X. That thereafter the said complainant and this appellant duly filed their respective exceptions to the said report of the master in said circuit court.

XI. That thereafter, to wit, in February term, 1880, the cause came on to be further heard by the said circuit court as well upon the proofs submitted to the master, his said report, and the said respective exceptions thereto of said complainant and this appellant as upon the pleadings, stipulations, and proofs relating to the interests of said complainant and of said Charles Eddy, and of those claiming through
3390 and under said Eddy in said letters patent and in the demands for infringement thereof, and after argument of counsel and consideration by the court, on the 23d day of September, 1880, a final decree was made, pronounced and entered in the cause, wherein and whereby it was adjudged and decreed in substance as follows: That said exceptions of this appellant, as well as those of complainant, be *be* disallowed and overruled; that said master's report be confirmed and ratified; that the sum of $63,000 00 be recovered of this appellant; that of such sum said complainant is entitled to $42,000.00, said Clexton to $13,125.00, said Caswell to $7,000.00, and said Eddy to $875.00; that this appellant pay said sum of $63,000.00 for the benefit of the parties entitled into the registry of said circuit court within twenty days after the entry of the decree, or in default thereof that execution there-
3391 for issue; that said complainant recover of this appellant the sum of $1,471$\frac{40}{100}$ costs as taxed.

Wherefore this appellant appeals hereby from the whole of said final decree of said circuit court and from every part thereof, except such part as overrules said exceptions of complainant, and respectfully prays that said final decree, the bill, amended bill, answer, amended answer, pleadings, stipulations, depositions, exhibits, evidence, master's report, evidence before the master, exceptions to the report, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will pro-
3392 ceed to hear the said cause anew, and that the said decree of said circuit court and every part thereof, except such part as overrules said exceptions of complainant, may be reversed and a decree made dismissing said bill and amended bill with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, September 25th, 1880.

THOMAS L. JAMES,
Appellant.

STEWART L. WOODFORD,
U. S. Attorney, Solicitor and of Counsel
for said Defendant and Appellant Thomas L. James.

The foregoing appeal is hereby allowed this 27th day of September, 1880.

SAM'L BLATCHFORD,
Circuit Judge.

3393 (Indorsed:) U. S. Supreme Court. C. C. Campbell versus Thomas L. James, Charles Eddy, et al. Petition. Appeal of Thomas L. James. Stewart L. Woodford, United States attorney. Due service of a copy of the within is hereby admitted , 18 . U. S. circuit court. Filed Sept. 28, 1880. John I. Davenport, clerk.

3394 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Samuel B. Clarke, being duly sworn, says: I am one of the assistants of Stewart L. Woodford, attorney of the United States for the southern district of New York, who is the solicitor of record of the defendant appellant, Thomas L. James. I served the annexed citation, the petition of appeal of said appellant, James, and said James' affidavit, verified September 25th, 1880 (by exhibiting said original citation and delivering a copy of said citation, said petition, and said affidavit), upon Marcus P. Norton, esq., solicitor of record of the complainant respondent, Christopher C. Campbell, on the 29th day of September, 1880; upon Horatio F. Averill, esq., solicitor of record of the defendant-respondent, Charles Eddy, on the 28th day of September, 1880; and upon Edward D. Bettens, esq., solicitor of record of the de-
3395 fendant's respondents, Horace T. Caswell, Samuel R. Clexton, and Charles Eddy, as trustee of said Clexton and Caswell, on the 28th day of September, 1880.

Said solicitors of the respondents respectively waived service of the stipulation, dated Aug. 31, 1880, for the reason that they were already in possession of a copy thereof, and in my presence signed the admission of service which is endorsed upon the annexed original citation.

SAMUEL B. CLARKE.

Subscribed and sworn to before me this 1st day of October, 1880.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

3396 UNITED STATES OF AMERICA, *ss:*

By the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York.

To Christopher C. Campbell, Charles Eddy, Horace T. Caswell, and Samuel R. Clexton:

Whereas Thomas L. James has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you the said Campbell, the said Caswell, the said Clexton, and the said Eddy, and whereas such appeal has been taken by direction of the Post Office Department of the United States, and whereas you and all of you have waived the giving of any bond or security whatever by said James on such appeal, you and each and all of you are
3397 therefore hereby cited to appear before the said Supreme Court, at the city of Washington, D. C., on the second Monday of October, 1880, to do and receive what may appertain to justice in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 27th day of September, 1880.

SAM'L BLATCHFORD.

Due and timely service of the within citation by copy thereof, and of a copy of defendant James' petition of appeal, and of said James' affidavit, verified Sept. 25, 1880, and of the stipulation dated Aug. 31, 1880, is now and hereby admitted.

New York, Sept. 28, 1880.

MARCUS P. NORTON,
Solicitor for Complainant Christopher C. Campbell, and Assignee in Trust.

HORATIO F. AVERILL,
Sol'r for Chas. Eddy.

3398 EDWARD D. BETTENS,
Solicitor for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, as Trustee for Samuel R. Clexton and Horace T. Caswell.

(Endorsed:) Citation. U. S. Circuit court. Filed October 1st, 1880. Joseph D. M. Dewy, clerk.

3399 U. S. circuit court, southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES ET AL.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York:

Edward D. Bettens, being duly sworn, says that he is the solicitor of record in the above entitled suit for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, as trustee for Samuel R. Clexton and Horace T. Caswell; that on the 30th day of September, 1880, in the city of New York, State of New York, deponent served the annexed petition of appeal of Samuel R. Clexton, and the annexed citation granted on said petition on the following named solicitors of the parties to this suit, and at the places set opposite their names, to wit:

Marcus P. Norton, as solicitor for Christopher C. Campbell, assignee in trust, in the Metropolitan Hotel.

Horatio F. Averill, as solicitor of Charles Eddy, in his office, number 120 Broadway.

Stewart L. Woodford, as solicitor of Thomas L. James, in his office in United States Post Office building.

3400 That said service was made by delivering to and leaving with said Norton copies of said petition and citation and exhibiting to him the originals thereof, by delivering to and leaving with Samuel B. Clarke (in the absence from his said office of Stewart L. Woodford) copies of said petition and citation and exhibiting to him the originals thereof, by delivering to and leaving with George F. Betts (in the absence of said Horatio F. Averill from his said office) copies of said petition and citation and exhibiting to him the original thereof; that at the times of said services Marcus P. Norton was the solicitor of said complainant; Stewart L. Woodford was the solicitor of said James and Samuel B. Clarke was of counsel for said James; Horatio F. Averill was the solicitor of said Eddy and George F. Betts was of counsel for said Eddy; that at the time of said services the said Woodford by said Clarke, the said Averill by said Betts, and the said Norton, each, in writing (annexed to said citation), admitted due and timely service of said citation by copy, and of a copy of said Clexton's petition; that de-

ponent, as the solicitor for said Charles Eddy, as trustee for Samuel R. Clexton and Horace T. Caswell, hereby admits due and timely service of said citation and petition of appeal.

EDWARD D. BETTENS.

Sworn to before me this 1st day of October, 1880.

THOS. B. CLIFFORD,
Notary Public, City & Co. of New York.

3401 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York.

To Christopher C. Campbell, assignee in trust, Thomas L. James, Horace T. Caswell, Charles Eddy, Charles Eddy as trustee for Horace T. Caswell & Samuel R. Clexton, greeting:

Whereas Samuel R. Clexton has lately appealed to the Supreme Court of the United States from a part of a decree lately rendered in the circuit court of the United States for the southern district of New York, as appears by a petition of appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, and wherein he is the appellant and you are the respondents; and whereas he has filed the security required by law, you, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, on the second Monday of October, eighteen hundred and eighty, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 29th day of September, in the year eighteen hundred and eighty.

SAMUEL BLATCHFORD.

Due and timely service of the within citation by copy thereof and of a copy of defendant Clexton's petition of appeal is now and hereby admitted.

New York, September 30th, 1880.

STEWART L. WOODFORD,
U. S. Attorney, Solicitor for def't Thomas L. James, S. B. C.
MARCUS P. NORTON,
Solicitor for Complainant.
H. T. AVERILL,
Solicitor for Charles Eddy.
EDWARD D. BETTENS,
Solicitor for Charles Eddy as trustee for Samuel R. Clexton and Horace T. Caswell.

3402 Circuit court of the United States for the southern district of New York. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT,
vs.
THOMAS. L. JAMES, CHARLES EDDY, SAMUEL R. Clexton, and Horace T. Caswell, defendants.

To the honorable the Supreme court of the United States:

The appeal of Samuel R. Clexton, one of the above-named defendants and appellant, respectfully showeth:

I. That on the 4th day of June, 1877, the above-named complainant

filed his bill in the circuit court of the United States for the southern district of New York against James Thomas L. James; that process thereupon issued against said James, and said James having been duly served therewith, said James entered his appearance in said circuit court on the 3rd day of July, 1877.

II. That upon the 26th day of July, 1877, in pursuance of a
3403 stipulation entered into by the respective solicitors of the above-named complainant, and said James, said complainant filed this amended bill in said circuit court against said James in place and stead of said original bill, in which amended bill said complainant alleged, in substance, that on the 14th day of April, 1863, the letters patent of the United States numbered 38175 for a certain new and useful improvement in post-office marking and canceling hand stamps were duly issued to Marcus P. Norton as the true, original, and first inventor of said improvement; that on or about the 20th day of April, 1863, by an assignment in writing bearing that date, said Marcus P. Norton sold, assigned, and transferred unto Jacob Shavor and Albert C. Corse, in trust, all his right, title, and interest in and to said letters-patent and invention, which assignment was thereafter recorded in the Patent Office; that on the 23rd day of August, 1864, upon a surrender of said original letters-patent, new letters patent, numbered 1748 of reissued letters-patent, being for the same invention upon reformed and amended specifi-
3404 cations and claims, were duly issued to said Shavor & Corse; that on or about the 23rd day of February, 1864, said Shavor and Corse, by a deed of assignment bearing that date, sold, reassigned, and reconveyed the aforesaid letters-patent and any and all reissues thereof to said Marcus P. Norton, which assignment was recorded in the Patent Office on the 24th day of July, 1869; that on the 3rd day of August, 1869, upon a surrender of said reissued letters-patent new letters patent for the same invention upon reformed, corrected, and amended specifications numbered 3586 of reissued letters patent were duly issued to said Norton; that on the 20th day of October, 1869, said Norton, by an assignment in writing of that date, sold, assigned, and transferred said letters patent to Helen M. Ingalls, which assignment was recorded in the Patent Office on the 1st day of August, 1870; that on the 4th day of October, 1870, upon a surrender of said last reissued letters patent new letters patent (their specifications, drawings and claims or summary of invention therein, being the same as those contained in said last reissued letters patent), numbered 4143, "Division A" of reissued letters patent, were duly issued to said Helen M. In-
3405 galls; that on the 4th day of March, 1871, by an assignment in writing of that date, said Helen M. Ingalls conditionally assigned and transferred to William W. Secombe (in trust, according to the terms and conditions of a deed of trust bearing the same date, signed, executed, and delivered by said Secombe to said Ingalls as a part of said conditional assignment), all her right, title, and interest in and to said last reissued letters patent, Division A, which assignment was recorded in the Patent Office on the 11th day of March, 1871; that said Secombe wholly and entirely failed to keep and maintain the terms and conditions stated in said deed of trust, and that said assignment to him long since became utterly void and of no effect, either in law or in equity; that on the 10th day of July, 1873, by deed of assignment bearing that date and recorded in the Patent Office, said Secombe, with whom joined the Secombe Manufacturing Company, assigned, transferred, and reconveyed to said Helen M. Ingalls all the right, title, interest, claims, or demand of them, or either of them, to or under said patent of April 14, 1863, or

its aforesaid reissues; that on or about the 2nd day of January,
3406 1877, by an assignment in writing of that date, said Helen M. Ingalls sold, assigned, and conveyed in trust unto the said complainant, Christopher C. Campbell, all her right, title and interest in and to the said letters patent and invention, so as aforesaid patented, reissued, and last reissued as number 4143, division A, which assignment has been duly recorded in the Patent Office; that said patented invention and improvement is of very great utility and value, and has been in extensive public use; that said James, being postmaster of the United States at the city of New York, has, at divers times, since the first day of January, 1872, wrongfully made, used and sold said patented invention to the great injury of said complainant, and prayed therein for a writ of subpœna ad respondendum against the said James, for writs of injunction, preliminary and perpetual, against the said James, and that the said James might be compelled to account for and pay to the complainant the profits acquired and the damages in addition sustained by the complainant by reason of the said infringement.

III. That on the 3rd day of December, 1877, the said James
3407 filed his answer in said circuit court, and on the 24th day of January, 1878, his amended answer to complainant's bill, in which said answer and amended answer it was alleged in substance as follows: that complainant was not the owner of, and had no title to said last reissued letters patent, Division A, No. 4143; that said Shavor and Corse did not reassign to said Norton as stated in said bill; that said Secombe did not reassign to said Ingalls as stated in said bill; that said assignment from said Ingalls to said Secombe did not become null and viod as stated in said bill; that on the 23rd day of October, 1869, said Norton assigned one-third of his right, title, and interest in and to said letters patent to Charles Eddy, as trustee for himself, Jacob Shavor, and Albert C. Corse, which assignment was recorded in the Patent Office on the 25th day of October, 1869, and that said Charles Eddy, as trustee, should be a party to this suit; that none of the said reissues were duly and lawfully made, or were for the same invention as that described in said original patent; that said Marcus P. Norton was not the true original
3408 and first inventor of the improvement described and claimed in said original letters patent, or of any material or substantial part thereof; that said improvement had been patented (in letters patent described), prior to said Norton's supposed invention or discovery thereof; that said improvement had been known and used by others (named and described) prior to said Norton's supposed invention or discovery thereof; that said improvement had been publicly used and sold by persons and at places named and described for more than two years before said Norton made his application for said original patent; that such public use and sale was with said Norton's consent and allowance; that said Norton had abandoned said improvement to the public before his application for said patent; that said James had not infringed upon said last reissued letters patent "Division A," No. 4143; that said James had never used any instrument or device for postmarking letters and canceling postage stamps thereon, either directly or by subordinates, except as an officer and agent of the United States, in his office of postmaster at the city of New York, and that all such official use by him was with
3409 the consent, approbation and *and* approval, and under the direction of the Postmaster-General, and that therefore the said James was not liable to suit for his action in the premises.

IV. That on the 4th day of December, 1877, said complainant filed in said circuit court his replication to said James' answer, and on the 25th

day of January, 1878, his replication to said James' said amended answer.

V. That thereafter upon the pleadings aforesaid and upon certain mutual stipulations and upon certain orders of said circuit court, proofs were taken by and on behalf of said complainant and said James, and were filed in said circuit court.

VI. That thereafter a stipulation dated June, 1878, and filed in said suit on September 13, 1878, was entered into by and between Charles Eddy and the complainant (which stipulation was duly approved of by Helen M. Ingalls and Marcus P. Norton, and which approvals were filed in said suit on said September 13, 1878), by which it was agreed between said complainant and said Eddy that said Eddy should be made a party to this suit as prayed for in said James' answer, and that the
3410 filing of said stipulation in said court should be held and treated as said Eddy's voluntary appearance, for that purpose and for all the purposes of said suit as fully in all respects as though he was an original party thereto. Said stipulation further recites that said Eddy claims that his rights in the subject matter of said suit are fixed and determined by an assignment dated October 23, 1869, from Marcus P. Norton to said Eddy in trust of a one-third interest in said patent and its reissue and by a certain contract of even date with said assignment; that said complainant denies this and claims that said Eddy's rights are fixed and determined by a certain instrument dated October 7, 1871, and executed by Charles Eddy, Jacob Shavor, Albert C Corse, and W. W. Secombe. Said stipulation further recites that said Eddy's rights and interests in the subject matter of said suit shall be determined by the said court upon the pleadings and evidence as they then stood, and without any further evidence or pleadings in said case unless the court shall otherwise direct, and that the court is to make such decree in respect thereto as equity and good conscience may require, and in case of a recovery against said James the court shall de-
3411 termine the rights respectively thereto of said complainant and said Eddy. Said stipulation further recites that the said assignment of October 23, 1869, from Marcus P. Norton to Charles Eddy is a valid assignment not affected by any prior or contemporaneous assignment by said Norton to Helen M. Ingalls, or other written agreement to which said Eddy is a party excepting said instrument dated October 7, 1871.

VII. That thereupon, and on the 13th day of September, 1878, on motion of said complainant and on said stipulation, and on the affidavit of counsel for complainant and on the pleading and evidence then in said suit by an order of said circuit court filed on said September 13, 1878, the said Charles Eddy was made a party defendant as well for himself as in trust for Jacob Shavor and Albert C. Corse for all the purposes of said suit as fully in all respects as though he were an original party thereto. And said order further ordered that as regards said Campbell and said Eddy that said suit be heard upon the pleadings and evidence as they then stood unless the court should thereafter otherwise direct.

VIII. That thereafter this cause came on to be heard upon the
3412 pleadings and proofs before said circuit court, and after argument thereof and consideration by said circuit court it was interlocutorily adjudged and decreed in substance, as follows, that the said letters patent, "Divison A," numbered 4143, reissued to said Helen M. Ingalls, on the 4th day of October, 1870, are good and valid; that said Marcus P. Norton was and is the original and first inventor of the said

improvement described and claimed in said original letters patent, and in the several reissues thereof; that Christopher C. Campbell, the said complainant, is the exclusive owner, in trust, of said reissued letters patent, numbered 4143, subject to the rights of Helen M. Ingalls and of Charles Eddy thereto, if any; that said James has infringed upon said reissued letters patent by causing to be manufactured and by using and by causing others to use the said improvement as specified and charged in said complainant's bill; that an account be taken of the profits, gains and advantages which have been in anywise received or made, or which have arisen or accrued by reason of the infringements aforesaid, and also of the damages in addition thereto, if any, which said com-
3413 plainant has sustained by reason of the infringement aforesaid; that said complainant recover of said James his costs, charges, and disbursements to be taxed; that it be referred to Kenneth G. White, esq., to ascertain and take and state and report to this court an account of profits and damages.

IX. That thereafter an application was made by said Eddy's counsel for leave to take evidence as to the cancellation of said instrument dated October 7, 1871, and that Caroline G. Caswell be made a party defendant in said suit. That said motion came on to be heard upon the pleadings, evidence, and proceedings in said suit, and on the affidavits of Charles Eddy, Albert C. Corse, and Caroline G. Caswell, each verified December 9, 1879, and of George H. Williams, verified December 13, 1879, and after argument thereof and consideration by said court, it was ordered, in substance, that said Eddy have leave to take and file testimony in said suit to prove the cancellation of said instrument dated October 7, 1871, provided the said Eddy or his counsel within five days after the entry of said order, file with the clerk of said court a written assent to the terms upon which said order was granted.
3414 That said terms are stated in said order, and that said order is dated December 23, 1879, and that said Eddy thereafter duly filed, on December 26, 1870, said written assent to said terms; that Caroline G. Caswell's motion to be made a party to said suit was denied.

X. That thereafter an application was made to said court by Horace T. Caswell and this appellant, to be made parties defendants in said suit; that said motion was made on the affidavit of Edward D. Bettens, verified January 16, 1880; Samuel R. Clexton, verified January 15, 1880; and Horace T. Caswell, verified January 16, 1880; and on the papers, pleadings, and proceedings in said suit; that said affidavits stated in substance, that by said assignment dated October 23, 1869, from said Norton to said Eddy in trust, the said Eddy, as trustee for himself, Jacob Shavor, and Albert C. Corse, became the owner in fee of an undivided one-third of said patent and its reissues; that thereafter, the said Albert C. Corse assigned and conveyed to Caroline G. Caswell his (said Corse's) interest in said patent; that thereafter said Caroline G. Caswell, assigned and conveyed to Herbert M. Caswell, all her
3415 right, title, and interest in said patent; and that thereafter the said Herbert M. Caswell assigned and conveyed to said Horace T. Caswell, all of his (said Herbert M. Caswell's) interest in said patent. That the said Eddy, on or about March 31, 1879, made and executed a general assignment to assignees for the benefit of his (said Eddy's) creditors, under the laws of the State of New York. That thereafter, and on or about January 7, 1880, the said assignees of said Eddy, under said general assignment sold and conveyed to this appellant all of said Eddy's interest in said patent. That said Eddy no longer had any interest in said patent. That said Horace T. Caswell was the owner of

one-ninth of said patent; and that this appellant was the owner of two-ninths of said patent, and that this appellant was the owner of all the interest in said patent that said Jacob Shavor and Charles Eddy had acquired by or through said assignment from said Norton to said Eddy in trust, dated October 23, 1869.

XI. That after argument thereof, and consideration by said court, it was ordered, in substance, that said Horace T. Caswell and this appellant be made parties defendants to said suit, subject to the
3416 same orders and stipulations by and under which said Charles Eddy, as trustee for himself, Jacob Shavor, and Albert C. Corse became, and then was, a party defendant to said suit, with the same rights and privileges, and subject to the same obligations and liabilities, as the said Eddy, as they then appeared in the proceedings in said suit. That said order is dated January 24, 1880, and under said order the said Caswell and this appellant became and are parties defendants to said suit.

XII. That thereafter, upon said stipulation of June, 1878, and the said order of said court thereon filed on September 13, 1878, and the further orders of said court dated December 23, 1879, and January 24, 1880, and the affidavits upon which said orders were obtained, and on the papers referred to in said affidavits, and upon certain orders of said circuit court, proofs were taken and filed in said circuit court as to the respective rights of said complainant, Horace T. Caswell, Charles Eddy, and this appellant in and to said patent and claims for its infringement.

3417 XIII. That thereafter, to wit, in February term of said court, 1880, this cause came on to be further heard by the said circuit court—

(1) Upon the proofs submitted to the master, his said report, and the said respective exceptions thereto of said complainant and the said defendant James; and

(2) Upon the pleadings, stipulations, orders, and proofs relating to the respective rights in said patent and claims for its infringements of said complainant, Horace T. Caswell, Charles Eddy, and this appellant; and after argument by counsel and consideration by the court, on the 23rd day of September, 1880, a final decree was made and pronounced in this cause wherein and whereby it was adjudged and decreed in substance as follows, that is to say:

3418 (1) That said complainant is the owner in trust of an undivided two thirds part of said letters patent, Division A, numbered 4143, reissued to Helen M. Ingalls on 4th day of October, 1870, subject to the rights of Helen M. Ingalls; that Charles Eddy, individually and as trustee for Horace T. Caswell and Samuel R. Clexton, is the owner of an undivided one-third part of said letters patent, Division A, numbered 4143.

(2) That all the exceptions to the master's report be overruled, and said report be confirmed and accepted.

(3) That the gains, profits, savings, and advantages which have been made, or which have arisen or accrued on account of the infringements upon, and in violation of, the rights under and secured by the said letters patent, Division A, numbered 4143, and reissued to Helen M. Ingalls on the 4th day of October, 1870, in this cause, are the sum of $63,000.00.

(4) That the complainant recover of Thomas L. James the sum of $42,000.00 besides his charges and disbursements taxed at $1,470.40; in all, $43,471.40; that Charles Eddy, individually and as trustee for

Samuel R. Clexton and Horace T. Caswell, recover of Thomas L.
3419 James $21,000.00; that of said 21,000 said Clexton is entitled to
13,125 00, said Caswell to $7,000, and said Eddy to $875; and that said $875 has been assigned to the complainant since the interlocutory decree, as appears by assignment on file.

(5) That said James, within 20 days from the entry of the said decree, pay to the clerk of this court $64,471 40 and interest thereon from entry of said decree to date of said payment to said clerk for the benefit of the complainant, said Clexton, said Caswell, said Eddy, and the complainant, his assignee; that upon said payment to said clerk the said clerk forthwith pay to said Campbell $43,471.46, and interest thereon from the date of entry of said decree to date of said payment to said clerk; and to said Clexton, $13,125.00 and interest thereon from the date of the entry of said decree to date of said payment to said clerk;
and to said Caswell $7,000.00 and interest thereon from the date
3420 of the entry of said decree to the date of said payment to said
clerk; and to the complainant, assignee of Charles Eddy, $875 and interest thereon from date of entry of said decree to date of said payment to said clerk.

(6) In default of said payment by said James to said clerk, that Christopher C. Campbell, as assignee in trust, and Charles Eddy individually and as trustee for Samuel R. Clexton and Horace T. Caswell, have execution against said James for $64,471.40 and interest thereon from the date of the entry of said decree. That the moneys collected under said execution less the marshal fees, be forthwith paid by the marshal collecting the same to the clerk of this court for the benefit of the complainant said Clexton, said Caswell, and said complainant, assignee of Charles Eddy, and that said clerk thereupon forthwith pay such portions of said moneys to said complainant, said Clexton, said Caswell, and said complainant, the assignee of Charles Eddy, respectively, as the said Campbell, Clexton, Caswell, & Eddy are each respectively entitled
to, under the sixth paragraph of said decree.

3421 Wherefore this appellant appeals from so much of said decree
as orders, adjudges, and decrees as follows; that is to say:

(1.) "That Charles Eddy, individually and as trustee for Horace T. Caswell and Samuel R. Clexton, is the owner of an undivided one-third part of said letters patent, Division A, numbered 4143." In the place and stead of said part of said decree so appealed from, the said decree should order, adjudge, and decree as follows, to wit: "That Charles Eddy individually has no right, title, or interest in said letters patent, Division A, numbered 4143. That samuel R. Clexton is the owner of an undivided one-ninth part of said letters patent, Division A, numbered 4143. That Charles Eddy as trustee for Samuel R. Clexton and Horace T. Caswell is the owner of an undivided two-ninths part of said letters patent, Division A, numbered 4143."

(2.) "That Charles Eddy, individually and as trustee for Samuel R. Clexton and Horace T. Caswell, do recover of the said Thomas L. James the sum of twenty-one thousand dollars." In the place and stead of said part of said decree so appealed from, the said decree should order,
adjudge, and decree as follows, to wit: "That Charles Eddy in-
3422 dividually recover nothing of said Thomas L. James. That Samuel
R. Clexton individually do recover of the said Thomas L. James the sum of seven thousand dollars. That Charles Eddy, as trustee for Samuel R. Clexton and Horace T. Caswell, do recover of the said Thomas L. James the sum of fourteen thousand dollars."

(3.) "That Christopher C. Campbell, as assignee in trust, and Charles

Eddy, individually and as trustee for Samuel R. Clexton and Horace T. Caswell, have execution against the said Thomas L. James for the sum of $64,471.40 (sixty-four thousand four hundred and seventy-one $\frac{40}{100}$ dollars) and interest thereon from the date of the entry of this decree." In the place and stead of said part of said decree so appealed from, the said decree should order, adjudge, and decree as follows, to wit: "That Christopher C. Campbell, as assignee in trust, and Samuel R. Clexton individually and Charles Eddy as trustee for Samuel R. Clexton and Horace T. Caswell, have execution against the said Thomas L. James for the sum of $64,471.40 (sixty-four thousand four hundred and seventy-one $\frac{40}{100}$ dollars) and interest thereon from the date of the entry of this decree."

(4.) "That Charles Eddy is entitled to $875 assigned to the
3423 complainant since the interlocutory decree as appears by assignment on file"; and that there be paid to the clerk of the circuit court of the United States for the southern district of New York for the benefit of "Charles Eddy and the complainant, his assignee, or for the benefit of the complainant assignee of Charles Eddy," the sum of $875, or any part thereof, or any sum of money whatever; and that said clerk pay to "the complainant, assignee of Charles Eddy, the sum of eight hundred and seventy-five dollars and interest thereon from the date of the entry of this decree to the date of said payment to said clerk," or any part thereof, or any sum whatever.

And this appellant respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, stipulations, orders, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that so much of the said decree of the circuit court as is hereinbefore complained of may be reversed, or that such other decree may be made by the said Supreme Court as to the said Supreme Court shall seem just.

Dated New York, September 28, 1880.

SAMUEL R. CLEXTON,
Appellant.

EDWARD D. BETTENS,
Solicitor & of Counsel for Samuel R. Clexton,
206 *Broadway, New York City, New York.*

The foregoing appeal is hereby allowed this 29th day of September, 1880.

SAMUEL BLATCHFORD.

3424 (Indorsed:) U. S. circuit court. Christopher C. Campbell vs. Thomas L. James et al. Copy. S. R. Clexton's petition of appeal. Edward D. Bettens, solicitor for S. R. Clexton, 206 Broadway, New York City.

3425 Circuit court of the United States of America for the southern district of New York, in the second circuit.

CHRISTOPHER C. CAMPBELL *vs.* THOMAS L. JAMES, CHARLES EDDY, SAMUEL R. Clexton, and Horace F. Caswell & ano.	Bond for damages and costs.

Know all men by these presents, that we, John Consalus and Patrick

H. Feely, each of Troy, Renns. Co., New York, are held and firmly bound unto the above named Charles Eddy, in the sum of five hundred dollars, to be paid to the said Charles Eddy, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-seventh day of September, in the year our Lord one thousand eight hundred and eighty. Whereas the above named Samuel R. Clexton has prosecuted an appeal to the Supreme Court of the United States to reverse a certain part of the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named Samuel R. Clexton shall prosecute said appeal to effect and answer all, if he shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN CONSALUS. [L. S.]
PATRICK H. FEELY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 27th day of September, 1880, before me.

WM. V. S. WOODWARD,
United States Circuit Court Comm'r in and for the Northern District of New York.

3426 UNITED STATES OF AMERICA,
Northern District of New York, ss:

John Consalus and Patrick H. Feely, each for himself, being duly sworn, deposes and says that he resides in Troy, State of New York, and is a householder therein, and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

JOHN CONSALUS.
PATRICK H. FEELY.

Sworn to this twenty-seventh day of September, A. D. 1880, before me.

WM. V. S. WOODWARD,
U. S. Circ. Court Comm'r in & for the North'n Dist. of N. Y.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I hereby certify that before me personally came John Consalus and Patrick H. Feely, known to me to be the individuals described in and who executed the within bond, and acknowledged that they executed the same.

WM. V. S. WOODWARD,
U. S. Com'r.

(Indorsed:) U. S. circuit court. Christopher C. Campbell vs. Thomas L. James et al. Bond for damages and costs on Edward D. Bettens, 206 Broadway, New York City, solicitor for S. R. Clexton.

The within bond is approved Sept. 29, 1880.

SAM'L BLATCHFORD,
U. S. Circuit Court.

Filed Oct. 2, 1880.

JOHN I. DAVENPORT,
Clerk.

3427 In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

CHRISTOPHER C. CAMPBELL, COMPLAINANT and assignee in trust,
versus
THOMAS L. JAMES, CHARLES EDDY, SAMUEL R. CLEXTON, and HORACE T. CASWELL, defendants.

To the honorable the judges of the Supreme Court of the United States of America and to the Supreme Court of said United States.

The appeal of Christopher C. Campbell, complainant and appellee, and appellant in this cause, respectfully showeth unto said Supreme Court:

I. That on the 4th day of June, A. D. 1877, he, the said complainant, filed his bill of complaint in this cause in the circuit court of the United States, in and for the southern district of New York, against the above named defendant, Thomas L. James; that process in due form, duly issued against said defendant, Thomas L. James, and the same
3428 having been duly served therewith, the said defendant, Thomas L. James, entered his appearance in due time in said cause, in the said circuit court, on the 3d day of July, A. D. 1877.

II. That on the 26th day of July, A. D. 1877, in pursuance of a stipulation in writing, entered into by and between the respective solicitors of the above named complainant and the said defendant, Thomas L. James, said complainant, Christopher C. Campbell, filed his amended bill of complaint in this cause, in said circuit court, against the said defendant, Thomas L. James, in the place and stead of said original bill of complaint.

III. That on the 3d day of December, A. D. 1877, the said defendant, Thomas L. James, filed his answer in this cause in said circuit court, and on the 24th day of January, A. D. 1878, the said defendant, Thomas L. James, filed in this cause, and in the said circuit court, his amended answer to the said complainant's said amended bill of complaint.

IV. That upon the filing in this cause in said circuit court by
3429 the said defendant, Thomas L. James, of his aforesaid mentioned and described original answer, and of his said mentioned and described amended answer, and in due time the said complainant and assignee in trust, Christopher C. Campbell, duly made and filed in this cause in the said circuit court his replication thereto, and to each thereof. The said replication to the said original answer being so filed, on the 4th day of December, A. D. 1877, and the said replication to the said amended answer being so filed on the 25th day of January, A. D. 1878.

V. That thereafter, and upon the aforesaid mentioned and described pleadings, in due form, and in due time, proofs, exhibits, and evidence were duly taken by and on the behalf of said complainant, Christopher C. Campbell, and also upon the behalf of said defendant Thomas L. James, and the same and each thereof were duly filed in this cause in said circuit court.

VI. That thereafter, and on the 13th day of September, A. D. 1878, on the motion of said complainant, Christopher C. Campbell's
3430 counsel, founded upon a certain stipulation in writing, dated the day of June, A. D. 1878, and signed by Christopher C. Campbell, the said complainant, and Charles Eddy, and upon an affidavit made by George H. Williams, of counsel for said complainant, dated

the 5th day of September, A. D. 1878, and in opposition of counsel for said defendant, Thomas L. James, the said Charles Eddy was, by an order of the said circuit court, dated the 13th day of September, A. D. 1878, made a party "defendant in this suit, for himself, as well as in trust for Jacob Shavor and Albert C. Corse, for all the purposes thereof, as fully in all respects as though he were an original party thereto."

VII. That thereafter, in due time and in due form, this cause came on to be heard, and the same was duly heard, upon pleadings and proofs before said circuit court; and after argument thereof upon the part of said complainant and of the said defendants, Thomas L. James and Charles Eddy, and upon due consideration thereof by said circuit court, it was ordered, adjudged, and decreed by the court in substance, 3431 substantially as follows: That the letters patent, Division A, numbered 4143, and reissued to Helen M. Ingalls October 4th, A. D. 1870, being for letters patent numbered 38175, granted and issued on the 14th day of April, A. D. 1863, to Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, and conveyed to Jacob Shavor and Albert C. Corse, reissued to them and numbered 1748, and dated August 23d, A. D. 1864, and by them reconveyed and reissued to the said Marcus P. Norton, numbered 3586, and dated August 3d, A. D. 1869, are good and valid."

"That the said Marcus P. Norton was and is the original and first inventor and discoverer of the new and useful improvement in post-office postmarking and canceling hand stamp, described and claimed in said letters patent and in the several reissues thereof, and the specifications thereto attached, as hereinbefore stated and set forth."

"That Christopher C. Campbell, the complainant herein, is the exclusive owner in trust of the said reissued letters patent numbered 4143, as hereinbefore described, and of the new and useful improvements 3432 in post-office postmarking and canceling hand stamp, described and claimed in the said reissued letters patent numbered 4143, subject to the rights of said Helen M. Ingalls and Charles Eddy thereto, if any."

"That the said defendant, Thomas L. James, has infringed upon the said reissued letters patent numbered 4143, hereinbefore described, that is to say, by causing to be manufactured, and by using, and by causing others to use, the said 'new and useful improvements in post-office postmarking and canceling hand stamps,' as specified and charged in the said bill of complaint."

"That an account be taken of the profits, gains, and advantages which have in anywise been received or made, or which have arisen or accrued, on account of the infringements aforesaid, and also of the damages in addition thereto, if any, which the said complainant has sustained by reason of the infringements aforesaid."

"That the said complainant do recover of said defendant, Thomas L. James, his costs, charges, and disbursements, to be taxed."

"That it be referred, and the same is hereby referred, to Kenneth G. White, of the city of New York, one of the standing masters of 3433 this court, to ascertain and take, and report to the court an account of the gains, profits, and advantages which the said defendant, Thomas L. James, has in anywise received or made, or which have arisen or accrued on account of the infringements aforesaid, and also of the damages in addition thereto which the said complainant has sustained by reason of said infringements."

IX. That thereupon and on the 4th day of December, A. D. 1879, Edward D. Bettens, residing in the city of New York, made and filed in

this cause, in said circuit court, his appearance, with notice of retainer, as solicitor for the said defendant Charles Eddy; that as such solicitor for said defendant Eddy, the said Bettens, on the 13th day of December, A. D. 1879, applied to one of the judges of said circuit court, by motion and notice thereof, for the permission and leave of said court "to take evidence as to the cancellation of the contract, dated October 7th, 1871, and recorded in the Patent Office January 29th, 1872," and also, "at the same time," asked the court aforesaid to make one Caroline G. Caswell, "a party defendant herein;" that the said
3434 motion came on for argument of counsel; and thereupon, after the reading and filing of an affidavit made by the said Charles Eddy, on the 9th day of December, A. D, 1879; and an affidavit of Albert C. Corse, made by him on the 9th day of December, A. D. 1879; and, also, upon an affidavit made by Caroline G. Caswell, on the said 9th day of December, A. D. 1879; and argument of counsel for and in opposition to said motion, it was determined and ordered by said circuit court, on the 23d day of December, A. D. 1879, "That the defendant Charles Eddy be, and he hereby is, given leave to take and file testimony in this suit as to the cancellation of the contract signed by William W. Secombe, Charles Eddy, Jacob Shavor, and Albert C. Corse, dated October 7th, 1871;" and it was at that time and by the same order of said court further ordered, "That Irving Brown, esq'r, of Troy, N. Y., be, and he hereby is, appointed a special examiner of this court to take the testimony at Troy, New York, under the 67th equity rule, as amended, of such competent witnesses, and of such documentary proofs as may be brought before him on the part of the defendant
3435 Charles Eddy, in proof of said cancellation, or of the complainant, Christopher C. Campbell, to disprove said cancellation;" and it was at that time and by the said order of said court further ordered "that said Eddy and Campbell, or either of them, may examine such witnesses or take such testimony in proof or disproof of said cancellation, before a standing examiner of this court, upon proper notice given."

X. That thereupon and thereafter, the said Edward D. Bettens, "as solicitor for the defendant Charles Eddy, in this suit," and on the 26th day of December, A. D. 1879, made and filed in this cause, in the said circuit court, the following notice and instrument in writing, and gave notice thereof to complainant's solicitor, to wit: "Please to take notice that the terms upon which the order in this suit was granted, which order is dated December 23d, 1879, and was entered and filed in the office of the clerk of this court, on or about said December 23d, 1879, and gives leave to the defendant Eddy to take testimony as to the cancellation of a certain contract, and to the complainant Campbell to
3436 disprove said cancellation, are each and all hereby assented to by the defendants, Charles Eddy and Edward Bettens, as the solicitor herein for said Eddy. The said terms are specified in said orders."

That on the 30th day of December, A. D. 1879, the said Edward D. Bettens, as the "solicitor for Charles Eddy," one of the defendants in this cause, made and served upon the said complainant's solicitor a notice in writing, containing, among other things, the following, that is to say: "That on Tuesday, the 6th day of January, 1880, at 10.30 o'clock in the forenoon of that day, pursuant to and by virtue of the order of this court, dated December 23d, 1879, made in this suit, and filed in the office of the clerk of this court, on or about December 23d, 1879, I shall commence the taking of evidence and proofs on the part of and in be-

half of the above named defendant, Charles Eddy, in this cause, as to the cancellation of the contract signed by William W. Secombe, Charles Eddy, Jacob Shavor, and Albert C. Corse, dated October 7, 1871."

That under said notice, commencing on the 15th day of Janu-
3437 ary, A, D. 1880, and from time to time thereafter, the said defendant Charles Eddy, by his said solicitor, Edward D. Bettens, certain testimony was taken and exhibits were placed on file therein by the said Edward D. Bettens as such solicitor, and the same and each thereof were filed in this cause in said circuit court, under the objections and remonstrances of counsel for said complainant Campbell.

XI. That thereupon, and on the 26th day of January, A. D. 1880, the aforesaid named and described Edward D. Bettens made and filed in this suit in the said circuit court a paper in writing, as follows, that is to say, "Sir: You will please to enter my appearance for the defendants Horace T. Caswell and Samuel R. Clexton, in the above entitled suit, and all papers herein are hereby demanded to be served in me at my office, No. 206 Broadway, New York city, New York," he having prior thereto, and upon a motion by him made to the court upon an affidavit made by himself, on the 16th day of January, 1880; also upon an affidavit made by Horace T. Caswell, on the 16th day of Jan-
3438 uary, 1880, and also upon an affidavit made by Samuel R. Clexton, on the 15th day of January, 1880, and thereupon on the 24th day of January, A. D. 1880, obtained an order of the said court, making the said Horace T. Caswell and said Samuel R. Clexton party defendants here, which order so dated the 24th day of January, A. D. 1880, was and is in the following words, that is to say: "Ordered, that the said Horace T. Caswell and Samuel R. Clexton be, and the same are hereby, made parties defendants to this suit, subject to the same orders and stipulations by and under which Charles Eddy, as trustee for himself, Jacob Shavor and Albert C. Corse, bacame and is a party defendant to this suit, with the same rights and privileges, and subject to the same obligations and liabilities as the said Eddy, as the appear in the proceedings in this suit."

XII. That by the leave and permission of the said circuit court, proofs and evidence were to be taken, and the only proofs and evidence that were allowed or permitted to be taken and filed in this suit by the
3439 said defendant Charles Eddy, under the aforesaid mentioned order of said court, dated the 23d day of December, A. D. 1879, or by the said defendants Horace T. Caswell and Samuel R. Clexton, under the hereinbefore mentioned order of said court, dated the 24th day of January, A. D. 1880, were such and only such as might be rendered by competent witnesses, and such documentary proofs as related to and only "to the cancellation of the contract signed by William W. Secombe, Charles Eddy, Jacob Shavor, and Albert C. Corse, dated October 7, 1871, and printed in complainants' printed book of exhibit proofs, at pages 323 and 324, provided that said Eddy, or his solicitor herein, within five days from the entry of this order, file with the clerk of this court a written assent to the terms hereinafter mentioned, upon which this order is granted." That any and all proofs and evidence produced and offered on the part and in behalf of the said defendants Eddy, Caswell and Clexton, that did not relate to and solely and exclusively to the said mentioned and described subject matter of the cancellation of the said contract, dated the 7th day of October, A. D. 1871, and recorded in the Patent Office, at Washington, were duly objected to by the counsel for the said complainant, on the grounds mainly
3440 that the same were not admissable or permissable under the said

orders of said court, dated the 23d day of December, A. D. 1879, and the 24th day of January, A. D. 1880.

XIII. That on or about the 12th day of January, A. D. 1880, upon the proofs taken and submitted by and on the part of the said complainant, Christopher C. Campbell, and the said defendant Thomas L. James, the said master, Kenneth G. White, found and reported in writing to said circuit court in substance, as follows: That the gains, profits, and advantages, and savings which the said defendant Thomas L. James, had in anywise received or made, or which had arisen or accrued on account of the infringements charged in the said bill of complaint, and which came under or within the final decree upon pleadings and proofs, and dated the first day of September, A. D. 1879, in the saving of salaries, amounted to the sum of ($63,000.00) sixty-three thousand dollars, and with the filing of his said report, said master also filed in said circuit court the said proofs and all thereof that were taken before him.

XIV. That thereupon and thereafter the said complainant,
3441 Christopher C. Campbell, and the defendant, Thomas L. James, in due form, duly filed their respective exceptions to the said report of the master aforesaid so filed by him in said circuit court, as follows, to wit, those of said defendant being so filed on the 7th day of February, A. D. 1880, and those of said complainant on the 12th day of said month and year.

XV. That thereafter, to wit, in the February term of said circuit court, in the year A. D. 1880, the said cause came on in due form to be further heard by the said circuit court as well upon the proofs submitted to the said master by said complainant and by said defendant Thomas L. James, his said report, and the said respective exceptions thereto of said complainant and said defendant Thomas L. James, filed in this cause as aforesaid in said circuit court; and also upon the said proofs and evidence taken and filed as aforesaid by said defendants Charles Eddy, Horace T. Caswell, and Samuel R. Clexton, under the said orders of said court, as follows, to wit, the 23d day of December, A. D. 1879, and the 24th day of January, A. D. 1880; and thereupon, after argument of counsel for the several parties respectively and consider-
3442 ation by the court, and on the 23d day of September A. D. 1880, a final decree upon the said report so made and filed in court as aforesaid by said master was made, pronounced, and entered in due form in this cause, wherein and whereby it was adjudged and decreed substantially as follows, that is to say: that the said exceptions of the said defendant Thomas L. James, as well as those of the said complainant, be disallowed and overruled; that the said master's report be accepted, ratified, and confirmed in all things; that the sum of $63,000$\frac{00}{100}$ (sixty-three thousand dollars) be recovered of the said defendant Thomas L. James; that of such sum the said complainant is entitled to $42,000$\frac{00}{100}$; that of said sum the said Clexton is entitled to $13,125$\frac{00}{100}$, said Caswell to $7,000$\frac{00}{100}$ and the said Eddy to 875\frac{00}{100}$; that the said defendant Thomas L. James pay the said sum of $63,000$\frac{00}{100}$ into the registry of said circuit court within twenty days after the entry of the said final decree, and in default thereof, that execution therefor be issued in due form; that said complainant recover of the said defendant Thomas L. *L.* James the sum of $1,471$\frac{40}{100}$ costs, as taxed by the clerk of said court, in all, the sum of
3443 $64,471$\frac{40}{100}$; and it was also and further adjudged and decreed in and by the said final decree in substance and substantially as follows, that is to say: that the said complainant, Christopher C. Camp-

bell, on the 20th day of March, A. D. 1880, by virtue of a certain instrument in writing of that date, became, and now is, the assignee in trust by the said defendant Charles Eddy, assignor, in and by which the said Charles Eddy sold, assigned, and conveyed to the said complainant, in trust as aforesaid, all and every right, title, and interest whatsoever obtained by him, if any, from Marcus P. Norton on the 23d and 25th days of October, A. D. 1869, and that the same and all thereof should be held and owned in trust aforesaid, "with the same force and effect as if no conveyance or assignment of any interest in said letters patent, or for any claim or demand for infringement thereof had ever been made by any person heretofore, at any time, to the said Charles Eddy."

"It is understood between the parties hereto that this conveyance shall, and does hereby, embrace, assign, and convey to the party of the second part, in trust as aforesaid, on the conditions above set forth, each and every letters patent and invention of every name and nature
3444 whatsoever patented to or invented by Marcus P. Norton, in which the said party of the first part has any right, title, or interest whatever, whenever or howsoever the same may have been acquired" by him.

XVI. And the said Christopher C. Campbell, complainant and appellee, and appellant in this cause, respectfully showeth unto the honorable the Supreme Court of said United States, that on or about the 14th day of July, A. D. 1870, the Congress of said United States, by virtue of and under the authority of the Constitution of the said United States, enacted a law which, on the 14th day of July, A. D. 1870, was duly approved by the President of said United States, in and by which act or law the Postmaster General of said United States was duly "authorized and directed to investigate the right and title of claimants to the invention, device, or instruments for the postmarking and postage-stamp canceling in the postal service, patented on the 14th day of April, A. D. 1863; reissued the 23d day of August, A. D. 1864; and again reissued the 3d day of August, A. D. 1869, and now
3445 and for many years past in general use in the postal service of the United States, and to ascertain and determine upon a fair, just, and equitable compensation for the use of the said invention and device from the date of its use by the Post-Office Department; and also to ascertain and determine upon a fair and equitable compensation for its future use and value to the Post-Office Department and government while the said letters patent shall continue, and to whom it should be paid under the said letters patent and reissues thereof, and to report the amount thus ascertained to Congress at its next session.'

That pursuant to the said act of the said Congress and in the winter of the year A. D. 1870 and 1871, and upon the due notice made and promulgated by the Postmaster-General of said United States, under the authority of said act of Congress, a trial or hearing was duly had in the Post Office Department building in the city of Washington, D. C., before said Postmaster-General, upon proofs and evidence touching the title, right and ownership of the said letters patent, and also of the value of said invention; and also as to who was the original and first inventor of the same; and also as to the importance and value
3446 of said machine or device as a labor-saving and effectual instrument for postmarking letters and for the cancellation of postage stamps in the postal service of said United States; and thereupon and after a long and expensive examination of witnesses and documentary

proofs and full enquiry into the said several matters named in said act of Congress, and upon the argument of counsel, the said Postmaster-General found, determined and adjudged in writing under the date of the 25th day of February, A. D. 1871, substantially, that Marcus P. Norton, the patentee, was the original and first inventor of the said machine or device; that the invention was of great utility and value in the postal service in the saving of labor and in the more effectual cancellation of postage stamps and in the rapid dispatch of the mails; that the several reissues thereof were duly and properly granted and issued by the Commissioner of Patents, and that the entire title, right, interest, and ownership of the said letters patent and of each and every reissue thereof were duly and lawfully vested in Helen M. Ingalls, who on the 4th day of October, A. D. 1870, obtained of the Commissioner of
3447 Patents a reissue of said letters patent in two divisions, namely, Division A, numbered 4143, and Division B, numbered 4144, and the said findings by said Postmaster-General so dated and reduced to writing has never been rescinded or reversed, but appears in the proofs and evidence in this suit in said circuit court.

XVII. And the said complainant, Christopher C. Campbell, appellee, and appellant in this cause and in said circuit court, respectfully showeth unto the honorable the Supreme Court of the said United States that if at any time on or after the 23d day of October, A. D. 1869, the hereinbefore mentioned and described Jacob Shavor and Albert C. Corse owned, or held, or claimed any right or title or interest of any kind, description or name whatever, they each sold, assigned, and conveyed the same and each and every thereof to the said defendant Charles Eddy, by deed of assignment and transfer, dated the 18th day of December, A. D. 1876, and duly of record in the Patent Office of said United States on the 11th day of January, A. D. 1876, in liber O 22, page 12 thereof, in which it is stated among other things as follows, to
3448 wit: "And whereas it is desirable that but one person shall have the management and control of the said patents for the sole purpose of effecting settlements under the same with any and all infringers of the same or of any one or more thereof, or with whomsoever may use the inventions and improvements contained in the said letters patent or any of them; which settlement for the past or future use may be in any way the said Eddy may deem proper and expedient":

"Now, therefore, for and in consideration of the sum of one dollar, and in the further and other valuable considerations which we now and hereby duly acknowledge the receipt of the same, we, Jacob Shavor and Albert C. Corse, of said city of Troy, county and State aforesaid, have sold, assigned, and transferred, and do now and hereby sell, assign, and transfer unto the said Charles Eddy, in trust, in the manner so as aforesaid stated, all the right, title, and interest of every name and description which we now have in, to, or for the said letters patent, and the inventions and improvements therein named, described, and claimed as new and patentable or in either of them.

"To have and to hold the same, and each and every thereof, in
3449 trust as aforesaid, with full power to enforce settlement and payment for the past or the future use of the said inventions and patents or either of them.

"He, the said Charles Eddy, having full and absolute control of each and all of the said several patents hereinbefore named by date as well as by numbers, commencing with the date of each thereof, intending herein and hereby to sell, assign, and transfer unto him, the said Charles Eddy, in trust, all our right, title, and interest and ownership

in any or all the said several letters patent from the date of each of the same and until the expiration of the term for which they were respectively granted and issued unto the said Marcus P. Morton."

That thereafter, and on the 20th day of March, A. D. 1880, the said Charles Eddy, in writing, sold, assigned, and conveyed unto the said complainant, Christophe' C. Campbell, in trust, all the right, title, interest, and ownership of every name, kind, or description purchased and obtained by him under and by virtue of the said date to, and purchase by him of and from the said Jacob Shavor and Albert C. Corse, as stated and contained in and by said deed of assignment and transfer so dated on the 18th day of December, A. D. 1876, and so re-
3450 corded in said United States Patent Office, and as stated and set forth in paragraph No. XVI hereof.

XVIII. And the said Christopher C. Campbell, complainant and appellee, and appellant in this cause, respectfully showeth unto the honorable the Supreme Court of said United States, that the proofs and the evidence taken and produced to the said master, Kenneth G. White, upon the said accounting had by and before him in this cause, under said decree dated the first day of September, A. D. 1879, on the part and in behalf of said complainant, fully show that the gains, savings, profits, and advantages which had been received, or made, or which had arisen or accrued on account of the infringements charged in the bill of complaint in this cause and sustained by the proofs therein, were of the value and amounted to the full and just sum of ($189,000 $\frac{00}{100}$) one hundred and eighty-nine thousand dollars, which sum and amount should have been allowed and determined and fixed upon by said master in place and instead of the said sum and amount of ($63,000) sixty-three thousand dollars, the sum and amount awarded by him in
3451 his said report, filed in said circuit court by him on the 12th day of January, A. D. 1880, and accepted and confirmed by this court as hereinbefore stated.

Wherefore and whereupon this complainant, Christopher C. Campbell, appellee and appellant, appeals hereby from the said final decree, dated the 21st day of September, A. D. 1880, and filed and entered in said circuit court on the 23d day of said September, A. D. 1880, or so much thereof as is found and contained in sections or paragraphs Nos. 1, 3, 4, 5, 6, 7, and 8, and therein and thereby ordered, adjudged, and decreed by said circuit court as its final decree in this cause in said court, and the grounds and reasons of and for this appeal are contained herein and stated in and by the several paragraphs hereof and in each and every thereof.

In the place and stead of the said several parts and portions of said final decree so appealed from, the said decree should order, adjudge, and decree as follows, that is to say:

First. The exceptions made and filed by the complainant, Chris-
3452 topher C. Campbell, to the master's said report ought not to have been disallowed and overruled by said court; but the same, and each and every thereof, should have been accepted, ratified, and confirmed by said circuit court, and judgment herein entered in said court accordingly.

Second. The said master's said report ought not to have been accepted, ratified, and confirmed by said court in the manner it was done in said final decree; because said master did not, upon the evidence and proofs before him, find the total amount of said gains, profits, savings, and advantages to have been not less than ($136,000.00) one hundred and thirty-six thousand dollars; and had said master found them to

have been one hundred and thirty-six thousand dollars, then such report in all things ought to have been accepted, ratified, and confirmed by said circuit court, and not otherwise.

Third. That the said complainant, Christopher C. Campbell, do, as assignee in trust, recover of and from the said defendant, Thomas L. James, the full and just sum of ($136,000.00) one hundred and
3453 thirty-six thousand dollars and costs, and disbursements in addition thereto.

Fourth. That the gains, profits, savings, and advantages which have been made or which have arisen or accrued on account of the infringements upon and in violation of the rights and privileges under and secured by the letters patent, Division A, numbered 4143, and reissued to Helen M. Ingalls, on the 4th day of October, A. D. 1870, being for letters patent numbered 38175, granted and issued on the 14th day of April, A. D. 1863, to Marcus P. Norton, of the city of Troy, in the State of New York, in this cause, are the full and just sum of one hundred and thirty-six thousand dollars ($136,000.00), and that the said complainant, Christopher C. Campbell, appellee and appellant, have execution therefor against said defendant, Thomas L. James, together with costs and interest on the whole amount from the day of the entry in court of judgment upon such final decree.

Fifth. That the rights and interests of Helen M. Ingalls named in the decretal order of said circuit court, on the first day of September, A. D. 1879, and at paragraph "third" thereof, were vested in said
3454 complainant, Christopher C. Campbell, according to the terms, conditions, and provisions stated in the certain deed of assignment and transfer made by her to him the said complainant, appellee and appellant, on the second day of January, A. D. 1877, and of record in the Patent Office of said United States, under and by virtue of which he obtained the right in and to the said letters patent on which this suit is founded, and which letters patent are named and described in said decretal order.

Sixth. That the exclusive right, title, interest in and ownership of the said mentioned and described letters patent were fully and lawfully vested in the said complainant, Christopher C. Campbell, appellee and appellant, in trust, subject only to the terms, provisions, and conditions stated and specified in the said deed of assignment and transfer to him by said Helen M. Ingalls, on the second day of January, A. D. 1877, and a certain deed of assignment and transfer to him by the said defendant, Charles Eddy, dated the 20th day of March, A. D. 1880,
3455 and recorded in said United States Patent Office, on the 27th day of March, A. D. 1880, and mentioned and referred to in the said final decree by said circuit court.

Seventh. That the said defendants Horace T. Caswell and Samuel R. Clexton are not rightful or lawful or proper parties to or in this suit in said circuit court, because they are not assignees, nor is either of them an assignee of the hereinbefore named and described letters patent upon which this suit is founded by the bill of complaint herein or of any part or portion thereof, or of any part or portion of the recovery upon or under said letters patent by reason of infringements thereof or otherwise.

Eighth. That any and all papers purporting to be deeds of assignments and transfers to said defendants Horace T. Caswell and Samuel R. Clexton in this cause in said circuit court, as well also the paper-writing purporting to be the general assignment in insolvency of the firm of Eddy, Corse & Co., composed of said defendant Charles Eddy,

and of Albert C. Corse, Augustus P. Corse, and George C. Baldwin, jr., should not have been received in evidence and considered by said
3456 court, as the same were not in the evidence in said cause or alluded to in the pleadings thereof; nor were the same at any time whatever brought into said cause upon or by the written permission, leave, or order of said circuit court; nor were nor could the same or any thereof be admitted in the evidence and proofs in said cause, under the said orders of said court, dated respectively the 23d day of December, A. D. 1879, and the 24th day of January, A. D. 1880, as those and each were by the terms and conditions thereof limited by said circuit court to the taking of proofs and evidence concerning the cancellation and the cancellation only of a certain paper in writing particularly designated therein by said court, and said final decree of said circuit court should have been made accordingly, and the said Caswell and Clexton wholly and entirely excluded from this cause as parties to or in the same.

And this complainant, Christopher C. Campbell, appellee and appellant, respectfully prays that the said final decree of the said circuit court and the original bill of complaint, the amended bill of complaint, the
3457 answer, the amended answer, the replications, and all the pleadings, the stipulations, depositions, exhibits, evidence, and all proofs, the master's report, the evidence before the master, the exceptions to said report, and also all the proceedings in the said cause, and the orders of said court, dated the 23d day of December, 1879, and the 24th day of January, 1880; the final decree upon the pleadings and proofs, dated the first day of September, A. D. 1880; also, the opinion in writing by Judge Hoyt H. Wheeler, filed by him in December, 1879, upon granting said order, dated December 23d, 1879, and also all papers relating to said suit now on file in said circuit court in this cause, may be sent to the Supreme Court of said United States without delay; and that said court will proceed to hear said cause anew, and that so much of the said final decree of the said circuit court, as is hereinbefore objected to and complained of in the manner and form aforesaid, stated by paragraphs and numbers, may be reversed by the said Supreme Court, and the rights of said complainant established under and in accordance with his said amended bill of complaint, and his proofs and evidence in connection
3458 therewith, as to the said Supreme Court of the said United States shall seem meet, just, and proper upon the whole case.

Dated New York, this 2d day of October, A. D. 1880.

CHRISTOPHER C. CAMPBELL,
Complainant and Assignee in Trust.

Copy.
MARCUS P. NORTON,
Solicitor for Complainant.
GEORGE H. WILLIAMS,
Of Counsel for Complainant.
Copy.

The above and foregoing appeal is hereby allowed on this 2d day of October, A. D. 1880.

SAMUEL BLATCHFORD,
Circuit Judge.

3459 (Indorsed:) In the circuit court of the United States in and for the southern district of New York, second circuit. In equity.

Christopher C. Campbell, complainant and assignee in trust, versus Thomas L. James, Charles Eddy, Horace T. Caswell and Samuel R. Clexton, defendants. Petition of complainant on appeal to the Supreme Court of the United States. Marcus P. Norton, solicitor for complainant. George H. Williams, of counsel for complainant. Copy.

3460 UNITED STATES OF AMERICA, *ss:*

By the honorable Samuel Blatchford, judge of the circuit court of the United States, in and for the southern district of New York, second circuit.

To Thomas L. James, defendant and United States postmaster at the city of New York, and to Charles Eddy, and to Horace T. Caswell, and Samuel R. Clexton, defendants:

Whereas, Christopher C. Campbell, complainant and assignee in trust, has lately appealed to the Supreme Court of the United States of America, from a decree lately rendered in the circuit court of the United States, in and for the southern district of New York, as will more fully appear by reference to a petition of appeal on file in the clerk's office of the said circuit court, in and for the southern district of New York, wherein he is the appellee and also appellant, and you and each
3461 of you, are defendants and appellants.

You, and each of you, therefore are hereby cited and admonished to be, and to appear before the said Supreme Court, at the city of Washington, D. C., on the second Monday of October, A. D. 1880, to do and to receive what may appertain to justice in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, on the 2d day of October, A. D. 1880.

SAM'L BLATCHFORD,
Circuit Judge.

Due, personal, and timely service of this citation, and of the complainant's petition of appeal of the suit of Christopher C. Campbell, complainant and assignee in trust, versus Thomas L. James, Charles Eddy, and Horace T. Caswell, and Samuel R. Clexton, defendants, is
3462 now and hereby admitted by copy of the same, and of each thereof, on this 4th day of October, A. D. 1880.

STEWART L. WOODFORD,
U. S. Att'y for Thomas L. James.
EDWARD D. BETTENS,
Solicitor for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, as their Trustee.
H. F. AVERILL,
Solicitor for Charles Eddy.

(Endorsed:) In the circuit court of the United States in and for the southern district of New York, second circuit. In equity. Christopher C. Campbell, complainant and assignee in trust, versus Thomas L. James, Charles Eddy, Horace T. Caswell, and Samuel R. Clexton, defendants. Citation on appeal to Supreme Court of the United
3463 States. Marcus P. Norton, solicitor for complainant; George H. Williams, of counsel for complainant. (Original.) U. S. circuit court. Filed Oct. 4, 1880. Joseph M. Deuel, clerk.

3464 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell, Samuel R. Clexton.

It is hereby stipulated that the foregoing shall constitute the record to be transmitted to the Supreme Court herein.

New York, Oct. 4, 1880.

STEWART L. WOODFORD,
U. S. Att'y for James, Def't Appellant.
MARCUS P. NORTON,
Solicitor for Complainant.
H. F. AVERILL,
Solicitor for Charles Eddy.
EDWARD BETTENS,
Solicitor for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, as solicitor for Samuel R. Clexton and Horace R. Caswell.

3465 (Endorsed:) U. S. circuit court, filed Oct. 7, 1880. Joseph M. Deuel, clerk.

3466 Circuit court of the United States for the southern district of New York.

CHRISTOPHER C. CAMPBELL
vs.
THOMAS L. JAMES, CHARLES EDDY, HORACE T. Caswell, and Samuel R. Clexton.

It seeming to be necessary and proper that the original exhibits, papers, and models of the parties hereto should be inspected in the Supreme Court on the pending appeals, and, all of the parties consenting, it is ordered that the clerk of this court send, under his hand and the seal of this court, all of said exhibits to the Clerk of the Supreme Court, to be by him safely kept until the determination of the pending appeals, and then to be returned to the files of this court.

New York, Oct. 7th, 1880.

SAM'L BLATCHFORD.

Consented to.

STEWART
U. S. Att'y, for James.
MARCUS P. NORTON,
Solicitor for Complainant.
H. F. AVERILL,
Solicitor for Charles Eddy.
EDWARD D. BETTENS,
Solicitor for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy as trustee for Samuel R. Clexton and H. T. Caswell.

3467 (Endorsed:) U. S. circuit court. Filed Oct. 7, 1880. Joseph M. Deuel, clerk.

3468 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 3467, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Christopher C. Campbell, assignee in trust, against Thomas L. James, Charles Eddy, Samuel R. Clexton, and Horace T. Caswell, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eighth day of October, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fifth.

[SEAL.] J. M. DEUEL, *Clerk.*

(Indorsement on cover:) No. 945. Thomas L. James, appellant, vs. Christopher C. Campbell, Charles Eddy, Horace T. Caswell, and Samuel R. Clexton. Filed 11th October, 1880. No. 1098. Samuel R. Clexton, appellant, vs. Christopher C. Campbell, assignee in trust, Thomas L. James, Horace T. Caswell, Charles Eddy, and Charles Eddy as trustee for Horace T. Caswell and Samuel R. Clexton. Filed November 11, 1880. No. 1101. Christopher C. Campbell, assignee in trust, appellant, vs. Thomas L. James, Charles Eddy, Horace T. Caswell, and Samuel R. Clexton. Filed November 12, 1880. S. New York C. C. U. S.

Supreme Court of the United States.

OCTOBER TERM, 1880.

SAMUEL R. CLEXTON, *Appellant*, *versus* CHRISTOPHER C. CAMPBELL, ASSIGNEE, &c., ET AL., *Respondents*.	No. 1098.

APPEAL FROM UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR SAMUEL R. CLEXTON, APPELLANT.

Supreme Court of the United States.

SAMUEL R. CLEXTON, *Appellant,* *versus* CHRISTOPHER C. CAMPBELL, ASSIGNEE, &c., THOMAS L. JAMES HORACE T. CASWELL, CHARLES EDDY, AND CHARLES EDDY AS TRUSTEE FOR H. T. CASWELL AND S. R. CLEXTON, *Respondents.*	*No.* 1098.

BRIEF FOR SAMUEL R. CLEXTON, APPELLANT.

STATEMENT.

This suit was begun June, 1877, in the Circuit Court, Southern District of New York, in Equity, by Christopher C. Campbell against Thomas L. James, Postmaster in New York City, to recover damages and profits for the use of certain Letters Patent, issued by the United States, for improvements in Post Office Post Marking and Cancelling Hand Stamps, dated April 14, 1863, and issued to Marcus P. Norton as the inventor of those improvements.

In January, 1878, the defendant, James, filed his amended answer, and alleged therein that Marcus P. Norton had exe-

cuted an assignment of a third interest in the patent to Charles Eddy as Trustee for said Eddy, Jacob Shavor and Albert C. Corse, by deed dated October 23, 1869, and recorded October 25, 1869. James pleaded the non-joinder in this suit of said Eddy, as such Trustee, and prayed that said Eddy, as such Trustee, be made a party.

Page 61 of Record.

For said assignment of October 23, 1869, see—

Page 1147 of Record.

September 13, 1878, Charles Eddy was made a defendant herein for himself, as well as in trust for Jacob Shavor and Albert C. Corse.

Pages 657–8 of Record.

Eddy as such Trustee was made such defendant at the request, and on the motion of the complainant, Campbell, and by a certain stipulation dated June, 1878, executed by the complainant Campbell, and approved of by Marcus P. Norton and Helen M. Ingalls.

Pages 654-5–6 of Record.

Such stipulation provided that "said court shall decide as "to what the rights and interests of said Eddy in the subject "matter of this suit are," and contained the admission that the complainant "agrees that said assignment of October 23, "1869, from Marcus P. Norton to Charles Eddy in trust, as "aforesaid, was a valid assignment, not affected by any prior "or cotemporaneous assignment by said Norton to Helen M. "Ingalls, or other written agreement to which said Eddy is a "party, except the one hereinbefore referred to, and dated "October 7, 1871." And it further stipulated that in case of a recovery against James "the court shall determine the rights "respectively thereto of complainant and said Eddy."

Pages 654–5 of Record.

Thereafter Corse's interests were transferred to Horace T.

Caswell, one of the above-named respondents, and Shavor's interests were transferred to Samuel R. Clexton.

Pages 1628, 1629, 1630, 1640–1–2 for Caswell's title.

Pages 1638–9 for Clexton's title.

January 24, 1880, Samuel R. Clexton and Horace T. Caswell were made defendants, and the determination of their rights provided for by order of court.

Page 1576 of Record.

The following are therefore the parties in this suit:

(1.) Christopher C. Campbell, assignee in trust for Helen M. Ingalls.

(2.) Thomas L. James.

(3.) Charles Eddy.

(4.) Charles Eddy, as Trustee for Samuel R. Clexton and Horace T. Caswell.

(5.) Samuel R. Clexton.

(6.) Horace T. Caswell.

March 31, 1879, Charles Eddy made a general assignment for the benefit of his creditors, under the Laws of New York, to J. Albert Cipperly and Charles N. Stannard, of all his "individual estate and property, real and personal, goods, "chattels, effects, credits, accounts, debts, dues, demands, "choses in action, and property of every name and kind whatsoever, except such property, if any, held or owned by him "as is exempt by law from levy and sale under execution."

See pages 1632–5 of Record.

Cipperly and Stannard, acting under that general assignment, sold Eddy's individual interest to Samuel R. Clexton, on January 7, 1880.

See pages 1635–6 of Record.

Between December 4, 1879, and February 10, 1880, testimony was taken as to the cancellation of the contract of

October 7, 1871, mentioned in the above cited stipulation of June , 1878.

See pages 1563 to 1637 of Record.

The above-mentioned general assignment from Eddy to Cipperly and Stannard, and the assignment of Cipperly and Stannard to Clexton, were put in evidence February 4, 1880.

See pages 1616 and 1614 of Record.

The above testimony and assignments were filed in court prior to February 10, 1880.

See notice of such filing, page 1637 of Record.

A hearing was first had as to the liability of James, and the interlocutory decree thereon was filed September 1, 1879, sustaining the patent, decreeing Campbell the owner thereof, subject to the rights of Ingalls and Eddy, and ordering a reference to a master to take and state an account.

See page 1458 of Record.

On March 11, 1880, a hearing was had (1) on the exception to the Master's Report, (2) as to the rights of Campbell, Eddy, Caswell, Clexton, and Eddy as Trustee, as between themselves.

See Notice of Hearing, page 1637 of Record.

The court's opinion as to the rights of Campbell, Eddy, Caswell, Clexton, and Eddy as Trustee, is as follows:

(1.) That Campbell owns an undivided two-thirds of the patent, and two-thirds of the recovery, to wit, $42,000.

(2.) That Eddy individually, and as Trustee for Caswell and Clexton, owns the other one-third of the patent and the balance of said recovery, to wit, $21,000.

(3.) That Caswell owns the Corse beneficial interest, to wit, one-ninth of the patent and $7,000 of the recovery.

(4.) That Clexton owns the Shavor beneficial interest, to wit, one-ninth of the patent and $7,000 of the recovery.

(5.) That Eddy had assigned to Cipperly and Stannard, by

his general assignment of March 31, 1879, all Eddy's choses in action for the use and infringement of his individual one-ninth of the patent that had accrued up to March 31, 1879; that these choses in action were vested in Samuel R. Clexton, and that the recovery in this suit for said choses in action, to wit, $6,125, belonged to Clexton.

(6.) That Eddy was the individual owner of one-ninth of the patent; that this one-ninth did not pass to Cipperly and Stannard by that general assignment of March 31, 1879, because it was excepted from the operation thereof by the words "except "such property, if any, as is exempt by law from levy and sale "under execution," and that Eddy was entitled to the recovery ($875) in this suit on all claims for the infringement of that one-ninth accruing subsequent to March 31, 1879.

See Opinion, pages 1644–1652.

On August 18, 1880, an order reciting certain alleged assignments, dated March 20, 1880, purporting to have been made by Charles Eddy to Christopher C. Campbell, and directing the payment to certain persons mentioned in the order of a portion of the complainant's recovery, was entered "without prejudice to the rights of any parties, in interest, except "those who have signed the agreement of March 20, 1880, and "the assignment from Eddy to Wooster." Such persons are Charles Eddy; Christopher C. Campbell; Marcus P., Helen M., Minnie D., Helen G. and Estelle M. Norton.

See page 1657 of Record.

The final decree was entered in accordance with the above opinion, except that the decree recognizes Campbell as the assignee, through the above order of August 18, 1880, of Eddy's $875. The decree gives to Campbell, as assignee, in trust for Helen M. Ingalls, a decree of recovery against James for $43,471.40 ($42,000 and the costs, $1,470.40); and gives to Eddy individually, and as Trustee for Caswell and Clexton, a recovery against James for $21,000, and decrees that of such $21,000 Clexton is entitled to $13,125, Caswell to $7,000, and Campbell, as assignee of Eddy, to $875. It also directs, conditionally, that Campbell,

as assignee, and Eddy, individually, and as Trustee for Caswell and Clexton, have execution against James for $64,471.40.

See pages 1664–5 of Record.

ASSIGNMENT OF ERRORS.

Samuel R. Clexton appeals from that decree, and assigns as errors:

A.—As to the Title.

I.—That said decree is erroneous, in that it should (and does not) decree that Samuel R. Clexton, individually, is the owner of an undivided one-third part of the Letters Patent "Division A," numbered 4,143, and reissued to Helen M. Ingalls on the 4th day of October, 1870, being for Letters Patent, numbered 38,175, granted and issued on the fourteenth day of April, 1863, to Marcus P. Norton.

II.—That said decree is erroneous, in that it should (and does not) decree that Samuel R. Clexton, individually, is the owner of an undivided two-ninths part of the Letters Patent "Division A," numbered 4,143, and reissued to Helen M. Ingalls on the 4th day of October, 1870, being for Letters Patent, numbered 38,175, granted and issued on the fourteenth day of April, 1863, to Marcus P. Norton.

III.—That said decree is erroneous, in that it should (and does not) decree that Samuel R. Clexton, individually, is the owner of an undivided one-ninth part of the Letters Patent "Division A," numbered 4,143, and reissued to Helen M. Ingalls on the 4th day of October, 1870, being for Letters Patent, numbered 38,175, granted and issued on the fourteenth day of April, 1863, to Marcus P. Norton.

IV.—That said decree is erroneous, in that in the place and stead of so much of said decree as decrees "That Charles "Eddy, individually and as Trustee for Horace T. Caswell "and Samuel R. Clexton, is the owner of an undivided one-

" third part of said Letters Patent 'Division A,' numbered " 4,143," the said decree should have decreed as follows: " That Charles Eddy individually has no right, title or interest " in said Letters Patent 'Division A,' numbered 4,143. That " Samuel R. Clexton is the owner of an undivided one-ninth " part of said Letters Patent 'Division A,' numbered 4,143, " and reissued to Helen M. Ingalls on the 4th day of October, " 1870, being for Letters Patent, numbered 38,175, granted " and issued on the fourteenth day of April, 1863, to Marcus " P. Norton. That Charles Eddy, as Trustee for Samuel R. " Clexton and Horace T. Caswell, is the owner of an undivided " two-ninths part of said Letters Patent 'Division A,' num- " bered 4,143, and reissued to Helen M. Ingalls on the 4th " day of October, 1870, being for Letters Patent, numbered " 38,175, granted and issued on the fourteenth day of April, " 1863, to Marcus P. Norton."

B.—As to the Recovery.

I.—That said decree is erroneous in that it should (and does not) decree that Samuel Clexton do recover of Thomas L. James the sum of $21,000.

II.—That said decree is erroneous in that it should (and does not) decree that Samuel R. Clexton do recover of Thomas L. James the sum of $14,000.

III.—That said decree is erroneous in that it should (and does not) decree that Samuel R. Clexton do recover of Thomas L. James the sum of $7,000.

IV.—That said decree is erroneous in that it should (and does not) decree that Samuel R. Clexton do recover of Thomas L. James the sum of $13,125.

V.—That said decree is erroneous in that in the place and stead of so much of said decree, as decrees, "That Charles " Eddy, individually, and as Trustee for Samuel R. Clexton and " Horace T. Caswell, do recover of the said Thomas L. James

"the sum of twenty-one thousand dollars ($21,000)," the said decree should have decreed, "That Charles Eddy, individually, "recover nothing of said Thomas L. James; that Samuel R. "R. Clexton, individually, do recover of the said Thomas L. "James the sum of seven thousand dollars; that Charles "Eddy, as Trustee for Samuel R. Clexton and Horace T. Cas- "well, do recover of the said Thomas L. James the sum of "fourteen thousand dollars."

VI.—That said decree is erroneous in that it should decree, (and does not) that Charles Eddy, as assignor for Samuel R. Clexton, do recover of Thomas L. James the sum of $6,125.

C.—As to Execution Against James.

I.—That said decree is erroneous in that it should (and does not) decree that Christopher C. Campbell, as Assignee in Trust, and Samuel R. Clexton, individually, have execution against Thomas L. James for $64,471.40, and interest thereon from the date of the entry of said decree.

II.—That said decree is erroneous in that it should (and does not) decree that Christopher C. Campbell, as Assignee in Trust, Samuel R. Clexton, and Charles Eddy, as Trustee for Horace T. Caswell, have execution against Thomas L. James for $64,471.40, and interest thereon from the date of the entry of said decree.

III.—That said decree is erroneous in that it should (and does not, decree that Christopher C. Campbell, as Assignee in Trust, Samuel R. Clexton, individually, and Charles Eddy, as Trustee for Horace T. Caswell and Samuel R. Clexton, have execution against Thomas L. James for $64,471.40, and interest theron from the date of the entry of said decree.

IV.—That said decree is erroneous in it that should (and does not) decree that Christopher C. Campbell, Assignee in Trust, Charles Eddy as assignor for Samuel R. Clexton and Charles Eddy, individually, and as Trustee for Samuel R. Clexton and Horace T. Caswell, have execution against

Thomas L. James for $64,471.40, and interest thereon from the date of the entry of said decree.

D.—As to What Portions of the Recovery Samuel R. Clexton is Entitled to.

I.—That said decree is erroneous in that it should (and does not) decree that Samuel R. Clexton is entitled to $21,000 of the recovery.

II.—That said decree is erroneous in that it should (and does not) decree that Samuel R. Clexton is entitled to $14,000 of the recovery.

III.—That said decree is erroneous in that it decrees, "That Charles Eddy is entitled to $875 assigned to the "complainant since the interlocutory decree, as appears by "the assignment on file;" and in that it decrees that there be paid to the Clerk of the Circuit Court of the United States for the Southern District of New York, for the benefit of Charles Eddy and the complainant, his assignee, or for the benefit of the complainant, assignee of Charles Eddy, the sum of $875; and in that it decrees that said clerk pay to "the complainant, assignee of Charles Eddy, the "sum of eight hundred and seventy-five dollars, and interest "thereon from the date of the entry of this decree to the date "of said payment to said clerk."

VI.—That said decree is erroneous in that it should have decreed (and does not) that Charles Eddy is entitled to no part of the recovery in this suit; that the complainant as assignee of Charles Eddy is entitled to no part of the recovery in this suit; and that no part of said recovery be paid to the Clerk of the Circuit Court of the United States for the benefit of Charles Eddy, or of complainant the assignee of Charles Eddy; and that said Clerk pay nothing to Charles Eddy or to the complainant as assignee of Charles Eddy.

That said decree is erroneous in that it decrees that Eddy's interest in the Letters Patent involved in this suit, and all claims for damages for infringements of such interest subse-

quent to March 31, 1879; and of profits arising since March 31, 1879, for use of said Letters Patent; and of a recovery and execution therefor in this suit against James, did not pass by Eddy's general assignment, executed March 31, 1879, to J. Albert Cipperly and Albert Stannard, and from said Cipperly and Stannard to Clexton by the deed of said Cipperly and Stannard to said Eddy, dated January 7, 1880, both of which deeds are in evidence in this suit, printed at pages 1632–36 of the Record.

POINTS.

I.

Christopher C. Campbell is in no way interested in this appeal, except as stated hereafter. It concerns Charles Eddy, Thomas L. James and Samuel R. Clexton alone.

In the court below Campbell claimed to own the *whole* patent. Eddy, Caswell and Clexton contested this and claimed to own a third of the patent under Norton's assignment of October 23, 1869, to Eddy in trust

See page 1147 of Record.

As between Campbell on the one hand, and Eddy, Caswell and Clexton on the other, this matter was litigated and settled in favor of Eddy, Caswell and Clexton.

The court decided that Eddy, Caswell and Clexton owned one-third of the patent, free from any connection with Campbell.

See opinion, pages 1644–1652 of Record.
Final decree, pages 1664–5 of Record.

What became of the one-third, concerns James, Eddy, Caswell and Clexton alone.

The rights of Eddy, Caswell and Clexton, as between themselves, were likewise determined by the court below.

See opinion, pages 1644–1652 of Record.
Final decree, pages 1664–5 of Record.

In such determination of the right of Eddy, Caswell and Clexton, as between themselves, "the plaintiff (Campbell) "has no right nor apparent interest as to where it shall go, "whether to Eddy himself, for himself, and those for whom he "was Trustee, or to those to whom he and his *cestuis que trust* "may have conveyed that right."

Opinion of Court, page 1647 of Record.

Eddy's evidence of ownership was on file before Clexton was made a party. After Clexton was made a party, the general assignment from Eddy to Cipperly and Stannard, and the latter's assignment to Clexton were filed. This was on February 4, 1880.

See pages 1616 and 1614 of Record.

James, Eddy and Clexton alone were interested in these assignments, and Eddy and James never objected to their introduction.

See page 1616 of Record.

No objection can now be taken to them.

General Rules Supreme Court, No. 13.
Desty's Federal Procedure, page 254.

Campbell did object to their introduction on February 4, 1880; such objection was futile, as it was no concern of his.

See page 1616 of Record.

Thereafter, *i. e.*, on March 20, 1880, Campbell claims to have bought out Eddy's interests, and an order was entered August 18, 1880, filing such alleged assignment.

Such order of August 18, 1880, however, was "made without prejudice to the rights of" Clexton.

See page 1657 of Record.

Independently of such order, Campbell could succeed only to Eddy's rights.

Eddy's assignment to Campbell was *pendente lite* so far as Clexton and Eddy are concerned, and therefore Campbell took the assignment from Eddy, subject to all the equities existing between Eddy and Clexton.

See Kinsman *vs.* Parkhurst, 18 How., 289.

As Eddy had made no objection to these assignments, Campbell has no right now to raise any objections to their admission in evidence.

The assignments are admitted even by Campbell to be genuine and valid.

See Campbell's objection at page 1616 of Record.

It is therefore clear that on this appeal no objection can be raised by any of the respondents but what Eddy or James could or can raise.

And the only objection to this appeal that Eddy can make is that he did not assign his patent rights to Cipperly and Stannard because he expressly excepted them from the operation of that assignment.

II.

The Circuit Court held that the general assignment of March 31, 1879, *executed by Charles Eddy (and others) to the general assignees, Cipperly and Stannard, did not convey Eddy's interest in the Letters Patent involved in this suit to Cipperly and Stannard, on the ground that such Letters Patent were expressly excluded by Eddy's excepting from the operation of such assignment such property,* IF ANY, *as was "exempt by law from levy and sale under execution."*

See Opinion of Court, pages 1644–1652 of Record.

See General Assignment, pages 1632–5 of Record.

The appellant Clexton believes such decision to be erroneous, and submits to this court that Eddy's interest in such Letters Patent did pass to Cipperly and Stannard, and from Cipperly and Stannard to him by assignments.

See pages 1635–6 of Record.

Eddy's general assignment of March 31, 1879, conveyed to Cipperly and Stannard all his "individual estate and property,

" real and personal, goods, chattels, effects, credits, accounts, " debts, dues, demands, choses in action, and property of every " name and kind whatsoever."

See General Assignment, page 1632 of Record.

Such words are broad enough to convey patent rights.

Thus, an instrument assigning " all property whatsoever and " wheresoever, was held to carry patent rights."

Railroad Co. *vs.* Trimble, 10 Wall., 367.

Therefore, Eddy's patent rights passed to Cipperly and Stannard, and then to Clexton, unless they were excluded by the words, " except such property, *if any*, as is exempt by law from " levy and sale under execution."

Such clause did not except patent rights, nor any other property than the usual *statutory exemptions*, for which statutory exemptions see § 1390, New York Code of Civil Procedure.

III.

Eddy's general assignment was executed in New York under the New York laws. The New York State Courts admit that Letters Patent cannot be levied on and sold under execution, but those courts have expressly decided that the phrase, " property exempt by law from levy and sale under execution," does not embrace Letters Patent.

For instance, section 297 of the New York Code of Procedure enacts that " the judge may order any property of the " judgment debtor, *not exempt from execution*, * * * to be " applied towards the satisfaction of the judgment."

The New York Supreme Court has expressly held that, under this statute, a judge can compel a debtor, the owner of Letters Patent of the United States to transfer such patent to be applied towards the satisfaction of the judgment, notwithstanding that property *exempt from execution* cannot be reached under that statute.

Barnes *vs.* Morgan, 3 Hun (N. Y.), 703.

"The debtor must devote all his property absolutely to the "payment of his debts; reserve no control to himself; provide "for no benefit to himself. When it appears from the pro- "visions of the assignment, or by other proof, that any of these "rules have been violated in making the assignment, the law "adjudges it fraudulent and void."

Oliver Lees & Co. Bank *vs.* Talcott, 19 N. Y., 146, 148.

"The law only tolerates them when honestly made for the "purpose of giving the preference and devoting the *whole* prop- "erty of the debtor to the payment of the debts."

Rathbun, *vs.* Platner, 18 Barb., 272, 275.

"As we understand the settled law of this State, derived "from an examination of all the decisions, assignments pre- "ferring certain creditors are only tolerated when they are ab- "solute and unconditional; when they devote the *whole* of the "assignor's property to the immediate and unqualified pay- "ment of his debts *pari passu*, or in a specified order; when "they contain no reservations or conditions."

Burdick *vs.* Post, 12 Barb., 168, 175.

"The courts have very reluctantly upheld general assign- "ments by an insolvent debtor which give a preference among "creditors; and they can only be supported when they make "a full and unconditional surrender of the property to the "payment of debts. The debtor can neither make terms, nor "reserve anything to himself, until after all his creditors have "been satisfied."

Barney *vs.* Griffen, 2 N. Y., 365, 371.

The New York General Assignment Act of 1877, ch. 466, page 543, enacts that the debtor, at time of making assignment, or within twenty days thereafter, shall make an inventory or schedule containing "a full and true inventory of all such "debtor's estate at the date of such assignment, both real and "personal, in law and in equity."

Omission to do this does not invalidate the assignment; the act provides that the assignee must do it.

The above act, following the above decisions, clearly contemplates an assignment of *all* the debtor's property.

Making out such schedules, but omitting to insert therein some property, is sufficient to enable a creditor to have the assignment set aside as fraudulent. This was expressly decided in Schultz *vs.* Hoagland, 9 N. Y. Weekly Digest, 319, decided February 2, 1880.

The above act, regulating general assignments in New York, was enacted in 1877.

New York Session Laws, 1877, chap. 466, p. 543.

Eddy's general assignment was executed March 31, 1879, and is clearly subject to that act and the above decisions, and is fraudulent and void if it did not convey *all* of Eddy's property except his statutory exemptions. For such statutory exemptions can be excluded and the assignment be valid.

Dow *vs.* Platner, 16 N. Y., 562.

Everything will be presumed to sustain the validity of Eddy's general assignment.

Parsons on Contracts, 5th Ed., Vol. II, p. 500.

Therefore, it must be presumed that the clause "except such property, if any, as is exempt by law from levy and sale under execution," means the statutory exemption, and does not exclude Eddy's interest in patents from the operation of his assignment.

It may be well to add that assignments preferring creditors are not void *per se* in New York.

See Bostwick *vs.* Burnett, 74 N. Y., 317.

VI.

The meanings of English words are known to the court. Yet dictionaries and other authorities may be consulted by the court to refresh its recollection of such meanings. It is proper

to consult law books, opinions of courts, statutes, &c., for the true meanings of words and legal phrases.

Such reference to dictionaries, statutes, &c., is to determine the meaning of such words and phrases, and it is not in any sense an attempt to vary or contradict a written instrument.

What then is the meaning of the word exempt? Webster defines the verb "exempt" as meaning "to take out or from;" "to release," "to exonerate."

Property that is *exempt* from execution is therefore property that is "taken out or from," or "released from," or "exonerated from" a general rule.

Property cannot be "taken out or from" a general rule, unless at one time it has been *in or under or subject* to that rule.

But in New York, choses in action and equitable assets never have been subject to levy and sale under execution.

Ransom *vs.* Miner, 1 Code Rep., N. S., 98.

Such property is not "*exempt*" from execution. It is not property that is, or has been, "taken out from," or "released from," or "exonerated" from execution. It never has been subject to execution.

On the other hand, chairs in New York are liable to execution; but *six chairs* are "exempt," *i. e.*, "taken out from," "released from," or "exonerated from," the burden resting on chairs generally.

§ 1390, New York Code of Civil Procedure.

It is erroneous to confound property *exempt* from execution with property *not subject* to execution. Property exempt from execution always means exempt by *statute*. Property exempt from execution refers only to property which, but for the special exemption, would be subject to execution. But property which from its *very nature* cannot be taken by execution is correctly designated as "property not subject" to execution.

Giving to the word "exempt" its exact and proper meaning, it is clear that Eddy's general assignment did pass his patent rights to Cipperly and Stannard, and that Clexton's appeal is well taken.

For Letters Patent, in New York, by their *very nature*, cannot be taken by execution. They never were subject to such

execution, and consequently never were "taken out from," or "released from," or "exonerated from" liability to a levy and sale under execution in New York.

For "no property can be levied on and sold under execution "unless it is present and within the view of those attending "the sale."

3 N. Y. R. S., page 629, § 41 (6th Ed.).

VII.

The *statutes* use the phrase "exempt by law from levy and "sale under execution," as meaning statutory exemption only.

"The judge may order any property of the judgment debtor "*not exempt from execution* to be applied towards the satisfac-"tion of the judgment."

§ 297, New York Code of Procedure.

Under this statute, as we have seen above, the New York Supreme Court compelled a debtor to assign Letters Patent, notwithstanding the clause "not exempt from execution."

Barnes *vs.* Morgan, 3 Hun (N. Y.), 703.
Thorne *vs.* Thomas, 1 Law Bulletin (N. Y.), 53.

Under the New York proceedings, supplementary to execution (a statutory substitute for a creditor's bill to reach debtor's equitable assets), the debtor may be brought before the judge to be examined as to his property. If there is danger that the debtor will leave the State, the judge may compel him to give an undertaking with sureties "that he will not during the "pendency of the proceedings dispose of any portion of his "property *not exempt from execution.*"

§ 292, New York Code of Procedure.

And, pending the appointment of a Receiver of such debtor's property, the judge may "forbid a transfer, or other disposi-"tion of the property of the judgment debtor *not exempt from* "*execution.*"

§ 298, New York Code of Procedure.

In New York, choses in action property situated out of New York and equitable assets generally are incapable of being levied on and sold under execution. "No property can be levied on and sold under execution unless it is present and within the view of those attending such sale."

3 N. Y. R. S., page 629, § 41 (6th Ed.).
Ransom *vs.* Miner, 1 Code Rep. (N. S.), 98.

Yet such property can be taken under the above § 297, or its transfer forbidden under §§ 292, 298.

Bunn *vs.* Fonda, 2 Code Rep., 70.
Fenner *vs.* Sanborn, 37 Barb., 610.
Newell *vs.* Cutler, 19 Hun (N. Y.), 74.
Potter *vs.* Low, 16 How. Pr. (N. Y.), 549.

It is evident from the above authorities that in New York, Letters Patent, choses in action, equitable assets, and other property not subject to levy and sale under execution, are not referred to or meant by the phrase, "property exempt from execution."

Property exempt from execution is property that is released from a liability to execution by express provisions of some statute.

VIII.

Property "exempt *by law* from levy and sale under execution" is the expression used in Eddy's general assignment.

By law means *by statute*, for:

First.—The forms of general assignments given by text writers as models after which assignments are to be drawn, use the phrase, "exempt by law," in the sense of "exempt by statute," and in no other sense.

"Excepting such as is *by law* exempt from execution," is used by Burrill.

See Burrill on Assignments, 2d Ed., 633.

"Except such property as is exempt *by law* from levy and "sale under execution," is found in Bishop.

See Bishop on Insolvent Debtors, pp. 439–440.

Every statute in which the phrase "exempt *by law* from levy and sale under execution" is found, employs the phrase as meaning exempt *by statute* from levy, &c.

Thus § 5045 of Revised Statutes of the United States (Title "Bankruptcy") enacts that from the operation of a bankrupt's conveyance there shall be excepted "such other property not "included in the foregoing exceptions as is exempted from "levy and sale upon execution, or other process or order of "any court, *by the laws* of the State, of the State in which the "bankrupt has his domicile."

Choses in action and equitable assets generally cannot be levied on and sold under execution in the State of New York, as we have seen above.

See Ransom *vs.* Miner.

By the *laws* of the State of New York, such choses in action are not subject to levy and sale upon execution.

But no one will for a moment contend that, even in New York, choses in action and equitable assets do not pass by a bankrupt's conveyance. Yet such property would not pass by such conveyance if *by laws* in the above statute (§ 5045) meant other than *by statutes.*

So, a debtor, to obtain his discharge when imprisoned for debt, must execute "an assignment of all his property not *expressly* exempt *by law* from levy and sale by virtue of an execution."

See § 2208 N. Y. Code of Civil Procedure.

No property, in New York, is *expressly* exempt from execution, by *law*, as distinguished from *by statute.*

The statutes regulating assignments of the estates of non-resident, absconding, insolvent or imprisoned debtors, use

the phrase "excepting such *a ticles* as are *by law* exempt from execution."

3 N. Y. R. S. (6th ed.), page 24, § 8.

And in another place, "except the *articles* which are *by law* exempt from execution."

3 N. Y. R. S. (6th ed.), page 26, § 6.

An article is tangible personal property, and hence *leviable* property.

But no tangible personal property is *exempt* from execution, *by law*, as distinguished from *by statute*.

It is idle to pursue this investigation any further. This phrase is found in numberless other places, and always means statutory exemption. Thus in §§ 2175 and 2177 of the New York Code of Civil Procedure it is "exempt *by law* from levy and sale by virtue of execution."

And in 3 N. Y. R. S. (6th ed.), page 23, § 22, it is "except such as is *by law* exempt from execution."

IX.

The burden of proof is on the person claiming the exemption to prove that the property in question is *exempt*.

"Where property is claimed to be exempt from execution "the burden of proof rests upon the person claiming the "benefit of such exemption."

Brown *v.* Davis, 9 Hun (N. Y.), 43.

"It undoubtedly devolved upon the plaintiff to show, af- "firmatively, the facts which entitled him to the exemption of "the property in question."

Griffin *v.* Sutherland, 14 Barb. 456, 459.

The burden of proof, therefore, is on Eddy and those claiming under him, to prove that Letters Patent are "exempt property" and not simply "property not subject to execution" —the same as choses in action and equitable assets generally.

X.

The court below, in its opinion, says, "an assignment of "what by law could be taken was all the creditors had a right "to claim."

See Opinion, page 1651 of Record.

But a creditor can by law take Letters Patent. He may not be able to take it by execution, nor by attachment, nor by appointment of a Receiver, nor by an assignment, made by order of the court, but not *signed* by the owner of the Letters Patent.

Still a creditor has one remedy. The court, at request of the creditor, may order the debtor, the owner of the patent, to execute an assignment of the patent to a third party, to be applied to the satisfaction of the debt.

Barnes *vs.* Morgan, 3 Hun, (N. Y.), 703.
Stephens *vs.* Cady, 14 How. (U. S.), at p. 531.
Stevens *vs.* Gladding, 17 How. (U. S.), at p. 452, near top, and head note at p. 448.
Ashcroft *vs.* Walworth, 1 Holmes, at p. 154.
Gordon *vs.* Anthony, 16 Patent Office Gazette, at p. 1139, and head note at p. 435.

It is no answer to say that the debtor MAY disobey the order of the court and prefer to undergo the penalties for his contempt rather than to execute such an assignment.

This court will not *assume* that its order will be disobeyed.

XI.

Eddy owned Letters Patent. Letters Patent cannot be taken by execution. Eddy is presumed to have known the law. If he had meant to except Letters Patent from his assignment, he would have omitted the words "if any" from the clause "except such property, *if any*, as is exempt by law "from levy and sale under execution."

The words "if any" throw doubt on the question as to whether Eddy had any exempt property at all, and is strong evidence that he did not regard the Letters Patent he then owned as exempt property.

XII.

The title to an immense amount of personal property is endangered in New York by the decision of the Circuit Court.

It has been the usual practice to insert in general assignments a clause exce pting property exempt by law from levy and sale under execution.

See Burrill on Assignments, 2d Ed., p. 633.
Bishop on Insolvent Debtors, pp. 439–440.

In many such assignments three-fourths of the debtor's property consists of choses in action and equitable assets *i. e.* non-leviable property. Such property, in New York, does not pass to the general assignees, if the decision of the Circuit Court be right. The *New York Daily Register* (a law paper) speaks of this decision as one wherein "the words, exempt by "law, were with *entire originality* held to include not only "those things exempt by statute, but non-leviable or equitable "assets."

See N. Y. *Daily Register*, 18 Vol. page 1108, the issue of Monday December 13, 1880.

XIII.

Shavor & Corse are alleged to have made an assignment of their interests to Eddy by a deed dated December 18, 1876.

See page 576 of Record.

Christopher C. Campbell claims that, by such assignment, Eddy became the legal owner of such one-third of the patent, free from all trusts.

See Campbell's Petition of Appeal, page 1689.

This assignment of December 18, 1876, its nature, purport and bearing in this suit are fully discussed in the brief of Caswell and Clexton, respondents in Campbell's Appeal, No. 1101.

Assuming, for the argument's sake, that Eddy, by this assignment of December 18, 1876, did become the owner of one-third of this patent, free from all trusts, then Clexton is clearly such owner, for Eddy transferred all his individual interests to Cipperly and Stannard, and they sold such interest to Clexton.

See pages 1632, 1635 of Record.

If, however, the title to such one-third did not pass to Cipperly and Stannard, because of the exemption clause, yet all choses in action, *i. e.*, claims for past infringement, passed from Eddy to Cipperly and Stannard, and then to Clexton. "Choses in action" are specially named in Eddy's general assignment.

See General Assignment, page 1632 of Record.

See opinion of court, page 1651, where the court says: "Choses in action are expressly named in the assignment to Trustees, and by force of those words it would carry this claim."

Therefore, if Campbell is right in his statement in his petition of appeal, Clexton owns one-third of the patent; and, at the very least, he owns all infringements up to March 31, 1879, and is entitled to a recovery of $18,375 against James.

Campbell claims that Eddy sold this one-third to him by an alleged deed, dated March 20, 1880.

See page 1658.

The bearing of this alleged assignment in the case is also fully discussed by counsel for Caswell and Clexton in the Campbell appeal.

But Eddy's sale to Cipperly and Stannard is just as effective in carrying his interest to Cipperly and Stannard, as would be the alleged assignment of Eddy to Campbell. One is as good a settlement with *infringers* as the other is.

XIV.

It may be said that Eddy's general assignment does not comply with the statutes regulating the transfer of patent rights.

The cases which will be cited for this proposition are cases in which it is held that an assignment *in invitum*, under insolvent proceedings, &c., does not pass such rights.

See Stephens *vs.* Cady, 14 How. (U. S.), 528.
Ashcroft *vs.* Walworth, 1 Holmes, 152.
Stevens *vs.* Gladding, 17 How. (U. S.), 447.
Gordon *vs.* Anthony, 16 Patent Office *Gazette*, 1135.

All these cases go on the ground that the assignments were not *signed* by the owner of the patent, but by some officer of the court, in involuntary proceedings.

They all say that, if the owner himself signed, even under the compulsion of involuntary proceedings, the title would pass.

See Stephens *vs.* Cady, 14 How. (U. S.), at p. 531.
Stevens *vs.* Gladding, 17 How. (U. S.), at p. 452, near top, and head note at p. 448.
Ashcroft *vs.* Walworth, 1 Holmes, 154.
Gordon *vs.* Anthony, 16 Patent Office *Gazette*, at p. 1139, and head note at p. 435.
See also Barnes *vs.* Morgan, 3 Hun (N. Y.), 703.
Thorne *vs.* Thomas, 1 *Law Bulletin* (N. Y.), 53.

Eddy executed his general assignment; it was his voluntary act.

See pages 1632–4 of Record.

XV.

The failure to record Eddy's general assignment in the Patent Office within three months (~~for it was, as a matter of fact, recorded on March 11, 1880~~), is of importance only as against *bona fide* purchasers for value, without notice. An unrecorded assignment is good as against everybody except a *bona fide* purchaser for value, without notice, and suit may be brought thereon without recording it.

Perry *vs.* Corning, 7 Blatch., at page 201 near middle.

Even such purchaser for value, without notice, must show that he purchased without notice.

See Perry *v.* Corning, above.

Eddy, the assignee, of course cannot raise the objection, and did not.

See page 1616 of Record.

Neither can Campbell, for

First.—The general assignment was introduced in evidence in this suit on February 4, 1880,

See pages 1614 and 1616 of Record.

And Eddy's alleged assignment to Campbell was made, if at all, on March 20, 1880. Prior to March 20, 1880, Campbell had no interest in the general assignment.

Moreover, Eddy's assignment to Campbell was *pendente lite*, and Campbell is bound by all the equities existing between Eddy and Clexton.

See Kinsman *v.* Parkhurst, 18 How., 289.

Second.—Campbell cannot raise this objection because Eddy cannot. For the order of court, filed August 18, 1880, which admits into this record Eddy's alleged assignment to Campbell was "made without prejudice to the rights of any parties in "interest, except those who have signed the agreement of "March 20, 1880, and the assignment from Eddy to Wooster."

See page 1657 of Record.

Clexton is not one of these parties.

Third.—Campbell had *actual* notice of this general assignment in February, 1880. It was introduced in evidence February 4, 1880, and filed in the presence of Campbell's counsel.

See page 1616 of Record.

Therefore the alleged assignment of March 20, is subject to this general assignment.

See § 4898, U. S. R. S.

XVI.

Making Clexton a party to this suit implies that he may have interests therein. Such interest appears in Clexton's moving papers.

See affidavit of Samuel R. Clexton and Horace T. Caswell, at pages 1572-6 of Record.

On such moving papers Clexton was made a party, "with "the same rights and privileges * * * as the said "Eddy, as they appear in the proceedings in this suit."

See order of court, January 24, 1880, at page 1576 of Record.

Eddy's right to have his interests determined in this suit, was provided for by the stipulation of June , 1878.

See pages 654-6 of Record.

Clexton, as the purchaser of Eddy's interest, is clearly entitled to have such determination, *especially as Eddy never objected to it.*

But, independent of the above considerations, it was certainly proper for the court to determine, in this suit, to whom it will decree the one-third interest to belong. The rule of courts of equity is that "the real parties in interest" shall be recognized, and such interests must be determined in this suit or never.

It appears in the record that Eddy, at a critical state of the case, peremptorily forbade any further steps to be taken in this suit. He never appeared by solicitor in this suit from its inception in 1877, up to December, 1879 (months after the interlocutory decree), and only then did he permit a solicitor to appear when his *cestui que trust* defrayed the expenses; he neglected his trust, was a bankrupt, and a fugitive from the State.

See pages 1571-6 of Record.

And, on March 20, 1880, the alleged assignment from Eddy to Campbell, was executed, which, if it amounts to anything, is a sale by Eddy to Clexton's most bitter opponent.

It was certainly proper to make Clexton a party and to permit him to protect his purchase.

There can be no doubt but that the court had jurisdiction of this matter, for it is a question of *title* to the patent.

Whenever the court makes a decree against an infringer, it must necessarily pass on such question.

Nor is it material that the parties (Eddy and Clexton) are not on opposite sides of the pleadings.

When the court "has jurisdiction of the parties it grants "the appropriate relief without regard to whether they come "as plaintiff or defendant." WAITE, *Ch. J.*

Littlefield *vs.* Perry, 21 Wallace, 205.

Meyer *vs.* Delaware Co., S. C. U. S., October Term, 1879, Leg. News, Jan. 3, 1880.

Moreover, Campbell, Eddy, Clexton and Caswell, all insisted on the rights of Eddy, Clexton and Caswell being determined herein.

See Opinion of Court below, pages 1644-1652.

Nor is it any objection that Eddy, Clexton and Caswell have no *pleadings*.

" In these causes the pleadings cover all the grounds of claim " upon and defense by the defendant, as well as to that part " claimed by Eddy as in respect to that claimed by the plain- " tiff, and the evidence has been taken in respect to all the " issues made, and considered as bearing upon them.

" Under these circumstances at least, it seems proper that " the rights of Eddy and of those claiming under him as Trus- " tee to the fruits of the infringement of the defendent, should " be considered and determined. *All the parties except the de- " fendent James, have insisted upon this course*, and he has only " insisted that the proceedings should be such as to protect " him from further suits for the same cause.

" These proceedings, with these parties to them, appear to " be ample for that purpose."

See Opinion of Court, page 1650.

XVII.

In so far as the decree of the Circuit Court determines that Charles Eddy did not transfer all his individual interests in the Letters Patent involved in this suit, and all claims for damages for the infringement of said interests, and all claims for profits for the use of said Letters Patent to his general assignees, J. Albert Cipperly and Charles N. Stannard, by the general assignment of March 31, 1879; and in so far as said decree determines that said Cipperly and Stannard did not transfer said interests and claims to Samuel R. Clexton by deed dated January 7, 1880; and in so far as said decree determines that Christopher C. Campbell, individually or in trust, acquired any interest in said patent or in said claim from Charles Eddy by the alleged assignment of March 20, 1880, or in any other way, the said decree should be reversed.

New York, January, 1881.

Edward D. Bettens,
Of Counsel.

OFFICE SUPREME COURT U.S.
FILED
DEC 31 1880
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1880.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN TRUST, *Appellant*, *versus* THOMAS L. JAMES, ET AL., *Respondents*.	No. 1101.	Reply.

APPEAL FROM UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR SAMUEL R. CLEXTON, HORACE T. CASWELL, AND CHARLES EDDY THEIR TRUSTEE.

Supreme Court of the United States.

CHRISTOPHER C. CAMPBELL, ASSIGNEE IN TRUST, *Appellant,* *versus* THOMAS L. JAMES, CHARLES EDDY, HORACE T. CASWELL, SAMUEL R. CLEXTON, AND CHARLES EDDY AS TRUSTEE FOR H. T. CASWELL AND S. R. CLEXTON, *Respondents.*	*No.* 1101.

Brief on behalf of Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, their Trustee.

STATEMENT.

Samuel R. Clexton, one of the above named respondents, is the appellant in the appeal numbered 1098 on the calendar of this court.

The court's attention, on this, Campbell's appeal, is respectfully called to the statement of facts and the brief, filed by counsel for Clexton, on Clexton's appeal, number 1098. That statement shows the following to be the parties in this suit, and likewise on this, Campbell's, appeal:

(1.) Christopher C. Campbell, assignee in trust for Helen M. Ingalls.

(2.) Thomas L. James.
(3.) Charles Eddy.
(4.) Samuel R. Clexton.
(5.) Horace T. Caswell.
(6.) Charles Eddy, as Trustee, for Samuel R. Clexton, and Horace T. Caswell.

That statement likewise shows the following facts, to wit:

This suit was originally begun by Campbell against James.

James pleaded the non-joinder of Charles Eddy, as Trustee for Charles Eddy, Jacob Shavor, and Albert C. Corse.

Thereupon, on Campbell's motion, and on a stipulation dated June, 1878, and by an order filed September 13, 1878, Charles Eddy, as Trustee, for himself, Jacob Shavor, and Albert C. Corse, was made a defendant. The stipulation of June, 1878, between Campbell and Eddy, admitted that the rights of Charles Eddy, as Trustee, for himself, Jacob Shavor, and Albert C. Corse, in the subject matter of this suit, were "*fixed and determined*," either by a certain assignment of one-third of the Letters Patent involved in this suit, + a contract dated October 23, 1869, and executed by Marcus P. Norton to Charles Eddy, as Trustee, for Eddy, Shavor and Corse, or by a certain contract dated October 7, 1871, executed by Charles Eddy, Jacob Shavor, Albert C. Corse, and W. W. Secombe.

The complainant Campbell, in that stipulation expressly admitted that the assignment dated October 23, 1869, above mentioned, is a valid assignment not affected by any prior or cotemporaneous assignment by said Norton to Helen M. Ingalls, or other written agreement to which said Eddy is a party, except said contract of October 7, 1871.

See stipulation of June, 1878, and order of September 13, 1878, at pages 654–657, of record.

See also statement of appellant Clexton in appeal, number 1098.

Eddy, Shavor and Corse (and Caswell and Clexton, their assigns,) claimed that the contract of October 7, 1871, had been cancelled.

The issue between Campbell on the one hand, and Eddy, Shavor and Corse, (or Caswell and Clexton, their assigns,) on the other hand, was thus narrowed down to the effect of such contract of October 7, 1871, and to the question of its cancellation. A large amount of testimony was accordingly taken, an argument thereon had to the court, as to the rights of Campbell on the one hand, and Eddy, Shavor and Corse (Caswell and Clexton, their assigns,) on the other hand, and the court decided that Campell owned but two-thirds of the patent, aud two-thirds of the recovery, and that the other third of the patent and of the recovery belonged to Eddy, Caswell and Clexton.

For such testimony see pages 1577–1637 of Record.

For court's opinion see page 1644 of Record.

For final decree see 1664 of Record.

See also statement of appellant Clexton, appeal No. 1098.

The defendant, James, was not interested in, and took no part in the above contest between Campbell, Eddy, Caswell and Clexton, except in so far as it was of vital interest to James to know who owned the patent.

The determination of such ownership necessarily was a condition precedent to a decree that James respond in damages to the owners.

Eddy was made defendant as Trustee for himself, Jacob Shavor, and Albert C. Corse, and by his own admission his rights as such Trustee are "*fixed and determined*" by the assignment of October 23, 1869, executed by Marcus P. Norton to Eddy as such Trustee.

See Eddy stipulation June, 1878, page 655.

Eddy was faithless to his trust; became a bankrupt and a fugitive (pages 1571–4, of Record).

The suit was begun in 1877; Eddy, as Trustee, was made defendant September 13, 1878 (page 657, of Record); the interlocutory decree was filed September 1, 1879, decreeing Campbell the *exclusive* owner of the patent, subject to the right of Helen M. Ingalls and of Charles Eddy, *if any* (page 1458, of

Record), and up to December, 1879, Eddy had not appeared by solicitor or counsel to protect either his iddividual or his trust interests.

See affidavits, pages 1571–4 of Record.

On March 31, 1879, Eddy failed in business and made a general assignment to assignees for his creditors.

See general assignment, page 1632, of Record.

After that date Eddy's interest in this suit was that of a naked Trustee for Shavor and Corse (or their assigns, Caswell Clexton), and it was his duty as such Trustee to attend to Caswell's and Clexton's interests; it was likewise his duty to his creditors and his general assignees to throw no obstacle in the way of having what individual interests he had possessed prior to March 31, 1879, fully protected.

The *cestui que trust* Caswell in November, 1879, retained counsel, and at Caswell's request, such counsel was allowed to appear as solicitor for Eddy in the suit in December, 1879. That was the first appearance of Eddy by solicitor in the suit to protect the very valuable interests Eddy was in duty bound to guard (page 1574 of Record)

Eddy's general assignees sold Eddy's individual interests in the patent and in its infringements to Samuel R. Clexton on January 7, 1880 (see page 1635, of Record), and five days thereafter Eddy peremptorily forbade his solicitor to do anything more in the suit (see page 1571, of Record). At that date (Jan. 12, 1880), the one-third interest represented by Eddy as Trustee was in imminent peril from the attacks of Campbell; testimony as to the cancellation of the contract of October 7, 1871, was then in process of being taken; the Master's report had been made (Jan. 2, 1880, see page 1556 of Record), and the final hearing as to the rights of Campbell, and Eddy as Trustees for Shavor and Corse, and on the Master's report, was expected to be heard in a few weeks.

On affidavits stating the above facts the court, by order dated January 24, 1880, made Clexton and Caswell defendants for the purpose of protecting the interests which their Trustee and assignor so faithlessly neglected, and were made such parties, with the same rights and privileges as the said Eddy.

See those affidavits and order at pages 1571–6, of Record.

Eddy, from being simply faithless in his trust, thereafter became bitterly hostile to Caswell and Clexton his *cestuis que trust*, as is evidenced by an alleged sale by Eddy of all his interest in the patent and infringements to Campbell, the bitter and implacable opponent of the "one-third" interest. Such alleged sale is by an alleged deed dated March 20, 1880, which was filed in this suit on August 18, 1880, pursuant to an order which *expressly* provided that such order and alleged deed should not prejudice the rights of Caswell, Clexton, and Eddy, their Trustee.

See order, page 1656, of Record.

On March 11, 1880, the court permitted Eddy, as Trustee, to appear by the same solicitor who represented Caswell and Eddy, his *cestuis que trust*, and permitted Eddy, as far as he had individual interests, to appear by a different solicitor.

See page 1643 of Record.

Eddy having proved himself utterly faithless to the "one-third" interest which he was in duty bound to protect, the court admitted Caswell and Clexton as defendants, and in its opinion and in the final decree recognized Caswell and Clexton as the substantial owners of the whole one-third interest and of the $21,000 allotted to the owners of the one-third; it gave $13,125 to Clexton, and $7,000 to Caswell, and $875 to Campbell, as assignee of Eddy under the alleged assignment of March 20, 1880, Eddy to Campbell, above mentioned.

See opinion, page 1614, of Record.
Final Decree, 1664, of Record.

On this appeal it will be convenient to consider in the following order:

First.—The rights of Eddy, Caswell and Clexton, as between themselves.

Second.—The rights of Christopher C. Campbell, the alleged assignee of Charles Eddy, under alleged assignment dated March 20, 1880.

Third.—The rights of Campbell on the one hand, as opposed to the rights of Eddy, Caswell and Clexton on the other hand. Under this head comes the stipulation of June, 1878, and the general question whether Eddy, as Trustee, for himself, Shavor and Corse had any interest in the subject matter of this suit.

FIRST.

The Rights of Eddy, Caswell and Clexton as Between Themselves.

I.

The rights and interests of Eddy, as Trustee, for himself, Jacob Shavor and Albert C. Corse are "*fixed and determined*" by *Eddy himself* by the assignment of October 23, 1869, executed by Norton to Eddy as such Trustee of a one-third interest in this patent and its infringements.

See stipulation, June, 1878, page 655 of Record.
Assignment, October 23, 1869, pages 1147 of Record.

That stipulation was acknowledged by Eddy on September 11, 1878, and filed September 13, 1878.

See page 656–7 of Record.

So far as Eddy is concerned he is bound by that stipulation, and his rights individually and as Trustee, on September 13, 1878, are to be sought for in the assignment of October 23, 1869, and *nowhere else.*

That stipulation relieves the court from all consideration of an alleged assignment, filed June 29, 1878, and marked "Complainant's Exhibit Shavor, Corse and Eddy—J. A. S., Exr., 2, *June* 29, 1878," purporting to be an assignment dated December 18, 1876, from Shavor and Corse to Eddy, in trust, with power to settle with infringers.

See page 577 of Record.

This alleged assignment of Dec. 18, 1876, assigns *nothing*. It assigns to Eddy, IN TRUST, "all the right, title and interest of "every name and description which we (Shavor and Corse) now "have in, to or for the said Letters Patent, and the inventions "and improvements, * * * intending herein and hereby to "sell, assign and transfer unto him, Charles Eddy, IN TRUST, all "our right, title and interest and ownership in any or all of the "said several Letters Patent."

Such words pass only title to patents.

See Moore *vs.* Marsh, 7 Wallace, 515.

Eddy, under assignment of October 23, 1869, already held the patent *in trust;* therefore the assignment of the title to him in trust on December 18, 1876, assigned nothing to Eddy but what he already had. Eddy admitted this by his stipulation of June, 1878, when he stipulated that his rights and interests as Trustee were *fixed and determined* by the assignment of October 23, 1869, and not by the one of December 18, 1876.

As to the alleged power to settle with infringers contained in the alleged assignment of December 18, 1876, it was revocable at the will of Shavor and Corse.

Eddy, by his stipulation of June, 1876, *admits that such power no longer (if it ever) existed.*

II.

We start then with an assignment of one-third of the patent by Norton to Eddy, in trust for himself, Jacob Shavor and Albert C. Corse, dated October 23, 1869.

See page 1147 of Record.

First.—As to Shavor's interest.

Shaver died.

See page 728 of Record.

Shavor's executors assigned the Shavor interest to Samuel R. Clexton.

See order of court and assignment, pages 1638-9 of Record.

Second.—As to Corse's interest.

Corse's interest became vested in Horace T. Casswell.

See order of court and assignments, pages 1640–1642; also 1628–9 of Record.

Third.—As to Eddy's interest.

Eddy failed March 31, 1879, and made a general assignment to J. Albert Cipperly and Charles N. Stannard of all "his individual estate and property, real and personal, goods, chattels, effects, credits, accounts, debts, dues demands, choses in action and property of every name and kind whatever, * * * except such property, if any, as is exempt by law from levy and sale under execution."

See page 1632 of Record.

On January 7, 1880, Cipperly and Stannard transferred Eddy's interest in the patent and its infringements to Samuel R. Clexton for $2,500.

See pages 1635–6 of Record.

Both these assignments were received in evidence on February 4, 1880, without any objections from Eddy or James.

See pages 1614, 1616, 1617 of Record.

The Circuit Court decided that Eddy's individual interest in the patent did not pass to Cipperly and Stannard, and from them to Clexton, because such patent rights were excepted from the operation of his general assignment by the words, "Except such property, if any, as is exempt by law from levy and sale under execution;" but that claims for the infringement of Eddy's patent that had accrued prior to March 31, 1879, did pass to Cipperly and Stannard and then to Clexton, because claims for such infringements are "choses in action," and choses in action are specially named in the general ~~arrangement~~ assignment.

See Opinion, page 1644 of Record.

These assignments, therefore, by the decision of the Circuit Court, gave to Caswell the beneficial interest in one-ninth of the patent, and entitled him to $7,000 of the recovery; and to Clexton a beneficial interest in one-ninth of the patent, and

entitled him to $13,125 of the recovery; and to Eddy an individual interest in one-ninth of the patent, and entitled him to $875 of the recovery.

So far as Campbell's appeal is concerned, Clexton and Caswell, and Eddy, as their Trustee, and James are deemed to be satisfied with the above decision of the Circuit Court. If it were not that Campbell claimed to be assignee of Eddy, by an alleged deed of March 20, 1880, Eddy would be deemed to be satisfied with that decree. And as such decision is no concern of Campbell (except as such alleged assignee of Eddy by alleged deed of March 20, 1880), Campbell would not be permitted to raise any objections to it, and such decision would be a final adjudication of the rights of Eddy, Caswell and Clexton. But because Campbell claims to be Eddy's assignee, and to have the right to raise here, on this appeal, any point that Eddy could raise had he appealed from this decision, it may be necessary for Caswell and Clexton to consider that this appeal is taken by Eddy from the above decision.

The rights of Eddy and Clexton as between themselves will first be discussed.

III.

No objections to the decision of the Circuit Court as to the rights of Eddy and Clexton, as between themselves, can be raised here but what Eddy could raise had he appealed.

Eddy did not object in the Circuit Court to the admission in evidence of the general assignment, and the assignment of Cipperly and Stannard to Clexton.

See page 1616 of Record.

Therefore no objection can be taken here.

Rule Supreme Court, No. 13.

Eddy did not, and could not, object to the admission in evidence of his assignment to Cipperly and Stannard, on the

ground that it did not show that it had been recorded. ~~As matter of fact it was recorded on March 11, 1880.~~

Therefore, that objection cannot be raised here by Campbell as Eddy's assignee.

IV.

It may be said that Eddy's general assignment does not comply with the statutes regulating the transfer of patent rights.

As to this see Point XIV., made by Samuel R. Clexton in his appeal, No. 1098.

Eddy's general asssignment is in writing, *signed* by Eddy.

V.

The failure to record the general assignment within three months is of no importance as against Eddy, and Campbell as his assignee.

See Point XV. Clexton's appeal, No. 1098.

Nor is it necessary to record an assignment of infringements.

Gear *vs.* Fitch, 16 Official Gazette, 1231.

VI.

The general assignment contains apt words for conveyance of all claims for infringements. It conveys all " his individual "estate and property, real and personal, goods, chattels,

"effects, credits, accounts, debts, dues, demands, choses in "action, and property of every name and kind whatsoever."
See page 1632 of Record.

Such words carry patent rights.
Railroad Co. *vs.* Trimble, 10 Wall, 367.

They are sufficient to carry torts under the laws of New York.
McKee *vs.* Judd, 12 N. Y., 622.
Sherman *vs.* Elder, 24 N. Y., 381.
Richtmeyer *vs.* Remsen, 38 N. Y., 206.

VII.

All the infringements of Eddy's individual interest in the patent that had accrued up to March 31, 1879, passed to his general assignees by that general assignment, and from those assignees to Clexton by assignment of January 7, 1880 (see page 1635 of Record). Infringements are *torts*.

It is settled that such torts are in no way inherent to or connected with the patent. An assignment of the patent alone, does not carry the torts.

An assignment of "all right, title and interest in the patent" conveys the patent, but not the torts.
Moore *vs.* Marsh, 7 Wallace, 515.

So an assignment of "all right, title, interest, claim or de-"mand whatsoever, in, to, or under" a patent, conveys the patent, but not the torts.
Dibble *vs.* Augur, 7 Blatch., 86.

It is equally well settled that an action can be brought to recover damages for such torts, even though the complainant has parted with the patent.
Moore *vs.* Marsh, 7 Wall., 515.

Furthermore, both under the laws of the United States and

of New York, torts affecting personal property (but not those affecting the person) are assignable and transferable.

"In general, it may be affirmed that mere personal torts, "which die with the party and do not survive to his personal "representative, are not capable of passing by assignment; "and that vested rights *ad rem* and *in re*, possibilities coupled "with an interest and claims growing out of and adhering to "property, may pass by assignment."—STORY, *J.*

Comegys *vs.* Vass, 1 Peters R., 194, 213.

"The law may be considered as settled, that a claim to "damage arising from the wrongful conversion of personal "property is a chose in action that is assignable."

McKee *vs.* Judd, 12 N. Y., 622.
Sherman *vs.* Elder, 24 N. Y., 381.
Richtmeyer *vs.* Remsen, 38 N. Y., 206.

The law is equally well established that infringement torts are also assignable.

"A cause of action in tort is not assignable; this rule, how-"ever, has reference to *strictly personal torts*, which do not sur-"vive the party injured; but right of action for damages and "claims growing out of, and adhering to property, will pass "by assignment," and the court accordingly held that complainant could recover for infringements.

Hamilton *vs.* Rollins, 4 Law and Equity Reporter, 561; decided by U. S. Circuit Court, Minnesota, September, 1877.

The assignments "were, therefore, assignments of a right of "action only—mere conveyances of the right to maintain "those several suits or other similar actions—mere choses in "action, in that narrow sense, after the patent itself had ex-"pired."

Complainants' bill was sustained.

Gear *vs.* Fitch, 16 Patent Office Gazette, 1231; decided October 7, 1878, by Judge LOWELL.

"I think that the purport and effect of the two papers of "the 8th of May, 1868, were, to vest in Dibble, as Trustee for "the three companies, all Robertson's interest in the patent;

"and to vest in Dibble, as Trustee for Robertson, all interest "in all claims for part infringement of the patent."—BLATCHFORD, *J.*

Dibble *vs.* Augur, 7 Blatch., 86-90.

VIII.

The appellant confounds the *assignability* of infringements with the *statutory* requirements as to the persons in whose *names damages* for such infringements are to be sued for *at law.*

For such statutory requirement see § 4919, U. S. R. S.

Moore *vs.* Marsh, 7 Wallace, 515.

It may well be that the court, because of some arbitrary rule, or for some other reason, will not permit a person to sue in his own name, but will yet grant such person full redress if suit be brought by him in the name of another.

Thus, a licensee cannot sue infringers in *his own name.* But he is not without redress. He can sue in the name of his licenser, even against the will of such licenser.

Goodyear *vs.* McBurney, 3 Blatch., 32.

So *at law*, formerly, choses in action could not be sued on in the name of the assignee. Such assignee, *at law*, was compelled to sue in name of his assignor. In equity he sued in his own name.

The mere fact that the statute does not permit the assignee of an infringement tort to sue *at law*, for damages, in his own name, simply puts such assignee, *at law*, on the same footing with a licensee.

The licensee must sue in the name of the licenser; and the assignee must sue in the name of the assignor.

The patent involved in this suit expired on April 14, 1880. The only value of the patent to its owners is in infringements of the patent, and the damages and profits to be received on account of such infringements. The owners have the right for six years, from April, 1880, to recover such damages and profits

Such owners can never more assign to anyone any interest in the patent, because the patent *no longer exists.*

If it be true that such owners cannot assign the infringement to anyone, but one who also receives or holds an interest in the patent, all this vast property is irrevocably tied up in the hands of the present owners, and neither they nor the law can transfer it to anybody. Only by the owners' death can they be divested of this property, and it is very doubtful whether their personal representative would succeed to their rights.

Such a conclusion demonstrates the absurdity of this theory —for it is but a theory.

Infringements, though torts, are property, and very valuable property, and like all other torts they are assignable, and the assignee is in law, as well as in equity, the owner of such torts.

Dibble *vs.* Augur, 7 Blatch, 86.

The statute merely regulates the mode of collecting the same *at law*, which is to be in the name of his assignee.

IX.

The owner of infringements has an action on the case at law to recover damages for these infringements.

§ 4919, U. S. R. S.

He has another remedy, in equity, to recover the *profits* accruing to the owner from the use by the infringer of the patented improvements.

The statute regulates the mode in which an action *on the case* is to be brought, and specifies the persons who can bring such an action, *at law.*

§ 4919, U. S. R. S.

But the statute says nothing about the parties to an *equity suit*, and does not prescribe the persons who are to bring suits for an accounting of profits.

An assignee of profits due the assignor on account of the past use of the patented improvement is not prevented by any statute regulations from suing in equity, even in his own name, for an accounting of profits.

The owners of the Norton patent have not proved any *damages* in this suit, and they never can from the nature of their patent. All they can ever get is profits. It is all they have got in this suit.

See opinion of court, page 1653 of Record.

All the assignments under which Clexton claims convey these profits.

See pages 1632–5 of Record for Clexton.

Therefore, as an assignee of these profits, Clexton is entitled to all the profits due from James to Eddy prior to March 31, 1879.

X.

Courts of equity, besides *profits*, can also give *damages*. No statute points out what person is to bring such suit for damages in equity, or prevents an assignee of infringements suing in his own name for such damages in equity.

The case of Dibble *vs.* Augur, 7 Blatch., 86, is an authority that the assignee of the claims should sue in his own name. In that case, the patentee conveyed the infringements to Dibble, as Trustee for the patentee; he likewise conveyed the patent to Dibble, as Trustee for certain corporations. Dibble as Trustee of infringements for patentee, and Dibble as Trustee of the patent for corporations are two distinct legal personages.

Judge BLATCHFORD held that Dibble, as Trustee for the patentee, had the legal title to the claims, and was the proper party to bring suit for such claims.

"I think that the purport and effect of the two papers of

" the 8th of May, 1868, were, to vest in Dibble, as Trustee for
" the three corporations, all Robertson's (the patentee) interest
" *in the patent;* and to vest in Dibble, as Trustee for Robert-
" son, all interest in all claims for *past infringements* of the
" patent against others than the three companies. * * *
" When the bill in this case was filed, it ought properly (so
" far as above past infringements are concerned) to have been
" filed in the name of Dibble, as Trustee for Robertson, join-
" ing Robertson as the *owner* of the equitable interest."
—BLATCHFORD, J.

Dibble *vs.* Augur, 7 Blatch., 86, 90–91.

XI.

The appellant Campbell admits that past infringements are assignable to one who takes title in the patent. This is a necessary admission on his part, otherwise he could not recover in this suit, as he does, infringements that accrued whilst Miss Ingalls owned the two-thirds of the patent before her assignment to Campbell in January, 1877.

It is difficult to see how Campbell gains any more rights in the infringements assigned to him by Miss Ingalls, than Clexton does in those assigned by Eddy to Cipperly and Stannard and by Cipperly and Stannard assigned to Clexton.

Campbell can have no better standing in court, so far as the Ingalls infringements are concerned, than Clexton has in the Eddy infringement.

The spirit of the statute (§ 4919) would seem to require that the person *interested as assignee in the patent at the time of the infringement, was the only person in whose name an action at law could be brought for damages.*

Such, indeed, is the [construction given this section by this court.

" True meaning of the word interested, as employed in the
" last clause of the fourteenth section of the Patent Act, when
" understood and applied, is, that the right of action is given

" to the person or persons owning the exclusive right *at the* " *time the infringement is committed.*"

Moore *vs.* Marsh, 7 Wall., 515, at p. 520.

Miss Ingalls, under this decision, is the person interested in the infringements prior to Campbell's purchase from her in January, 1877.

If there is any logic in Campbell's argument against Clexton's claim to own the infringements which accrued to Eddy prior to March 31, 1879, it necessarily follows that Campbell did not get from Ingalls any past infringements whatever, and that his recovery against James is too large by the amount of the profits that accrued prior to January, 1877.

XII.

Appellant Campbell relies on Bell *v.* McCullough, 1 Fisher's Pat. Cases, 380, and Gordon *v.* Anthony, 16 Official Gazette, 1135.

Bell *v.* McCullough.

Action *at law* for damages. Patent had expired.

Defense: " Since the expiration of the patent, the patentee " had assigned the same to one Christian Shunk, for whose " benefit the present suit was brought."

Judge LEAVITT charged the jury that this was no defense. Charge was not only correct, but it would have been a total miscarriage of justice to turn the plaintiff out of court on this defense.

The only possible way by which Shunk (the assignee of Bell) could ever collect these infringements *at law*, was in the name of Bell. In this way alone could § 4919 (or § 14, Act of July 4, 1836) of R. S. be satisfied, and Shunk get his rights.

So far from deciding that Shunk got nothing from Bell by the assignment, Judge LEAVITT added that it (the assignment) " may be good as a power of attorney authorizing the " assignee to collect for infringements."

On the facts (meagre as they are) Judge LEAVITT was right. Bell assigned to Shunk the patent *after* the expiration of patent.

Clearly Shunk got nothing by such an assignment, and the charge is correct from that point of view.

Gordon *v.* Anthony.

Facts of case:

Bill in equity for damages for infringement.

Patent issued October 19, 1858, and expired 1872.

Bill filed 1873 seeking damages for infringement since January 1, 1864.

In 1867 a Receiver was appointed "of all and singular the "debts, property, equitable interests, rights and things in "action of Ebenezer Gordon," the complainant. But Gordon *never executed and signed* any assignment of his patent rights to the Receiver.

On August 21, 1874, the Receiver executed an assignment to Anthony of "all the said Ebenezer Gordon's right, title "and interest in and to all and any claims under the said in-"vention, patent, letters patent, and patent rights."

Anthony thereupon made a motion for leave to file a supplemental answer, setting up the sale of August 21, 1874.

Judge BLATCHFORD denied the motion, and the decision seems correct.

The Receiver got no title to the Letters Patent in 1868, because Gordon never *signed* an assignment.

In support of the doctrine that the owner must *sign* the assignment, Judge BLATCHFORD cited

Stephen *v.* Cady, 14 How., 528.
Stevens *v.* Gladding, 17 How., 447.
Ashcroft *v.* Walworth, 1 Holmes, 152.

Assuming that the infringements from 1864 to 1866 vested in the Receiver, the latter did not transfer such infringements to Anthony by his assignment of August 21, 1874.

Such assignment conveyed "all the said Ebenezer Gordon's "right, title and interest in and under the said inventions, "patent, letters patent, and patent right."

These words would have conveyed the patent if the Receiver had had it (but he did not own the patent). They did not

carry claims for its infringement. In support of this Judge BLATCHFORD cited

Moore *v.* Marsh, 7 Wall, 515.
Dibble *v.* Augur, 7 Blatch., 86.

Much more comprehensive words were used in Dibble *v.* Augur without carrying the infringements. Judge BLATCHFORD did not decide that infringements could not be assigned to one not interested in the patent.

The citation of the case of Dibble *v.* Augur, also decided by Judge BLATCHFORD, proves the contrary.

For, in Dibble *v.* Augur, Judge BLATCHFORD held that Dibble, as Trustee for corporations, owned the patent, whilst Dibble, as Trustee for the patentee (quite a different Dibble, legally), held, as assignee from the patentee, the infringements.

XIII.

Clexton, as assignee of the Eddy individual interests, is clearly entitled to recover for claims for infringements prior to March 31, 1879, the sum of $6,125.

We next consider Clexton as the assignee of the Shavor interest and Caswell as the assignee of the Corse interest.

The assignments which vested these interests in Clexton and Caswell were recorded in Patent Office, and were filed by orders of court.

See pages 1638–9 of Record for Clexton's title to the Shavor interest.
See pages 1640–2; 1641 of Record for Caswell's title to the Corse interests.

The Shavor-Corse interests rest on the assignment & contract of October 23, 1869, executed by Norton to Eddy in trust for Eddy, Shavor and Corse.

By that assignment Eddy, as such Trustee, obtained an undivided one-third of this patent.

See Assignment, page 1147 of Record.

Eddy, on September 13, 1878, caused his stipulation of June, 1878, to be filed in court, wherein he stipulated that his rights and interests, individually and as such Trustee, are *fixed and determined* by the above assignment of October 23, 1869.

See Stipulation, page 654 of Record.

Eddy (and Campbell, as his assignee, who likewise executed the same stipulation) is bound by that stipulation. His rights and interests, individually and as Trustee, are to be found are "fixed and determined"—in that particular assignment of October 23, 1869, and nowhere else. It seems to be an imposition on the court for Eddy or Campbell, as his assignee, to say now that another paper filed June 29, 1878 (prior to the filing of the stipulation of June, 1878), totally changes Eddy's relations to Shavor and Corse, and, therefore, to Clexton and Caswell), and makes Eddy out a different sort of a Trustee from what he was under the assignment of October 23, 1869, or makes him out no Trustee at all, but the absolute owner of the one-third interest, free of all trusts.

Yet, Campbell, on this appeal, has the boldness to claim that an alleged assignment of Shavor and Corse to Eddy, in trust, dated December 18, 1876, filed June 29, 1878, has completely altered Eddy's relation to Shavor and Corse (and, therefore, to Clexton and Caswell).

See that alleged Assignment, page 577 of Record.

Eddy's stipulation of June, 1878, is an unanswerable reply to this claim; for that stipulation puts Eddy's rights and interests individually and as Trustee, as *fixed and determined* by the assignment of October 23, 1869, and not by that of December 18, 1876.

The alleged assignment of December 18, 1876, as an assignment, is a nullity. Eddy, as Trustee, already held the complete title to the one-third of the patent. The alleged assignment of December 18, 1876, purports to convey to Eddy, as Trustee, Shavor's and Corse's interests in the patent, and nothing more.

It assigns to Eddy, *in trust*, "all the right, title, and interest " of every name and description, which we (Shavor and Corse)

"now have, in, to, or for the said Letters Patent and the "inventions and improvements * * intending herein and "hereby to sell, assign, and transfer unto him, the said "Charles Eddy, *in trust*, all our right, title and interest and "ownership in any and all of the said several Letters "Patent."

See page 576 of Record.

That is an attempt to assign, in trust, to Eddy their rights in the patent; as Eddy already held, as Trustee, such rights, it is clear that nothing passed to Eddy by this alleged assignment.

It is true that Shavor and Corse purport to give to Eddy the power of settling with infringers, and *with infringers only*.

But such a power is revocable at the will of the givers. And it is to be presumed that this power was revoked by Shavor and Corse, or else Eddy would not have filed the above stipulation of June, 1878, "*fixing and determining* his rights, *individually* and as Trustee, by the assignment of October 23, 1869.

To be on the safe side, Caswell and Clexton long before March 20, 1880, divested Eddy of such alleged power to settle with infringers. This is not in the record, but it is here stated to show how dangerous might be the consequences of putting aside Eddy's stipulation of June, 1878, wherein he *expressly and unqualifiedly limits all his rights in the suit individually and as Trustee to the assignment of October* 23, 1869, and thus repudiates any other powers or rights which Campbell now claims belong to Eddy through the alleged assignment of December 18, 1876.

First.—As to Caswell.

The assignment of October 23, 1869, vested one-third of the title in Eddy, Shavor and Corse.

Eddy was in no proper sense a Trustee, and in a court of equity each of the parties to that instrument will be considered as invested with a one-ninth interest in the title; for where a deed is made to three persons, the presumption of law is that each takes an undivided third, in the absence of proof that the respective interests are otherwise.

On March 27, 1879, Corse assigned all his interest (one-ninth) to Caroline G. Caswell.

See page 1628 of Record.

On January 16, 1880, Caroline G. Caswell assigned this interest to Herbert M. Caswell.

See page 1640 of Record.

On the same day Herbert M. Caswell assigned this interest to Horace T. Caswell, the respondent on this appeal.

See page 1641 of record.

To quiet any possible differences between Samuel R. Clexton and Horace T. Caswell as to this one-ninth interest, the following further assignments affecting the "Corse" interests were made.

On March 1, 1880, Albert C. Corse made an assignment of his interests to Samuel R. Clexton.

See page 1641 of Record.

On March 9, 1880, Clexton assigned to Caswell the "Corse" interest.

See pages 1641-2 of Record.

All of the above assignments were duly recorded and filed.

See Order of Court, page 1641 of Record.

The above assignments vested in Caswell the one-ninth of the patents and one-ninth of all profits and damages for its past use and one-ninth of the recovery, to wit, $7,000.

Second.—As to Clexton's beneficial title.

Shavor, under the same assignment October 23, 1869, owned one-ninth of the patent.

Shavor died in 1878.

See page 728 of Record, Corse's Testimony.

Shavor's personal representatives conveyed the "Shavor" interest to Clexton, March 3, 1880. This assignment is recorded, and was filed by order of court.

See pages 1638-9 of Record.

This assignment vested in Clexton one-ninth of the patent and one-ninth of the profits and damages for its past use, and one-ninth of the recovery, to wit, $7,000.

As we have seen above, Eddy owned individually, under the said assignment of October 23, 1869, one-ninth of the patent. All profits and damages for the infringement of that one-ninth which had accrued to Eddy up to March 31, 1879, were assigned by Eddy to Cipperly and Stannard by Eddy's general assignment of March 31, 1879, and were thereafter assigned by Cipperly and Stannard to Samuel R. Clexton, by assignment of January 7, 1880.

Both these assignments are in evidence.

See pages 1632–6 of Record.

Through these two assignments Clexton is entitled to $6,125, in addition to the $7,000 due him on the Shavor interest, *i. e.*, Clexton is entitled altogether to $13,125 of the recovery, and Caswell to $7,000.

XIV.

Both Caswell and Clexton were not only *proper*, but also *necessary* parties to this suit.

Eddy was but their *nominal* Trustee under the assignment of October 23, 1869, above mentioned (and Eddy's stipulation of June, 1878, by which he became a party to this suit, "*fixes and determines*" all of his rights and interests individually and as Trustee by that assignment).

Where the Trustee is merely nominal, the *cestui que trust must* be made a party.

Malin *v.* Malin, 2 John. Ch. R., 238, and at p. 239.

A *cestui que trust must*, in all cases, be made a party.

Kirk *v.* Clark *et al.*, Precedents in Chancery, p. 275.

"It is, therefore, the ordinary case of a Trustee prosecuting "a claim for the benefit of the *cestui que trust*, in which the "latter should be made a party."

Fish *v.* Howland, 1 Paige, at pp. 23–24.
Perry on Trusts, § § 873–4.

In this suit Caswell and Clexton were imperatively needed as parties.

Eddy was a bankrupt, a fugitive from the State, and hostile to his *cestuis que trust*. He shamefully neglected his duties, and wantonly obstructed Caswell and Clexton in their attempts to guard their valuable interests involved in this suit, refused to permit his name to be used, or anything to be done, at the most critical stage of the litigation in which the "one-third" interest was especially at stake. Within six weeks after the court made Caswell and Clexton parties, and it was clear that the one-third interest would be attended to, even against Eddy's will, Eddy is said to have made a complete transfer of all his interest to Campbell.

See Caswell and Clexton's motion papers to be made parties, at pages 1569–1573 of Record.
See order of court admitting them as parties, page 1576 of Record.
See alleged deed, Eddy to Campbell, page 1658. of Record.

Eddy would have sacrificed not only his trust interest, but the individual interests that he owned prior to March 31, 1879, but for the court permitting Caswell and Clexton, the purchasers of such beneficial and individual interests, to come in, show their interests and defend.

The Circuit Court fully recognized Eddy's faithless and hostile conduct, and permitted the solicitor for Caswell and Clexton to continue as solicitor for Eddy as Trustee, and denied the motion of Eddy as Trustee for a substitution. The order denying this motion was made March 11, 1880.

See page 1643 of Record.

The date of the alleged deed from Eddy to Campbell, is March 20, 1880 (see page 1658 of Record). *Eddy was clearly in collusion with Campbell.*

We may, therefore, fairly charge, in the language of the United States Supreme Court, that Eddy had proved "faithless to his trust," and here, as there, the *cestuis que trust* were treated as the real parties.

Littlefield *vs.* Perry, 21 Wall., at p. 223.

" When a Trustee comes into equity claiming its protection
" for his legal title, as against the *cestuis que trust*, it is com-
" petent for the court to declare that title subject to the trust,
" and to restrain the Trustee from asserting any further claim
" in violation of this trust."

Blake *vs.* R. R. Co., 56 N. Y., p. 493.

Clexton's right to protect the choses in action he bought from Cipperly and Stannard is equally clear.

A licensee can bring a suit and use his licenser's name in an action at law, even against the will of such licenser.

See Goodyear *vs.* McBurney, 3 Blatch., 32.

In equity, the licensee can sue, joining the licenser with him.

Here, Clexton's appearance in this suit in which Eddy, his assignor, already was a party, was *proper*, and because of Eddy's evident purpose not to protect the interests assigned to Clexton, such appearance was *necessary*.

SECOND.

As to the rights, if any, of Christopher C. Campbell under the alleged assignment of March 20, 1880, *purporting to be executed by Eddy to Campbell.*

See page 1658 of Record for such instrument.

I.

The court filed this instrument on August 18, 1880, on the condition that it should be "*without prejudice to the rights of* "*any parties in interest, except those who have signed the agreement* "*of March* 20, 1880, *and the assignment from Eddy to Wooster.*"

See Order of Court, page 1657.

The order, therefore, specially limits the parties who are to be affected by it, and thereby excludes any attempt to show that the interests of Clexton, Caswell and Eddy, as their Trustee (they not being among the parties mentioned in the order), are in any way affected by such order.

The final decree shows this still more strongly. It permits Campbell to have the $875 which belonged to Eddy, but it decrees Eddy *individually*, and, as Trustee, to be the owner of the one-third of the patent.

See Final Decree, page 1664 of Record.

It was not intended that Eddy's one-ninth interest in the patent should vest in Campbell, as Clexton is vitally interested in that one-ninth.

See Clexton's Appeal, No. 1098.

The decree accordingly ignores Campbell's claim of ownership. It was purely discretionary with the court whether to make the order of August 18, 1880, or not.

It was in its discretion to make such order on terms, and it did so. The terms were, in effect, that such alleged assignment of March 20, 1880, should not be construed as a transfer of any title from Eddy to Campbell, or of any of Eddy's interest to Campbell, except Eddy's part of the money recovery, to wit, $875.

The final decree, as above seen, was entered accordingly.

II.

Therefore Campbell cannot claim in this court, as against Clexton, Caswell, and Eddy, as their Trustee, that Eddy transferred any of the legal title to the patent to Campbell.

So far as Eddy had individual interests in that title and damages for its past use, Clexton was interested therein.

So far as Eddy, as Trustee, had such interests, both Caswell and Clexton were interested therein.

III.

Transfers *pendente lite* do not affect such litigation.

In the Circuit Court there was an action pending between Eddy, Clexton and Caswell.

The instrument of March 20, 1880, being made, if at all, pending such litigation, cannot, on well settled principles, affect such litigation.

The final decree recognizes that principle.

IV.

The instrument of March 20, 1880, is, and purports to be, the instrument of Eddy individually. It nowhere conveys a one-third interest in the patent, or one-third of the damages for its use. It conveys Eddy's *own interest*, if anything.

See Instrument, page 1658–9 of Record.

Eddy, *individually*, under the opinion of the court (see page 1651 of Record), owned one-ninth of the patent, and all damages for its use subsequent to March 31, 1879, and $875 of the recovery.

He had other interests *as Trustee* for Caswell and Clexton, to wit, two-ninths of the patent, and two-ninths of claim for its past use, and also had interests as assignor for Clexton of all choses in action for the use of his (Eddy's) individual one-ninth that had accrued prior to March 31, 1879.

It will not be presumed that a deed purporting to assign simply Eddy's interest (he having such), in fact carries also

such interest as Eddy may have *as Trustee*, or *as assignor for his assignee.*

Courts do not presume fraud.

The presumption is the other way, *i. e.*, that Eddy intended to convey, and did convey, his *individual* interest only, if anything.

Therefore, the interests of Caswell and Clexton as *cestuis que trust*, and of Clexton as assignee of choses in action, accruing to Eddy prior to March 31, 1879, are in no way affected by the instrument of March 20, 1880, as Eddy's alleged deed neither purports to, nor does in fact, convey them.

V.

Campbell had actual notice of the interests of Shavor and Corse, for Campbell and Eddy both executed the stipulation of June, 1878, wherein Eddy *fixed and determined* his rights individually and as Trustee, by the assignment of October 23, 1869, and in the same stipulation Campbell admitted such to be the case, unless the contract of October 7, 1871 (specified in stipulation) affected such assignment.

See Stipulation of June, 1878, page 654 of Record.

The evidence as to the cancellation of the contract of October 7, 1871, was taken in February, 1880, and argument had thereon March 11, 1880.

See pages 1579-1634 of Record.

Eddy's general assignment to Cipperly and Stannard, and the assignment of Cipperly and Stannard were filed in court in February, 1880, in presence of Campbell's counsel. The assignment to Clexton was recorded January 16, 1880.

See page 1616 of Record.

See page 1635-6 of Record.

The Shavor deed to Clexton was recorded in Patent Office on March 5, 1880, and filed by order of court, on March 11, 1880.

See pages 1638-9 of Record.

All the assignments vesting the Corse interest in Caswell, were recorded in the Patent Office, and filed in court by order of court, on or before March 11, 1880.

See pages 1640–2, 1628.

Eddy's alleged deed to Campbell is dated March 20, 1880.

Campbell had therefore both actual and constructive notice of the rights of Clexton and Caswell, and if he took anything from Eddy by the March 20, 1880, instrument, he took it subject to the equities existing between Eddy and Caswell and Clexton. It follows necessarily that Clexton's and Caswell's right to recover $13,125, and $7,000, respectively, is in no way affected by the instrument of March 20, 1880.

VI.

Campbell claims that the alleged Shavor and Corse assignment to Eddy in trust, dated December 18, 1876 (see page 576, of Record), in some way or other permits Eddy to sell the one-third interest to Campbell, free of any trust on part of Campbell. This alleged assignment December 18, 1876, is discussed under the First subdivision of this Brief. Point XIII.

It is enough to say here—

First.—That the stipulation of Eddy, of June, 1878 (signed by Campbell also), has formally, for all the purposes of this suit, *fixed and determined Eddy's rights and interest, individually and as Trustee*, in the *assignment of October* 23, 1869, and not in the alleged one of December 18, 1876.

The stipulation, of June, 1878, was acknowledged September 11, 1878, and filed in court Sept. 13, 1878, with full knowledge that the alleged assignment of December 18, 1876, was then on file—having been filed June 29, 1878.

See for Stipulation page 654 and 656 of Record; for December 18, 1876, instrument, see page 576 of Record.

Second.—The alleged assignment of December 18, 1876, recites that the purpose of making it is for the *sole* purpose of giving one person power to settle with *infringers*. It then purports to vest Eddy in trust "with full power to enforce "*settlement and payment* for the past or future use of said "patent, and hereupon and hereby the said Charles Eddy is "vested with full and absolute power over, and control of any "and all settlements, and to settle and receipt for, and to sign "any and all necessary papers concerning either the past or "future use of the said inventions and patents, or either one "or more thereof, in *settlement and payment* for such use by "and with person or persons, corporations, government or any "body whomsoever."

See page 576 of Record.

This is a bare power of attorney for the *sole* purpose of making settlements and payments with *infringers*. A power to sign papers in *settlement and payment*, means with *infringers*. Indeed, the express recital is that such is the SOLE power given to Eddy.

Such a power cannot authorize Eddy to *give* the infringements and patent away; nor to settle with a *stranger* other than an *infringer*.

A power to enforce collection and settlement and *payment* of a debt is no authority to sell the debt to one not the debtor. Such a sale does not *extinguish* the debt, and the attorney has not effected a settlement *and payment* of the debt.

So the use of the patented improvements has not been settled and *paid* for by Eddy's alleged *sale* to Campbell. If such a sale is payment for such use, James must be entitled to a reduction of one-third on the recovery.

Third.—For reasons stated in Point XIII, subdivision First, page 19 of this brief, Eddy, as Trustee, received nothing from Shavor and Corse by this alleged assignment of December 18, 1876.

It was a power of attorney only; such power was not coupled with an interest, and was therefore revocable at the will of Shavor and Corse.

Eddy's stipulation of June, 1878, is conclusive proof that such power has been revoked.

Moreover, Caswell and Clexton, out of abundance of caution, long before March 20, 1880, revoked such power, and notified Campbell of such revocation. This is not of record. It is stated to show the wisdom of looking to the assignment of October 23, 1869, for Eddy's interests and rights. This is what the Circuit Court did.

THIRD.

We now come to the rights of Christopher C. Campbell on the one hand, and the rights of Eddy, Caswell and Clexton on the other hand.

Under this head we have nothing to do with the rights of Eddy, Caswell and Clexton, as between themselves discussed in subdivision *first* of this brief. Nor do we have anything to do with the alleged assignment of March 20, 1880, executed by Eddy to Campbell discussed in subdivision *second* of this brief.

I.

Norton's patent was issued April 14, 1863, and was assigned by Norton to Jacob Shavor and Albert C. Corse, April 20, 1863. Such assignment was recorded March 8, 1864.

See page 462 of Record.

Shavor and Corse *never* reassigned this patent to Norten.

See Testimony of Eddy, pages 759–764 of Record.
See Testimony of Corse, pp. 728–734, and also pp. 752–3 of Record.

But Norton put on record in the Patent Office an alleged reassignment by Shavor and Corse to Norton.

This alleged reassignment to Norton was recorded in 1869, but is *dated* February 23, 1864.

See pages 467–471 of Record.

From 1864 to 1869 Shavor and Corse spent, through Norton, $18,500 on this invention.

See Eddy's Testimony, page 764 of Record.
Corse's Testimony, pp. 733–5 of Record.

Part of this $18,500 belonged to the firm of Eddy, Shavor & Corse, and in settling up the affairs of that firm, Shavor and Corse agreed with Eddy that Eddy should have one-third of their interest in this patent.

See Eddy's Testimony, page 563 of Record.

On hearing of the recording of the alleged reassignment Eddy went to Washington in October, 1869, authorized by Shavor and Corse to effect a settlement with Norton.

See Corse's Testimony, page 751 of Record.
Eddy's Testimony, page 761 of Record.

A settlement was effected in October, 1869, by Eddy with Norton, by which settlement Norton assigned to Eddy, in trust for Eddy, Shavor & Corse, the undivided one-third of this patent. This is the assignment dated October 23, 1869, and recorded October 25, 1869.

See Agreement, page 1251 of Record.
See Assignment, page 1147 of Record.

Norten thereafter assigned his interest in the patent to Helen M. Ingalls by an assignment, dated October 23, 1869, but not recorded until August 1, 1870, more than three months after the assignment to Eddy in trust.

See page 478 of Record.

On August 15, 1870, in a written agreement with one W. W. Secombe, Norton recognized that Eddy, as Trustee, owned said one-third of the patent, and agreed that Secombe should have one-fourth of the patent, *provided* Norton recovered from Eddy, Shavor & Corse said one-third of the patent.

See page 1152, near bottom.

On October 4, 1870, Miss Ingalls made an agreement in writing with Secombe, referring to this agreement between Norton and Secombe, and ratifying and confirming it as if made by her.

See page 1153 of Record.

March 4, 1871, Miss Ingalls assigned her interest in the patent to W. W. Secombe.

See page 1154 of Record.

On October 7, 1871, Secombe, Eddy, Shavor and Corse executed a contract as to the division of $62,000, in process of recovery from the United States on a *certain* claim.

See page 602 of Record.

Secombe reassigned to Ingalls July 10, 1873.

See pages 1154–6 of Record.

Ingalls assigned to Campbell, the appellant, January 2, 1877.

See pages 1157–9 of Record.

Campbell began suit June, 1877, against James.

James set up the non-joinder of Eddy, in trust for Eddy, Shavor & Corse.

See page 61 of Record.

Thereupon Eddy and Campbell executed the stipulation of June, 1878, and on that stipulation and on Campbell's motion, Eddy was made a defendant in trust for himself, Shavor and Corse on September 13, 1878.

See page 655 of Record.

The stipulation of June, 1878, contains the following admissions and agreement, to wit:

Eddy, as Trustee, "claims that his rights and interests "in the subject matter of this suit are fixed and determined "by an assignment from Marcus P. Norton to him in trust "of a one-third interest in the patent dated April 14, 1863,

"and its reissues referred to in the pleadings in this case, "which said assignment is dated October 23, 1869, and a certi- "fied copy of which is now in evidence, and by a contract of "even date with said assignment now in evidence, and that "said complainant denies this, and claims that said Eddy's "rights and interests are fixed and determined by an instru- "ment in writing, dated October 7, 1871, and executed by "Charles Eddy, Jacob Shavor, Albert C. Corse, and W. W. "Secombe, a certified copy of which is now in evidence. And "it is further stipulated and agreed that upon the pleadings "and evidence as they now stand, and without any further "evidence or pleadings in the case, unless the court shall "otherwise direct, said court shall decide as to what the rights "and interests of said Eddy in the subject-matter of this suit "are, and shall make such decree in respect thereto as equity "and good conscience may require. And it is further agreed "that if there is recovery in said suit against said defendant, "James, the court shall determine the rights respectively "thereto of complainant, and said Eddy, as equity and good "conscience may require. And said complainant further "agrees that the said assignment of October 23, 1869, from "Marcus P. Norton to Charles Eddy, in trust as aforesaid, was "a valid assignment, not affected by any prior or cotempora- "neous assignment by said Norton to Helen M. Ingalls, or "or other written agreement to which said Eddy is a party, "excepting the one hereinbefore referred to, and dated October "7, 1871."

The stipulation is executed by Christopher C. Campbell and Charles Eddy, is approved of by Marcus P. Norton and Helen M. Ingalls, and Mr. George H. Williams is one of the subscribing witnesses.

The stipulation agrees that Eddy's rights individually and as Trustee, are either in the October 23, 1869 assignment, or in the October 7, 1871 contract, and Campbell admits that the October 23, 1869 assignment, is a valid assignment, not affected by any prior or cotemporaneous assignment by Norton to Ingalls (thus excluding the assignment dated October 23, 1869, recorded August 1, 1870, see page 478 of Record), nor affected by any other written agreement to which said Eddy is a party, excep

the agreement of October 7, 1871 (thus excluding (1) the agreement of October 23, 1869, see page 1251 of Record; (2) the alleged assignment of Shavor and Corse to Eddy, in trust, dated Dec. 18, 1876, see page 576 of Record.

The effect of such stipulation puts the rights of Eddy, Shavor, and Corse, on either the October 23, 1869, assignment, or on the October 7, 1871, contract.

The issue thus raised between Campbell on one hand, and Eddy, Shavor and Corse (or their assigns, Caswell and Clexton) on the other hand, was the *only* issue litigated in the Circuit Court between these parties.

Eddy, under the stipulation, had the right to take further testimony on this issue, for it provided that the court could direct further testimony to be taken.

See Stipulation, June, 1878, page 655 of Record.

Eddy neither took further testimony, nor did he appear in the suit until, in December, 1879, his *cestui que trust* Caswell insisted on it.

See Caswell's affidavit, page 1574 of Record.

Permission was given by the court, Dec. 23, 1879, to take testimony as to the cancellation of the contract of October 7, 1871.

See Order, pages 1567–8 of Record.

Such testimony was taken, and the contract satisfactorily proved to have been cancelled in March, 1872.

See Testimony, pages 1582–1636 of Record, and particularly pages 1623–5 of Record.

See Opinion of Court, pages 1646–1651 of Record,

The order of December 23, 1869, was granted on certain terms.

See Order, page 1568 of Record.

These have been fully complied with.

See Campbell's Notice of Motion (near end of it) pages 1652–3.

The Circuit Court decreed that Campbell owned but two-thirds of the patent; that the other one-third was owned by Eddy, Caswell and Clexton.

See Final Decree, page 1664 of Record.

II.

The above plain recital of facts, commencing with April 14, 1863, and ending with the final decree is in itself a convincing proof that Campbell owns but two-third of the interests involved in this suit, and that the other one-third belongs to Eddy, Caswell and Clexton.

III.

Campbell may say that Eddy, as Trustee, received nothing by the assignment of October 23, 1869, from Norton, as he claims that Norton had already assigned everything to Miss Ingalls.

The answers to this claim are numerous and convincing.

1st. The stipulation of June, 1878, executed by Campbell and approved of by both Norton and Ingalls, "agrees that the "said assignment of October 23, 1869, from Marcus P. Norton "to Charles Eddy, in trust, as aforesaid, was a valid assign-"ment, not affected by any prior or cotemporaneous assign-"ment by said Norton to Helen M. Ingalls."

See page 655 of Record.

2d. On August 15, 1870, Norton, in writing, admitted that Eddy, as Trustee, owned one-third of the patent, through the settlement October 23, 1869, and agreed that Secombe should have one-fourth of the patent, *provided* Norton regained from Eddy, Shavor and Corse that one-third.

See page 1152, near bottom.

On October 4, 1870, Miss Ingalls made an agreement, in writing, with Secombe, referring to this agreement between Norton and Secombe, dated August 15, 1869, ratifying and confirming it as if made by herself.

See page 1153 of Record.

3d. The date of Norton's assignment to Helen M. Ingalls, is October 23, 1869, but it was not recorded until August 1, 1870—more than three months after its execution. It is, therefore, void, as against a *bona fide* purchaser for value without notice.

U. S. Rev. Stat., 4898.

Eddy, Shavor and Corse were such purchasers from Norton of their one-third.

See Testimony, Eddy, pages 763–4 of Record.

4th See Addenda to this Brief

IV.

The agreement of October 23, 1869, collateral with the assignment of October 23, 1869, in no way affects the assignment of October 23, 1869.

See that Agreement, page 1251 of Record.

The stipulation of June, 1878, admits that the assignment of October 23, 1869, is valid, and is not affected by any written agreement, except the written agreement of October 7, 1871.

See Stipulation, page 654 of Record.

Eddy, Shavor and Corse executed to Norton the releases mentioned in the agreement of October 23, 1869.

See Eddy's testimony, pp. 764. Answer to questions 79, 80.

V.

Counsel for Caswell and Clexton understands that Campbell admits now the cancellation of the contract of October 7, 1871.

See Contract, page 602 of Record.

A few words are, however, here added as to this cancellation:

It is conclusively proved that the agreement of October 7, 1871, was cancelled by consent of parties on March 30, 1872, more than a year before the assignment by Secombe to Ingalls, which took place on July 10, 1873.

There is no conflict of evidence as to the cancellation, but it is conclusively proved.

Norton did not contradict the testimony.

The agreement (called Secombe *Original*, to distinguish it from the certified copy used on the James trial), appears at page 1623 of this Record, and the endorsements of cancellation on it, with letters, &c., showing the authority given by Secombe to Norton (who acted for Secombe in the matter) to cancel it, appear at pages 1624 and 1625 of the same.

Norton, on behalf of Secombe, cancelled it by an endorsement at page 1625, and Green, who represented the other parties, also cancelled it, and the paper was surrendered to Green as a cancelled instrument.

See Green's testimony, pp. 1585–7, also p. 1597

The names of the parties were erased by Norton.

See Green's testimony, pp. 1598–9; also pages 1587, 1589, 1590. Also Corse's testimony, p. 1615. Also stipulation as to Ransford's testimony, 1615.

Green had authority from Eddy, Shavor and Corse to procure the agreement to be cancelled, and he did it at their request, and it was approved by all of them after it was done.

See Green's testimony, pp. 1586–7; 1607–8. Corse's testimony, pp. 1612–3.

The authority to cancel, given by Secombe to Norton, is also proved conclusively.

Green called on Secombe on behalf of Eddy, &c., and demanded that the agreement be cancelled, and Secombe said he "would attend to it right away."

See page 1586 of Record, Green's testimony.

Either that day or the next, Norton produced and cancelled the agreement.

See Green's testimony, pp. 1585–6; 1595–6; 1600. Also Exhibits, pp. 1624–5.

Norton's authority was by letter from Secombe.

See page 1624 of Record.

This letter is proved to be in the handwriting of Secombe.

See Holt's testimony, p. 1582 and *seq.*, and Drinker's testimony, pp. 1584 and 1585; and Green's testimony, p. 1585 and p. 1599.

And there is no contradiction on this point. Norton, who produced and acted on the letter, did not venture to deny it.

And Norton does not deny either the authority or the cancellation.

The letter from Norton to Eddy, of March 25, 1872, only five days before the cancellation, evidently contemplates it.

See page 1622 of Record.

And Norton, who produced the letter on that occasion, does not venture to swear that it was not written by W. W. Secombe.

Green noted it as being done on March 30, 1872, while the memorandum by Norton is dated April 3, 1872.

See p. 1625.

But Green swears that Norton's memoranda were written on March 30th, and that April 3d is an error, to which Norton's attention was called, and he said it was immaterial.

See pp. 1597–8–9, 1600.

And Norton does not deny all this, nor any of our testimony as to the cancellation.

The contract was not an *assignment*, or anything which touched the title.

And not being under seal, or required to be under seal, even

if it was an *assignment* (see Van Ostrand *vs.* Reed, 1 Wend., p. 431, near middle), it could be cancelled by parol.

Even contracts which are required to be in writing by the Statute of Frauds, may be modified or cancelled by parol.

See Cummings *vs.* Arnold, 3 Metcalf (Mass), 486, and at p. 489.

Goss *vs.* Lord Nugent, 5 Barn & Adol., at top of p. 65.

But this agreement of October 7, 1871, not being an *assignment*, and hence not being required to be in writing, might be cancelled or rescinded by any acts which indicated the intention of the parties.

Not even an express agreement was necessary.

See Thrasher *vs.* Bentley, 1 Abb. New Cases, 39, and at page 45, where it is said:

"By their declarations, their acquiescence in declarations, "and their act, they may come to an understanding that the "contract should be annulled, and not held as binding by "either upon the other.

"A recision may be by consent. It need not be expressed "as an agreement."

As for the authority to Norton to cancel (p. 1624), it was ample. It need not have been in writing. Even as to lands, under the Statute of Frauds (except in some few cases where the statute requires the authority of the agent to be conferred by writing), a verbal authority to the agent is enough.

See Munn *vs.* Worrall, 5 N. Y., at p. 243.

Whatever, then, was the effect of this instrument, it was cancelled by Secombe before he transferred his rights to Ingalls.

Neither the cancellatien, nor the agreement of October 7th, 1871, were entitled or required to be recorded, as they were neither "an assignment" or a "grant or conveyance."

It is well settled that nothing which does not come within the recording acts is entitled to record.

See Brooks *vs.* Byam, 2 Story, 525, and at pp. 541 and 542.

Hamilton *vs.* Kingsley, 17 Patent Office Gazette, 147, and at p. 150.

Even a *license* is not within the recording acts.

Farrington *vs.* Gregory, 4 Fisher's Patent Cases, 221, and at p. 223.

And see Chambers *vs.* Smith, 5 id., at p. 14.

The language of the court in Gillig *vs.* Maass, 28 N. Y., at p. 212, applies so well here, both as to the point that the recording of a non-recordable instrument is a nullity, and as to the nature of this merely personal agreement, that we quote it:

"It was not a paper entitled to record, * * * * "and hence its record was not notice—even to subsequent "purchasers. * * * In terms and effect, it was a mere "personal contract between the two holders of mortgages. * "* * * No interest in the mortgage itself, no title or "right to the prior bond and mortgage, was transferred to "Jones."

Independently of the recording acts, an assignee can only take the interest of his assignor.

Neither the agreement of October 7th, 1871, nor its cancellation, being recordable, it follows that, even if Secombe *had* assigned to Ingalls his interest in the personal contract contained in the agreement, the latter would have taken nothing, since the agreement had been cancelled before Secombe transferred to Ingalls.

But the result would be the same on these proofs, even though the cancellation was recordable.

An unrecorded instrument is perfectly good except as against "purchasers for value and without notice."

See Brooks *vs.* Byam, 2 Story, 525, and at p. 552, near top.

Perry *vs.* Corning, 7 Blatch., 195, and at p. 200, near foot, and p. 201, near foot.

Pitts *vs.* Whitamn, 2 Story, 609, and at pp. 615, 616, 617 and 618.

And if the agreement ought to have been recorded, and the complainant claims to have taken Secombe's interest without notice of it, the burden is on him to plead and prove it, which is not done.

See Perry *vs.* Corning (*supra*), head note, p. 195, and at foot of p. 201, and top of p. 202.

VI.

The rights of Eddy, Caswell and Clexton to the "one-third" would seem to be conclusively established. But Campbell's counsel, in their petition of appeal, rely on a certain alleged private resolution of Congress, dated July 14, 1870, and a certain alleged report to Congress, by John A. J. Cresswell, dated February 25, 1871, as a means of proving that Eddy, Caswell and Clexton have no interest in this suit.

See pages 502–6 of Record for those papers.

This claim is absurd. It is difficult to understand why Campbell's counsel take this position.

Congress and the President together cannot deprive any "person of life, liberty or property without due process of "law."

That was a queer sort of a court! Was Mr. Cresswell a Referee appointed to hear and determine this matter?

He hardly constituted a supreme court; nor does it appear that he was an inferior court. Such are the only courts in which the judicial power of the United States is invested.

Mr. Cresswell's report does not have the usual decisive character of decrees or judgments; he *believes* Miss Ingalls to be the owner of the patent; he cannot make up his mind what the owners of the patent ought to have as compensation, and he very wisely sends report, exhibits and testimony (which, by the way, are no where in this record) back to Congress, where it all sinks into oblivion, until appellant's counsel digs up some portion of it to present to this court as evidence of the appellant's title!

Appellant's counsel cannot seriously believe that these two papers have any bearing on the issues in this suit.

These papers have not been properly proved in evidence.

See page 75 of Record when they were offered in evidence.

All the alleged proceedings before Mr. Cresswell are, so far as Eddy, Shavor, Corse, Caswell and Clexton are concerned, *res inter alios acta.*

Campbell, in the stipulation of June, 1878, admits that the rights of Eddy as Trustee are either absolutely in the assignment of October 23, 1869, or in that assignment as affected by the contract of October 7, 1871.

See Stipulation, page 654 of Record.

VII.

The stipulation of June , 1878, "did not enlarge what "would have been before the court, with Eddy as a party de- "fendant, without such an agreement, for it would all the "while be necessary to determine his (Eddy's) rights, in order "to settle what would be left to the plaintiff, as the founda- "tion of any decree that might be made in his favor."

Opinion of Court, page 1647.

FOURTH.

The decree of the Circuit Court should be affirmed with costs and disbursements of the appeal, to be paid by Christopher C. Campbell to Samuel R. Clexton and Horace T. Caswell.

Dated January, 1881.

EDWARD D. BETTENS,
Of Counsel,
New York City,
New York.

United States Supreme Court.

CHRISTOPHER C. CAMPBELL, Assignee in Trust, *Appellant*, *vs.* THOMAS L. JAMES ET AL., *Respondents.*	No. 1101.

Addenda to Brief for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, their Trustee.

Campbell *now* claims that there was no settlement between Norton on one hand and Eddy, Shavor & Corse (from whom Caswell and Clexton get their interests) on October, 23, 1869.

See agreement, page 1251 of Record.
" assignment, page 1147 of Record.

He claims that Norton had assigned *everything* to Miss Ingalls prior to October 23, 1869, and that consequently on October 23, 1869, Norton had nothing to transfer to Eddy.

We therefore, in these addenda, present to the court a more minute history of the events culminating in the settlement of October, 1869, than appears in our original Brief.

The date of the patent involved in this suit is April 14, 1863. Inventor, Marcus P. Norton.

Norton, the inventor, and Jacob Shavor and Albert C. Corse, capitalists of Troy, New York, entered into an arrangement by which the title to the patent was to be transferred to

Shavor and Corse, and Shavor and Corse were to pay the expenses necessary in obtaining compensation for the use of the invention, and one-half of the net proceeds was to belong to them, the other half to Norton.

See Eddy's Testimony, page 751–2.

Thereupon Norton assigned to Shavor and Corse the patent, by assignment, dated April 20, 1863, and recorded March 8, 1864.

See Assignment, page 462 of Record.
See Bill of Complaint, page 7 of Record.
See Amended Bill of Complaint, page 25 of Record.

August 23, 1864. Patent surrendered by Shavor and Corse; new letters re-issued to them. Mr. Norton prepared the papers for such re-issue.

See Re-issue, page 463 of Record.
See Corse's Testimony, page 733, answer to question 60.

October 23, 1864. Shavor and Corse obtained a verdict against Edmund Hoole in U. S. Circuit Court, Northern District of New York, for infringement of the re-issued letters patent. Mr. Norton was complainant's witness.

See page 515–537 of Record, and particularly page 537.

Norton, in that trial, read in evidence his assignment of April 20, 1863, to Shavor and Corse.

See page 152 of Record.

1867. Shavor and Corse brought suit in the Court of Claims against the United States, for compensation for the use by the Government's officers of the patented improvement. Norton was the attorney for Shavor and Corse, and also a witness.

In their petition Shavor and Corse swear "that the entire "title in said invention and patent is now fully vested in the "said Shavor and Corse," (page 1329,) and Norton swears

"I have no interest in the claim which is the subject matter "of inquiry." (Page 1334.)

See proceedings in such suit, pages 1320 to 1341.

Between March, 1864, and July, 1869, Norton wrote many letters to Shavor and Corse about this patent, admitting that they were the *owners* of it; never claiming to have any re-assignment, and when in 1866, 1867 and 1868, trouble began to brew between Norton, Shavor and Corse, Norton's piteous cry was for them to "*assign the patent back to me* . . . so that "I can have my invention and my patent back again."

See Norton's letter to Shavor, April 21, 1867, pages 1264–6 of Record.

Again he writes to Shavor, "you have an assignment of the "whole patent, *and I have simply nothing.*"

See letter, April 25, 1867, pages 1244–6 of Record.

Again: "Had you *re-assigned* my patent as I proposed when "you were finding so much fault with me, I could, before "now, have paid you every dollar back. I *now ask you to do* "*so at once* . . . The stamp must come back unto my hands, "and if not done on my return, I will commence a suit in "Equity compelling you to return to me the title."

Letter to Shavor, June 27, 1868, page 1266 of Record.

Again: "I think that you and Shavor ought to assign to "me my full one-third part. Now I have nothing to show."

Letter to Corse, March 15, 1869, page 1269 of Record.

Over one hundred of Norton's letters written to Shavor and Corse between March, 1864, and July, 1869, and of like purport to the above letters, are in evidence. They are printed at pages 1160–1270 of Record.

During this same period Shavor and Corse, through Norton, as their attorney, made many applications to Congress and the Postmaster General for compensation for the use of this patent.

See Def'ts ex., 55, page 1183 of Record.
" " 112 " 1235 "
" " 113 " 1237 "
" " 122 " 1249 "
" " 165 " 1361 "

During the same period Norton stated to many persons that Corse and Shavor owned the patent.

See Testimony of Baldwin, pages 728–3 of Record.
" " Weed, pages 987–990 "
" " Merriman, pages 996–7 "
" " Corse, pages 752–3 "

May 3, 1869. Shavor and Corse revoked Norton's authority to act for them.

See Def'ts Ex. No. 121, A & B, pages 1247–8 of record.

July 24, 1869, the alleged re-assignment from Shavor and Corse to Norton, dated *February* 23, 1864, was recorded.

Corse and Shavor knew nothing of this alleged re-assignment until after it was recorded in 1869. They never executed it, and Corse (Shavor being dead) gives his reasons why it could never have been executed by them.

See Corse's Testimony, pages 730–3; 752–3; answer to question 270, page 753.

This alleged re-assignment is Defendant's Exhibit 126, page 1254, was offered in evidence at page 752, and was proved to be in Norton's handwriting at page 752.

Norton retouched the words and letters both of the body of the instrument and the jurat, (see pages 752 and 796,) and many other curious things are pointed out by the expert Dr. Ward, (pages 795–799.) Twice the number of revenue stamps are affixed to it than was required in 1864.

See 12 Stats. at Large, 479, Act of July 1, 1862.

Norton's assignment to Shavor and Corse is dated April

20, 1863; it was not executed until about *February*, 1864, (see Norton's testimony, answer to cross-question 177, page 162;) it was recorded March 8, 1864; Shavor and Corse's ownership was not generally known—not even to Eddy, their partner, on May 17, 1864.

See Norton's letter, May 17, 1864, page 1259.

The alleged re-assignment is *dated* February 23, 1864.
Norton swears it was *executed* on February 23, 1864.

See Norton's testimony, answer to cross-questions 79 and 80, page 148.

It recites that Shavor and Corse understand that the committee of the House of Representatives objects to rewarding speculative assignees, and to remove that objection, they, Shavor and Corse, execute this alleged re-assignment to Norton. It is to be noted—

(1.) That at no time and in no place between the date of that alleged re-assignment in 1864, and the date of its record in 1869, does Norton refer to this alleged re-assignment or tell anybody or committee about it.

(2.) The first information that Shavor and Corse ever had of any such objection was in 1867, in a letter from Norton to Shavor.

"Now, I may as well tell you one thing which has been a "source of trouble as to amount of compensation, especially "in committee. It is this: Dennison and the committee "look on the case and say that the Government were not re-"warding the inventor and patentee, but were paying assignees "who were a set of speculators."

Norton's letter to Shavor, January 2, 1867, page 1262.

(3.) In 1866, Norton wrote as follows to Dr. Baldwin:

"We, (Shavor, Corse and Norton,) have never for these "long years had a scrap of writing between us in our con-

" tracts and various agreements. *I have never asked any from*
" *them either.*"

Norton to Dr. Baldwin, June 22, 1866, page 1261.

Shavor and Corse for some time prior to 1869, had been in partnership with Charles Eddy. Such partnership was dissolved in February or March, 1869. On such dissolution it was discovered that $18,500 of the firms money had been spent by Shavor and Corse, on this patent, and to satisfy Eddy he was given an interest in the patent by Shavor and Corse.

Thereafter, on hearing of the recording of this alleged reassignment, Mr. Eddy went to Washington to make such arrangements as he thought fit.

See Corse's Testimony, page 751 of Record.
" Eddy's Testimony, page 761–'2 of Record.

Eddy saw Norton, and on October 23, 1869, the written agreement, dated October 23, 1869, was executed.

See Agreement, page 1251.

The third paragraph of that agreement conveys to Eddy in trust for Eddy, Shavor & Corse the undivided one-third part of the patent and its re-issue.

On the same day Norton executed a formal assignment (separate from any other agreements) to Eddy, as such trustee, of an undivided one-third of this patent. This was recorded October 25, 1869.

See Assignment, pages 1147–8.

Mutual releases of all indebtedness, required by paragraph 1st of agreement of October 23, 1869, were then exchanged.

See Eddy's Testimony, page 764.

Norton now claims that on October 20, 1869, he had assigned everything to Miss Ingalls, and that therefore *nothing* was assigned to Charles Eddy on October 23, 1869.

Norton's assignment to Miss Ingalls is dated *October* 23, 1869, and was recorded on August 1, 1870.

The Court's particular attention is called to the fact that the date of the Ingalls assignment is October 23d, and not October 20th.

See Assignment, pages 1150–1. And see especially the *Exhibit itself* transmitted to this court by the Circuit Court.

Neither Eddy, Shavor nor Corse ever had any knowledge of this Ingalls assignment until long after October 23, 1869.

See Eddy's Testimony, pages 762–3.

Norton has been Miss Ingalls authorized agent ever since the execution of the assignment to Miss Ingalls.

Mr. Norton swears that "*at the time I (Norton) made the as-*
"*signment to her (Miss Ingalls) the arrangement was that I should*
"*act for her, and exercise my own judgment in any matter con-*
"*cerning that patent.*"

See Norton's answer to cross-question 173, page 161.

He swears that he then assigned to Eddy in trust the one-third, *informed Miss Ingalls of it, and she did not object.*

See page 161, end of answer to cross-question 172.

On August 15, 1870, Norton, in writing, agreed with W. W. Secombe to transfer one-fourth of this patent to Secombe, *provided* Norton *recovered* from Eddy, Shavor & Corse the one-third they *held* under the settlement of October 23, 1869.

See page 1152, near bottom.

This was recorded November 1, 1870.

On October 4, 1870, Miss Ingalls, in writing, referring to this Norton-Secombe agreement of August 15, 1870, ratified and confirmed it as if made by herself. This also was recorded November 1, 1870.

See pages 1153–4 of Record.

Campbell offered in evidence a report of a Senate Committee, dated July 6, 1870.

See page 75 of Record for the offer.

See page 499–502 for the Report.

The complainant is bound by the statements of that report. That report shows that as late as July 6, 1870, Norton was a *petitioner* to Congress for a settlement and for compensation for the use of this patent, in *conjunction with* Eddy as trustee for himself, Shavor and Corse.

The report does not contain a word about Miss Ingalls; she is *not one of the Petitioners.* The whole scheme of an assignment to Miss Ingalls was evidently an afterthought of Norton's. As long as Norton and Eddy, as Trustee, could have acted together there never would have been any assignment to Miss Ingalls.

The friendly relations between Norton and Eddy, as Trustee, fell through, and on August 1, 1870, (25 days after the date of the above report,) the assignment to Ingalls, antedated to October 23, 1869, is recorded.

See Assignment, pages 1150–1.

Since then Mr. Norton has persistently endeavored to put the date of that assignment back to October 20, 1869.

In the court below he deliberately printed it as of that date, thus falsifying the record. Before the record was transmitted to this court the date was corrected in the printed copy that was sent up.

See such Record.

But curiously enough, it is printed even in this record thus "twentieth (twenty-third,") and at bottom of page, "word "twentieth" erased in red—Printer."

The assignment to Miss Ingalls is dated October 23, 1869, and not October 20, 1869, and is correctly printed at page 1150 of this record.

The original Exhibit offered by Campbell is before this court, and an inspection thereof will show that this is so.

It is evident that Norton in 1869, never assigned, and never could have assigned to Miss Ingalls, any interest in the patent, until *after* the settlement with Eddy, Shavor and Corse on October 23, 1869.

Until such settlement was completed, Shavor and Corse owned the *whole* title, and Norton, to use his own language, *had simply nothing.*

Letter of Norton to Shavor, April 21, 1867, pages 1264–6 of Record.

We maintain that the assignment of October 23, 1869, Norton to Eddy in trust, was by way of a further assurance of the title of Shavor and Corse, (and Eddy who took from them;) the recorded alleged re-assignment was a cloud on their title; the assignment of Norton to Eddy in trust removed that cloud as to one-third of the title; but until such settlement on October 23, 1869, Norton had nothing to convey to Miss Ingalls—for the alleged re-assignment was, we insist, a barefaced forgery.

WASHINGTON, *January*, 1881.

EDWARD D. BETTENS,
Of Counsel.

United States Supreme Court.

THOMAS L. JAMES,
Appellant,
vs.
CHRISTOPHER C. CAMPBELL ET AL.,
Respondents.

No. 945. Reply

Brief for Samuel R. Clexton, Horace T. Caswell, and Charles Eddy, their Trustee.

Clexton is the appellant in appeal numbered 1098 on this calendar. Clexton, Caswell and Eddy, as Trustee, are respondents in the appeal numbered 1101 on this calendar.

The court's attention, on this, James' appeal, is respectfully called to the brief of counsel for Clexton, filed in appeal number 1098, and to the brief of counsel for Clexton, Caswell and Eddy, their Trustee, filed in appeal number 1101.

The title of Eddy, Shavor and Corse, (and Clexton and Caswell, their assigns,) is in no way connected with that of Secombe, Ingalls and Campbell. Shavor and Corse owned the *whole* patent in 1864.

See Assignment, page 462 of Record.

They never re-assigned any part of that title to Norton.

See Addenda to brief for Clexton, Caswell and Eddy, their Trustee, filed in appeal No. 1101.

They took from Norton, on October 23, 1869, an assign-

ment of one-third of the patent, by way of a further assurance of their title because the record of that title in the *Patent Office* was endangered by this alleged re-assignment.

See same Addenda.

This was in effect a ratification of the alleged re-assignment by Shavor and Corse to Norton, to the extent of two-thirds of the patent; whilst at the same time Eddy, Shavor and Corse got a clear *record* title to the one-third, which in fact Shavor and Corse had owned ever since 1864.

That one-third of the patent goes back to 1864, and it is well established that the owners of such one-third are entitled to the benefit of any re-issue taken out by the owners of the other two-thirds.

This one-third was never assigned to Mr. Norton, nor to Miss Ingalls, nor to Secombe, nor to Mr. Campbell.

It is clear, therefore, that defects in the title of Norton, Ingalls, Secombe or Campbell in no way affect or concern the owners of this one-third.

If Campbell be thrown out of court because of any defect in his title, Caswell, Clexton and Eddy, as their Trustee, are still entitled to their recovery of $21,000 against James.

They are as much complainants against James as Campbell is. A decree that Campbell do not recover against James, because he has no title to the patent, ought not to prevent Caswell, Clexton and Eddy, as Trustee, from recovering their $21,000—if their title is good.

It is well established in this country that when the court "has jurisdiction of the parties it grants the appropriate relief "without regard to whether they come as plaintiff or defend-

ant." Waite Ch. J., Littlefield *vs.* Perry, 21 Wallace, 205. Meyer *vs.* Delaware Co., S. C. U. S., October Term, 1879, Leg. News, Jan. 3, 1880.

Because Campbell cannot recover is surely not a sufficient ground, in itself, for refusing a recovery to Caswell, Clexton and Eddy, their Trustee.

If Campbell is not the proper party to this suit as owner of the two-thirds of the patent, the court has ample power to bring in the real owner.

The decision as to the *validity* of the patent, and the *damages* and *profits* to be recovered has been made; to whom the patent and such damages and profits belong is another matter. One-third of such patent, damages and profits belong to Caswell, Clexton and Eddy, their Trustee. If Campbell does not own the other two-thirds, the real owner can be brought in and made a party.

And it was well observed by the circuit court that "In these "causes the pleadings cover all the grounds of claim upon and "defense by the defendant, (James,) as well to that part claim-"ed by Eddy as in respect to that claimed by the plaintiff, "(Campbell,) and the evidence has been taken in respect to "all the issues made, and considered as bearing upon them. "Under these circumstances, at least, it seems proper that the "rights of Eddy and of those claiming under him, as Trustee, "to the fruits of the infringement of defendant, (James,) "should be considered and determined."

See opinion of court, page 1650.

WASHINGTON, *January*, 1881.

EDWARD D. BETTENS,
Of Counsel.

SUPREME COURT U.
FILED
DEC 31 1880
JAMES H. McKENNEY, Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880.

No. 945.

THOMAS L. JAMES, *Appellant.*

vs.

CHRISTOPHER C. CAMPBELL, et al., *Appellees.*

No. 1098.

SAMUEL R. CLEXTON, *Appellant.*

vs.

CHRISTOPHER C. CAMPBELL, et al., *Appellees.*

No. 1101.

CHRISTOPHER C. CAMPBELL, *Appellant.*

vs.

THOMAS L. JAMES, et al., *Appellees.*

Brief ~~of~~ for Christopher C. Campbell.

GEO. H. WILLIAMS,

Counsel for Christopher C. Campbell.

NATIONAL REPUBLICAN PRINTING COMPANY.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1880.

THOMAS L. JAMES, *Appellant*, *vs.* CHRISTOPHER C. CAMPBELL, *et al.*, *Appellees.*	No. 945.

Brief for Christopher C. Campbell.

This is a suit in Equity by Christopher C. Campbell against Thomas L. James for the infringement of Letters Patent, by using and causing to be used "a new and useful improvement in post-office post-marking and canceling hand-stamps, of which Marcus P. Norton is the first and original inventor.

Complainant's title is as follows:

1st. Patent to Marcus P. Norton, dated April 14, 1863. (R. 454.)

2d. Assignment by Marcus P. Norton to Jacob Shavor and Albert Corse, dated April 20, 1863. (R. 461.)

3d. Reissue of patent to said Shavor and Corse, August 23, 1864. (R. 462.)

4th. Re-assignment by said Shavor and Corse to said Norton, dated February 23, 1864. (R. 467.)

5th. Reissue of patent to said Norton, dated August 3, 1869. (R. 471.)

6th. Assignment by said Norton to Helen M. Ingalls, dated October 20, 1869. (R. 478.)

7th. Reissue to Helen M. Ingalls, dated October 4, 1870. (R. 479.)

8th. Assignment by Helen M. Ingalls to W. W. Secombe, dated March 4, 1871. (R. 487.)

9th. Re-assignment by said Secombe to said Ingalls, dated July 10, 1873. (R. 493.)

10th. Assignment by Helen M. Ingalls to C. C. Campbell, complainant, January 2, 1877. (R. 31.)

Copies of documents constituting the foregoing chain of title, duly certified by the Commissioner of Patents, are in evidence in the case, thus making *prima facie* a complete title in complainant.

Defendant has attacked the 4th, 6th and 9th items in said chain of title.

A.

As to the re-assignments by Shavor and Corse to Norton, February 23, 1864. Item No. 4.

The answer admits the execution of this re-assignment, but says it was not so executed as to be entitled to the advantages of record; that it was obtained by fraud and misrepresentation; that it was through mistake, fraud, misrepresentation, by or on behalf of said Norton, accident and misunderstanding of its purport, terms and legal effect. Pl., 58.)

Due objection was made to any evidence by complainant under this part of the answer, and none was admissible—

1st. Because it is unintelligible and wholly indefinite. No one can tell from it whether this assignment was procured by accident or mistake or by fraud. No one can tell whether it was made in good faith or bad faith. If by accident, how and to whom did this accident happen. If by mistake, how and by whom and about what was the mistake. If by fraud, how and by what means and who committed it. A general allegation of fraud is an allegation of a conclusion of law from facts, which facts are not pleaded. (Gear *vs.* Grosvenor, 6 Fisher, 314; Story's Eq. Pl., sec. 251*a*.)

No evidence was given corresponding to the allegations of the answer, but an abortive attempt was made to show that said re-assignment was a forgery. All or very nearly all the evidence from page 728 to page 795, and all the exhibits from page 1160 to page 1269 R. are directed to this end. It is not competent under said allegations to prove said instrument a forgery. There is not a particle of evidence to show that Norton said or did anything to mislead or deceive Shavor and Corse at the time they executed the said re-assignment. Complainant, by the advice of his counsel, has introduced no rebutting evidence upon this point.

1. Because defendant's evidence is inadmissible under the pleadings.

2. Because it does not prove any accident, mistake or fraud in the making of said re-assignment.

3. Because it shows satisfactorily that Shavor and Corse did sign, seal and acknowledge said instrument.

4. Because James cannot justify his infringement of Campbell's patent by complaining of Norton's alleged fraud upon Shavor and Corse. Shavor and Corse not complaining, nobody can complain. Such a defense is not available for defendant James. The right to complain of a fraud is not a marketable commodity. Story's Equity, sec. 1040, note *g*.

5. Because the evidence was wholly immaterial for the following reasons:

Norton, after the patent was reissued to him, August 3, 1869, was claiming compensation from the Post-office Department for the use of his stamp. Shavor & Corse contested his right, denying said re-assignment. On the 23d day of October, said Shavor & Corse, with Eddy, took an assignment of one undivided third interest in said patent of August 3, 1869 (R. 1149), and agreed to settle all differences and disagreements between them and Norton as to the ownership of said stamp. Mr. Eddy testifies, R. 761, as follows:

"A. Mr. Norton claimed that he was the owner by virtue of a re-assignment from Mr. Shavor & Corse of the patent of 1863, known as the Norton stamp patent; Mr. Shavor and Mr. Corse claimed that they had made no such assignment, and that all differences were to be considered amicably settled by this instrument, and the assignment, which was a part of this transaction by Mr. Norton to Chas. Eddy & Co., or Chas. Eddy, Jacob Shavor and Albert C. Corse, composing the firm of Chas. Eddy & Co., and the several releases named in said agreement."

See written agreement, R. 1251.

Shavor & Corse, by this agreement, are estopped from objecting to the patent to Norton of August 3, 1869. They ratified and took title under it. They are estopped by said settlement as to all questions about said patent of an antecedent date, and the defendant, if he had any rights, would of course be estopped in the same way.

Perhaps it is proper to say, as to the recording of said reassignment, that all the evidence goes to show that the assignment by Norton to Shavor & Corse was with the understanding that the latter were to furnish the means for prosecuting a claim against the Government for the use of the patented stamp, and have a portion of the proceeds. Con-

troversy arose between the parties as to these means. Shavor & Corse set up an absolute right to the whole patent, sold one-third to Eddy, and claimed the other two-thirds for themselves, and then notified Norton, who was in Washington attending to said claim, that all his authority to act in the matter was revoked, and it was then, and not till then, that Norton put said re-assignment on record. (R. 1247, 766.)

B.

As to item 6th, the assignment by Norton to Ingalls. This assignment is proved, and is perfect, but defendant, in his answer, alleges that on or about the same date said Norton assigned one-third interest in his said patent to Charles Eddy. Two points appear to be made by defendant upon this allegation.

1st. That Eddy ought to be a party to the suit, and defendant prays that he may be made a party before the termination of the case.

2d. That Ingalls had no right to surrender the patent assigned to her, and obtain the reissue of 1870.

Eddy, by his own consent, and by the order of this court, has been made a party to the suit, "as fully in all respects as though he was an original party thereto," and therefore all remaining questions as to said assignment to Eddy are between him and complainant. Defendant has no interest in the assignment, except to have Eddy before this court, so that he will be bound by its decision.

There is no evidence that Eddy joined with Ingalls in surrendering the patent of 1869, or that he consented to it, but he has since ratified and accepted it. On the 7th day of October, 1871, W. W. Secombe was the assignee in trust of the patent of 1870, the one on which this suit is brought by assignment from Ingalls, dated March 4, 1871. On the said 7th of October, Eddy, Shavor & Corse made an agree-

ment with said Secombe, by which they recognize his right in "Norton Post-office Cancelling Stamp" as such assignee, and agreed to receive from said Secombe, out of the proceeds of said stamp, a certain sum of money "in full payment and satisfaction of their claim and demand" thereto. (R. 602.)

Moreover, Eddy is now before this court, not only not objecting to said patent of 1870, but claiming a part of the recovery for the infringement thereof by defendant. To hold that defendant, an infringer, may object that Eddy was not consulted about the reissue of 1870, while Eddy is in court saying in effect not only that he does not object, but is satisfied, would be a very singular, not to say absurd ruling. Ingalls had an assignment of the entire patent of 1869. Eddy had a subsequent assignment of one-third thereof. Eddy's assignment takes precedence of the other, because it was first recorded, if Eddy insists upon it. To insist upon this, however, is the exclusive right of Eddy or his assignee. As against an infringer claiming nothing under said patent, the assignment to Ingalls is good for the whole of it.

Judge Ingersoll, in Potter *vs.* Holland, 1st Fisher, 336, says, speaking upon this subject:

"This consent may be manifested either by joining in the surrender with the patentee, or by previously authorizing it, or by subsequently *ratifying* or *approving* it. And taking advantage and benefit of it would be a ratification, and when consented to the rights of the party so consenting in and to the old patent are forever gone."

C.

As to the 9th item, the re-assignment of Secombe to Ingalls of July 10, 1873.

On the 4th of March, 1871, Ingalls made an assignment to W. W. Secombe of three patents—one-third interest in the patent of August 9, 1859, for cancelling stamps by cutting; a patent dated July 13, 1869, and the patent of October 4, 1870, upon which this suit is brought. (R. 487.) On

the 10th day of July, 1873, The Secombe Manufacturing Company and W. W. Secombe, president, executed to said Ingalls a re-assignment of various patents, described as follows: "For and upon improvements in hand-printing and dating stamps, post-office post-marking stamps, internal revenue dating and cancelling stamps, and for other improvements, not necessary here to name, among which were letters-patent of the following dates, to wit: January 14, 1862; December 16, 1863; August 4, 1865; and also during the years 1870 and 1871. This re-assignment refers to the several deeds of assignment on record from Marcus P. Norton and also from Helen M. Ingalls to the Secombe Manufacturing Company, or to W. W. Secombe, as president, for greater certainty of description. It further explains itself as follows: "Meaning to convey, and we do hereby convey unto her, the said Helen M. Ingalls, each and every claim, right, title, and interest we now have, or can or would have in any of said inventions, improvements, or letters-patent, by means or reason of any contract between us, or any of us, and the said Marcus P. Norton and Helen M. Ingalls, or either of them, unto or for the said inventions and said letters-patent, or either of them." This re-assignment is signed and sealed as follows: "Secombe Manufacturing Company. [Seal.]" W. W. Secombe, [Seal,] president." (R. 493.)

Defendant, in his answer, does not deny that this re-assignment describes and embraces the patent in suit, filed October 4, 1870, but avers that the right thereto was invested in W. W. Secombe individually, and that said re-assignment did not divest him of such right. Norton testifies that he drew this re-assignment without the patents and assignments to which it refers before him, and therefore the general, and to some extent inaccurate, manner in which they are described. (R. 434.) As matter of law, if W. W. Secombe held the title to any of the patents embraced in said re-assignment, such title thereby passed, and the appending of the word "president" to his name was of no effect.

Manifestly, however, the intent of the parties was to convey in said instrument the patent in suit, and the use of the word "president" was a mistake.

1st. No assignment was ever made by anybody to W. W. Secombe as "president." Assignments were made to The Secombe Manufacturing Company, and to W. W. Secombe.

2d. No assignment was ever made by Ingalls to Secombe except that one above referred to of March 4, 1871.

3d. This re-assignment embraces the patents issued during the years 1870 and 1871. The patent in suit was issued in 1870.

4th. Reference is made to the assignments on record for a more full and perfect description and understanding of the inventions and letters-patent re-assigned, and by these any mistakes or misdescriptions in the re-assignment are to be corrected.

This reference to the several deeds of assignment make them a part of the said re-assignment.

In Izard *vs.* Montgomery (vol. 1 Nott & McCord, S. C. Reports, page 381), the court say: "A reference in a deed to a will not executed according to the Statute of Frauds will have the effect of incorporating it with and making a part of the deed."

In Everett *vs.* Thomas (1st Iredell, N. C. Law, 256), the court say: "We do not doubt that by a proper reference of one deed to another, the description of the latter may be considered as incorporated into the former, and both be read as one instrument for the purpose of identifying the thing conveyed."

In Sewell *vs.* Henry (9th Ala., 30), the court say: "Two writings connected by a reference of one to the other may be considered and construed as parts of an entire transaction, and as if they were embodied in one instrument."

In Sawyer *vs.* Hammitt (15 Maine, 44), the court say: "The law will not suppose one to be ignorant of that to which his contract refers, but will imply notice of it, whether he have actual knowledge of it or not, when referred to in a contract to which he is a party. That the re-assignment refers to the assignment by Ingalls to Secombe of March 4, 1871, is perfectly clear, for it speciffes the letters-patent of Dec. 16, 1862, contained in that assignment."

If there are any doubts as to the construction of the said re-assignment, those doubts are to be resolved against Secombe.

In the case of The City of Alton *vs.* The Illinois Transportation Company (12 Illinois, 58), the court say: "When a deed is so drawn that some will read it one way and some another, is is a well-established rule that that meaning shall be adopted which is adverse to the interest of the grantor."

5th. One of the patents named in said assignment is dated December 16, 1862; one of the patents named in said re-assignment is dated December 16, 1862; so that it is perfectly clear that this assignment of March 4, 1871, was in the minds of the parties, and therefore is referred to in the general terms of the re-assignment "for a more full and perfect understanding" of what was re-assigned. This re-assignment speaks of the patent of December 16, 1862, as assigned to the "Secombe Manufacturing Company," which shows that it was written from a bad memory as to names and dates, for it was assigned to W. W. Secombe, as the said assignment of March 4, 1871, shows.

6th. According to the clause of said re-assignment, above cited, every invention and improvement in post-office stamps, which said Secombe held by reason or means of any contract with Helen M. Ingalls, was re-assigned to her.

Considerable evidence has been offered by defendant to show that Norton did not understand that said assignment embraced the patent of October 4, 1870, now in suit.

To this evidence there are two objections:

First, and a fatal one is, that defendant, having said re-assignment before him, as his answer shows, did not deny that it contained said re-assignment, but simply makes the point that a conveyance by W. W. Secombe with the word "president" attached to his signature, does not transfer a title conveyed to said Secombe with such an attachment to his name. Defendant cannot admit or claim one construction of a contract in his answer, and then set up another and different construction upon his evidence.

Second. If the words and terms of the re-assignment are broad enough to embrace said patent, then such evidence is immaterial.

But, if Norton is to be believed, there is nothing in this evidence; for on R. 165, is the following question:

Question by defendant's counsel: "Do you not know that the patent Division A, 4143, (the patent in suit,) is not canveyed by that re-assignment?" referring to the one in question.

Answer. "I don't know any such thing; but, on the contrary, I know that it is. I absolutely and personally know that fact, and that that was the intention of that instrument which I drew myself on the day it was executed."

Defendant's chief reliance to show that such was not the understanding of Norton is upon a letter written by him to Shavor (R. 1394), dated November 27, 1876, in which he states that he had written to Secombe for a re-assignment, and upon certain letters by Norton to Secombe, with a blank re-assignment, found on R. 448 and 449.

These papers, in some respects, appear to be inconsistent with Norton's statement of his understanding of the re-assignment, and in other respects they confirm it.

Norton testifies in answer to a question by defendant's counsel, that on his way to Washington in March, 1876, he

made a new and verbal arrangement with Secombe as to the patent in this suit, (R. 428) and the said letters to Secombe fully corroborate this testimony.

Norton, not supposing that there was anything upon record to show that the assignment by Ingalls to Secombe was not in force, was willing to let Secombe go on under that assignment, if he would carry out this new and verbal arrangement.

He explains his application for the re-assignment on R. 165–166.

One circumstance is almost conclusive as to the intent of the parties when this re-assignment was executed. That is, Ingalls at that time delivered up to Secombe the declaration of trust which he had made to her in connection with the assignment to him of the patent in question. (R. 252.)

Another circumstance is that this re-assignment admits a claim for professional services by Norton, for which and other causes it seems he had sued Secombe and the Secombe Manufacturing Company, and by this re-assignment their business matters as to patents were to be closed and settled. (R. 443.)

Taking the said assignment by Ingalls to Secombe of March 4, 1871, and the declaration of trust (R. 487–596), and they amount to this: Secombe was to take the assignment, manage and prosecute the claim against the Government, pay the expenses, and retain two-fifths of the proceeds, paying the other three-fifths to the family of Mr. Norton, and the fact that he was holding simply as trustee appears upon the face of the assignment.

Complainant in his bill alleges that Secombe had wholly neglected and refused to carry out this arrangement, and defendant, in his effort to show that it was not the intent of the parties to include the patent in question in the re-assignment, completely proves this allegation.

If said brother is an administrator in Minnesota, he cannot be made a party to this suit. (Caldwell *vs.* Harding, 5 Blatch., 501.)

This suit is for an injunction as well as for damages.

"Any party aggrieved," under section 17 of the act of 1836, 5 Statutes, 124, may maintain a suit to enjoin the infringement of a patent, and it was so held in Hussey *vs.* Whitley, 2 Fisher, 122.

Miss Ingalls, or her assignee, who brings this suit, is not only aggrieved, but the only party aggrieved by the infringement of defendant.

Secombe was furnished with copies of the bill in this case. He then disclaimed all interest in the suit, gave up certain papers in his possession, &c. (R. 436.) His brother, though notified at an early day of the proceedings in this case, makes no claim on behalf of the estate of Secombe, but long after the evidence is closed is induced to furnish to defendant's counsel some papers, which can only be understood by the circumstances under which they were written, and these the said counsel put forward *vicariously* to justify defendant's infringement of the patent.

To say nothing of the re-assignment, does not this evidence show an *estoppel in pais?* Would it not be a vain and useless thing, under these circumstances, to make Secombe's administrator, if he had one, a party to this suit, which is all that the defendant in any event can ask?

Judge Wheeler, in deciding the case in the court below, says:

"Norton conveyed this and other patents to Helen M. Ingalls. She, for a nominal consideration, conveyed the legal title to them to William W. Secombe, in trust for herself, her sister, and her sister's children, with power of management and sale, the net proceeds to be divided, two-fifths to himself, and the remainder to be paid over to them, according to a declaration of trust referred to in the deed. Secombe was president of the Secombe Manufacturing Company, which in some way held title to some other of Norton's

patents. The Secombe Manufacturing Company and Secombe, president, subsequently made conveyance of patents to Ingalls. The plaintiff derives title from her; and no other conveyance from Secombe to her is shown. The defendant claims that Secombe's title would not pass by that deed, and that, if it would, the description of the patents conveyed does not include this one.

"The deed recites the issuing of the patents, her desire to purchase, and that she has purchased of the Secombe Manufacturing Company, and of William W. Secombe, president, the patents, and declares that, in consideration of one thousand dollars and other considerations, the said Secombe Manufacturing Company, and William W. Secombe, president, do sell, assign, and convey them to her; and it was executed by the signature of the Secombe Manufacturing Company, with seal, and by William W. Secombe, president, and another seal. It is obvious that there were intended to be, and were, two grantors in that deed. One was the company, and the other was Secombe. The execution for the company in the name of the company was good for the conveyance of its interest. The execution by Secombe, although the addition to his name of '*president*' was made, was a good execution of the deed for himself, and good for that only, and not good to convey any interest for the company, even though that had been the intention. That execution made the instrument his deed, and it would carry whatever title he had in the subject of the conveyance. (Combe's case, 9 Co. Rep., 75. Clark *vs.* Courtney, 5 Pet., 319. Isham *vs.* Bennington Iron Co., 19 Vt., 230. Miller *vs.* R. and W. R. R. Co., 36 Vt., 452. Brinley *vs.* Mann, 2 Cush., 337.)

"The description of the subjects of the conveyance is very general and broad in some of its parts. It commences by reciting that 'at various times, and under several and different dates, letters-patent were issued, upon the application of Norton, for "improvements in hand-printing and dating stamps, post-office, post-marking stamps, internal revenue

dating and cancelling stamps, and for other improvements not necessary here to name; among which were letters-patent of the following date, *to wit:* January 14, 1862; December 16, 1862; August 4, 1865, and also during the years 1870 and 1871."' It then refers to the deeds of assignment from Norton to Ingalls, among others for a more full description of the patents conveyed, and ends by adding: 'Meaning to convey, and we do hereby convey, unto her, the said Helen M. Ingalls, each and every claim, right, title, and interest we now have, or can or would have, in any of said inventions, improvements, and letters-patent' by means or reason of any contract between us, or either of us, and said Marcus P. Norton and Helen M. Ingalls, or either of them, in, to, or for the said inventions and said letters-patent, or either of them,' &c. The reference to the patent, by stating the inventions covered, includes this one, and it is quite obvious, from the sweeping character of the instrument, that this and all other patents upon those subjects were intended to be included.

"It may be that, as the conveyance to Secombe was wholly *in trust*, upon the evidence carefully examined, such refusal to perform *the trust* would appear as to cause the title to *revert*, and it may be that the interposition of a court of equity would be necessary for that purpose. But that subject has not been examined here, for the reason that the *re*-conveyance appears to be amply sufficient."

As to the validity of the reissues—

Mr. Justice Clifford lays down the undoubted law upon this subject as follows:

"Reissued patents are presumed to be for the same invention as the original, and will only be adjudged to be void because for a different invention where it clearly appears that the reissue contains some new feature of a material character not described, suggested, nor substantially indicated in the specifications, drawings, or Patent Office model." (Thomas *vs.* Shoe Man. Co., *Official Gazette*, vol. 16, page 541.)

Judge Wheeler, in his opinion in this case, says:

"If the reissues are for any other, or substantially different, invention from that described in the original, they are unquestionably void. That the specifications or claims of the patent are different, the invention or discovery remaining the same, is of no consequence. The very object of the reissue is to correct the patent so as to make it conform to the invention. The principal objection to these reissues is the specification of a metal canceller in the combination, as well as cancellers of wood, cork, or other elastic material. If a metal canceller had not been mentioned or alluded to, it might well be said that it did not enter into nor form part of the conception of the inventor; but it was mentioned in the original. It was mentioned as not being so useful or desirable in the combination as an elastic one; but nevertheless it was mentioned as forming a part of an arrangement not patented or desired. The inventor or owner, when the reissues were applied for, desired it, the invention comprehended it, and the patent was made to cover it. The original patent also mentioned a canceller of any suitable material as a part of the combination."

If the court will look at the drawings of the original patent (R. 458) and at the drawings of the reissues (R. 481 and 471), they will see that they are identically the same, the only variance being a more particular description in the latter.

There is nothing in the reissues that is not contained or clearly suggested in the drawings and specifications of the original patent.

The specification of the reissue in 1864 and of the subsequent issues say that the cancelling device may also be made of "iron, steel, or similar material," which statement does not occur in the specifications to the original patent; but the latter specifications show in effect that the inventor had experimented with a canceller made of "solid metal," and that he considered the "wood, cork, and rubber, or similar

material," more effective for purposes of cancellation. Certainly a canceller of iron or steel is here suggested.

Let it be noticed that Norton's reissue of 1864 (the others are like it) was under the act of 1836 (5 Statutes, 122), which does not contain the restrictive provisions as to reissues contained in the act of 1870.

Moreover, a mere substitution of one material for another, such as iron for wood, or wood for bone, is not an invention or a substantial change in the construction of an invention. (Hotchkiss *vs.* Greenwood, 11 How., 248. Battin *vs.* Taggart, 17 How., 83. Powder Co. *vs.* Powder Works, 98 U. S. R., 136.)

A patentee has a right to restrict or enlarge his claim in a patent, so as to give it validity and to effectuate his intention. (Imhauser *vs.* Bourke, 101 U. S. R., 647. Herring *vs.* Nelson Blatchford, R. 301. Allen *vs.* City of New York, *Official Gazette*, Vol. 17, page 1281.)

INVENTION.

On page R. 453 will be found the copy of a paper, date, August 7, 1854, signed Marcus P. Norton, and duly certified by the Commissioner of Patents, and which purports to be an "additional description" to a caveat by said Norton for a machine for mailing and folding letters, filed October 20, 1853, in the Patent Office. Said paper contains a description of the combined post-office stamp, for the use of which this suit is brought, and if it was made at its date there can be no doubt that said Norton was the first and original inventor of said stamp.

D.

Defendant has made an effort to show that this "additional description" was surreptitiously put upon the files of the Patent Office at some unknown time, from which an inference is claimed that it was not made, as it purports to be, on the 7th of August, 1854.

All and the only evidence adduced upon this point by defendant is a copy of certain proceedings in the Patent Office (R. 1,348), carried on there for the purpose of depriving Marcus P. Norton of the right to practice as an attorney in said office. These proceedings consist of certain charges against Norton, the appointment and report of a committee, and the order of D. M. Leggett, Commissioner, debarring Norton, with an endorsement upon said "additional description" by said Leggett, that it had been surreptitiously filed and was not to be regarded as a valid part of the said caveat of October 20, 1853.

Objection was made to the evidence (R. 881), and it is now insisted that it is wholly incompetent to affect the value of said "additional description" in this court, or the rights of the parties in this case. Said proceedings were *quasi*-criminal, in behalf of the United States, to punish said Norton for malfeasance in his office as an attorney of the Patent Office. To illustrate this objection: Suppose John Doe holds a negotiable promissory note, purporting to be made by Richard Roe to John Jackson, an attorney of this court, and endorsed by the latter to said Doe. Jackson is charged with having forged the name of said Richard Roe, and application is made for his expulsion from the bar upon this ground, and it is so ordered. Thereafter John Doe brings a suit upon said note against Richard Roe, in one of the courts of the State. Is a certified copy of the proceedings here for the expulsion of said Jackson competent evidence for any purpose in that suit? Mr. Greenleaf says (vol. 1, page 574,) that a verdict and judgment in a criminal case, though admissable to establish the fact of the mere rendition of the judgment, cannot be given in evidence in a civil action to establish *the facts upon which it was rendered.* (See also Harger *vs.* Thomas, 44 Penn. St., 128, and Bennett *vs.* Fuller, 49 Penn. St., 155.) Moreover, said evidence is inadmissable because the parties to said proceedings and the issues involved were entirely different from those in this case.

When Leggett made the endorsement upon said "additional description," in September, 1871, the patent for the invention therein described did not belong to Marcus P. Norton. Rights of third parties intervened. Can the rights of such parties be prejudiced or destroyed without their day in court? Leggett had no jurisdiction over said "additional description" of 1854. His predecessors in office had passed their judgment upon its validity and value, and had granted patents and reissues for the invention it describes. Nobody was attempting to use it at that time in the Patent Office. Leggett had no more right to declare said "additional description" invalid in his proceedings to debar Norton, than he had to declare the patent which had been issued in conformity therewith invalid. They were *res adjudicata*. Complainant has a right to cross-examine the witnesses by whom the false date of this "additional description" is asserted, to contradict them if necessary, and he is also entitled to the judgment of this court upon the value of such testimony. He cannot be cut off by an extra judicial judgment or *ex parte* order of the Commissioner of Patents. That order, if it has any force, has none beyond his subordinates. Norton's testimony (R. 396.) shows that the above-named proceedings against him were a "put up job," and a shameful abuse of power.

E.

Independent of Norton's testimony, which is full and clear to the effect that said "additional description" was made when it purports to be, there are convincing record proofs to the same end. On the 7th of August, 1857, Norton addressed a letter (R. 142.) to the Commissioner, in which he says: "I send to-day an 'additional description' of my machine for mailing and folding letters," &c. This letter, it is admitted, was received at the Patent Office about the time it bears date. What and where is that "additional description" if the one in question was not the one referred to in

that letter? Nobody pretends that any other has ever been seen or heard of in the Patent Office. Norton's power of attorney to Hodges, dated March 11, 1854, and filed in the Patent Office March 14th, 1854, (R. 455.) speaks of a patent for a *post-office letter-stamp* and a way-bill folding machine.

Moreover, said "additional description" bears upon its face intrinsic evidence that it was made as a part of the caveat for the mailing and folding machine.

F.

Shavor & Corse, assignees of Norton, sued Edmund Hoole in June, 1864, for the manufacture of post-office stamps identically like the one described in the patent, for an infringement of which this suit is brought. Thomas D. Stetson, an experienced expert, and probably known to this court as such, testifies that he prepared the defense in that case (R. 924), and after searching the Patent Office and the records of the English and French patents, set up in the amended answer all defenses that he could discover. Hoole set up the patent of 1859 for an invention made by Norton and assigned to Ransford & Low, by which the post-office stamp was cancelled by cutting, and then says, in his amended answer, "If the said patent of 1863, reissued in 1864, be so held to contain any point in said stamps so made by defendant not contained in said 1859 patent, which had been contained in the caveats of said Norton *dated 1853 and 1854*, or had been invented by said Norton at an earlier date than May 2, 1859, such point was conveyed to the said Ransford & Low, and through them to the present owners of the 1859 patent by the deed of assignment executed by said Norton, dated May 2, 1859, and recorded in liber G 5, page 73, and for the further reason that if it shall be held to have been not so assigned, then that it had been either abandoned or was fraudulently concealed by said Norton." (R. 533.) Now, this answer shows that Ransford & Low claimed that said

caveats of 1853 and 1854 were assigned to them on the 2d day of May, 1859, so that said caveats must have been in existence at that time, which was eleven years before Legget made his discovery that the one of 1854 was surreptitiously filed. The foregoing words "either abandoned or was fraudulently concealed," evidently refer to the antecedent words, "or had been invented by said Norton at an earlier date," meaning that if there was any point in the patent on which that suit was brought invented by Norton prior to May, 1859, and not contained in said caveats of 1853 and 1854, and so not assigned, it had been abandoned or concealed. This answer was filed seven years before Legget's remarkable discovery.

Is there any difficulty in supposing that if this "additional description" was in existence in 1859, it was made and filed in the Patent Office in 1854? Why did not Stetson detect this alleged fraud when he was diligently searching for a defense in the Hoole case? No question was made about this "additional description" till Norton became involved in a bitter fight with Robertson about a dating-stamp, and with Green, Ransford and other owners of the patent of 1859. Meanwhile copies of this "additional description," certified by the Commissioner, were used in Congress, in the Departments, and before the courts without objection, and this copy in this case was made and certified in 1868. Another thing not to be forgotten is that some of the Departments of the Government, including the Patent Office, have been actively interested in defeating Norton's patent, for the invention described in said "additional description," because he and his assignees have contended that the Government and its officers were liable in a large amount for its use. To show the possibilities of this case: On page 458 and following will be found the drawings and specifications of Norton's original patent of 1863, of which the one in suit is a reissue. Defendant has introduced in his Exhibit No. 149 an alleged duplicate of the model filed in the Patent Office by Norton when said patent was issued.

To this Exhibit a bag is attached, said to contain sharp points, to show that the mode of cancellation by this instrument is to perforate instead of blot the postage-stamp. There is not a sign or word in the drawings or specifications to indicate that such a thing was thought of by the patentee at that time, and he swears that no such thing was attached to the model. Who committed this fraud? Has Norton been trying, in this way, to defeat his own patent? Possibly it has occurred to some one that if it could be made to appear that Norton's canceller cut the postage-stamp with sharp points, it was no better than one cutting it with knives.

G.

Defendant's counsel being too good a lawyer to believe much in Leggett's proceeding, after scouring the country with his circulars, has found three or four witnesses who have tried to swear that they were separately the inventors of the combined post-office stamp at some time prior to August 7, 1854, the date of said "additional description."

One Riley, formerly of the post-office in New-York, swears, if he swears to anything, that the combined stamp now in use was introduced into that office as early as 1853; that before that time he invented a thing that in its use accomplished the same results. But his testimony is so confused, uncertain and contradictory that it amounts to nothing. He is completely contradicted by Dix, Yeomans, Ryer and Corbett and other witnesses for defendant, and his statements are so inconsistent with everything else in the case, and so ridiculously false and absurd as to need no further attention. (Riley, R. 860. Ryer, R. 843. Dix, R. 849. Yeomans, R. 835. Corbett, R. 855.)

Charles E. Wheeler, of Cleveland, is another witness who testifies that he tied together with twine a post-marker and canceller in 1853. He applied, in 1863, for an interference with Norton's patent, but his claim was rejected. It is difficult to resist the conclusion that Wheeler's statement as to said date is worse than a mistake.

1st. He swears that said contrivance was made after the order by the Post-office Department, that the post-marking and cancelling of letters should be separately made. (R. 669.) It is beyond question that this order was made in 1860.

2d. On the 28th of November, 1863, Wheeler addressed a letter to Assistant Postmaster-General Zevely, asking for an increase of his salary on account of his having invented the combined post-office stamp and among other things he says: "My object in addressing you is to secure, if possible, your co-operation in the matter; and as you may have forgotten the circumstances, allow me to state that, about the first of July, 1861, the Department issued an order discontinuing the cancelling of stamps with the dating-stamp, and requiring that thereafter the regular cancelling-stamp should be used for that purpose. We followed instructions one day after receipt of the order, with two separate stamps. It was about all one man could do before to stamp our letters, circulars, and newspapers, and, by the change, it would require twice the labor. The idea struck me that, by a combination, all might be done as required by one operation, and immediately took the stamps to a locksmith and had them soldered together. The order and receipts you will find among your records. The smith's name is Jacob Schwartzenburgh." (R. 595.)

On the 7th of May, 1864, E. Cowles, then postmaster at Cleveland, addressed a letter to Postmaster-General Blair, written, as Wheeler admits, at his instance, in which Cowles, referring to the combined post-office stamp, says: "I have every reason to believe that the original inventor of that stamp is a clerk in this office. He invented it immediately upon the receipt of the order issued by Postmaster General Holt, several years ago, requiring a separate stamp to be used in cancelling the stamps on letters." (R. 566.)

Holt was Postmaster-General from March 14, 1859, to July 18, 1861.

Several witnesses have been introduced to sustain Wheeler, as follows: Bishop (R. 704), Cottrell (R. 713), Coon (R. 721), Warner (R. 999), Albinger (R. 1003), Nott (R. 1012), Beardsly (R. 1023).

Respecting this testimony it may be remarked, First, Coon and Warner testify simply as to the different locations of the post-office in Cleveland. Bishop and Cottrell were the two witnesses called to corroborate Wheeler before Complainant introduced rebutting evidence. Bishop had charge of the penny-post in the Cleveland post-office in the latter part of 1853 and fore part of 1854, while the post-office was on Water street. Coon testified that the office was removed from the Herald building to Water street July 1,1853. Bishop testifies that at first in the office on Water street a separate stamp was used, and that afterward Wheeler's contrivance was introduced. Cottrell testifies that in the years 1852 and 1853, and while the office was in the Herald building, he was accustomed to call at the office for love-letters, and five or six times he looked through the delivery window and saw Wheeler using said contrivance. Complainant called certain witnesses in answer to the foregoing, and supposed the case was closed upon that point, but long afterward defendant unfairly reopened it by calling Warner, Albinger, Nott, and Beardsly. Albinger testifies that he went into this office on Water street in the fall of 1854 as a porter, and that at that time the single stamp was used; subsequently Wheeler's contrivance was used. Nott testifies that he was in this post-office from October, 1852, to March, 1853, while it was in the Herald building, and that Wheeler made and introduced his contrivance during that time. Beardsly says that he was in this office three weeks in 1854 or 1855, and that Wheeler's contrivance was then used, but states emphatically that it was in consequence of the order from Washington to post-mark and cancel separately that this contri-

vance was used. These witnesses depend wholly upon their their memory as to these dates. They evidently testify as they have been prompted by Wheeler and others. Independent af any contradiction the inference is irresistible from what Wheeler and his witnesses say, that said contrivance was not made until after the order referred to was made by Postmaster-General Holt.

H.

Complainant has introduced A. L. Bassett (R. 207), who was a clerk in the Cleveland post-office for about a year in 1855 and 1856, and there as stamping clerk from 1859 to 1863.

James McGough, who was an employe in said office for sixteen years, commencing in the Herald building. (R. 187.)

Henry C. Cook, who was a stamper in said office in 1859. (R. 195.)

Henry A. Mastick, who was a clerk in said office in 1850 and 1851; also in 1854; also from 1861 to 1863. (R. 199.)

James R. Haskell, who was assistant postmaster in the Cleveland office from the spring of 1849 to April, 1853. (R. 213.)

Daniel L. Wood, who was mail agent, and worked in said office in 1853 and 1854. (R. 225.)

Letter envelopes post marked Cleveland, Ohio, in 1854, showing that the single stamp was then used, are also in evidence. (*Ibid*, 421, 433, 434.)

All these witnesses for Complainant flatly contradicted Wheeler and those called to his support, and show that nothing but the single stamp was used in that post-office until after said order by the Postmaster-General.

I.

E. S. Zevely. and John Zevely, his son, are two other witnesses discovered by defendant's counsel in Wheeling, West

Virginia, who undertake to testify that the former, while he was postmaster at Pleasant Grove, Maryland, in 1853, used two pieces of wood joined together, by which the postage stamp was cancelled and the letter post-marked at the same blow. (R. 927, 952.)

John H. Zevely swears that he was seven years old at that time, so that from that fact alone his evidence as to what his father did as postmaster at that time is of no value.

E. S. Zevely's statements are so confused and contradictory that it is difficult to define his testimony; but among other things he says: That he did make and use said wooden contrivance at the Pleasant Grove Post-office in 1853. This post-office was kept, the son says, in the shop; the father says in the dwelling-house, where there was no village, and with two other offices was located on a route thirty miles long, with two mails a week, and was in every sense a one-horse post-office. Witness says that he frequently sent out in a mail from that post-office thirty thousand circulars, and he conveys the idea that the object of said contrivance was to facilitate the post-marking and stamp-cancelling of said circulars, bnt he afterwards explodes that idea by saying that the circulars were open and were sent with the postage unpaid. He further states that he commenced making stamps for the Post-Office Department in Washington in 1850, and that he had four different written contracts with said Department to manufacture such stamps from said date up to 1871, exclusive of four years from 1859 to 1863. He further states that he furnished hundreds and thousands of the combined post-marking and stamp-cancelling instruments to the Department during that time. That Deacon Gray was stamp agent for most of the time between 1863 and 1871. He and his son both swear positively that he resigned the post-office at Pleasant Grove and moved to Cumberland, Maryland, in 1853, and that said post-office was then discontinued.

On R. 544 will be found a certified copy of a contract with E. S. Zevely, dated April 1, 1863, for making

single stamps. On R. 550 will be found certified copy of another similar contract, dated April 1, 1867.

W. S. Davis, who is now and has been for twenty-two years, assistant superintendent of the Blank Agency Division of the Post-Office Department, testifies that these two are copies of the only contracts with E. S. Zevely on file in the Department. And he further swears positively that said Zevely never furnished a single combined post-office stamp and canceller to the Department; and that the said Deacon Gray was appointed and took charge of the Blank Agency July 1, 1869, (R. 134.)

On R. 537 will be found a certificate of the Postmaster-General, showing that E. S. Zevely was appointed postmaster at Pleasant Grove on the 28th of January, 1850; that he was reappointed on the 10th of January, 1855, and that the office was discontinued April 1, 1856.

On R. 547 will be found copy of a proposal made by E. S. Zevely to the Post-Office Department in 1862 or 1863, to furnish it with "Norton & Co.'s patent combined stamp with their permission." Comment is unnecessary.

After the time was fixed for the argument of this case in the circuit court and the briefs were all prepared, defendant gave notice of a motion to open the record and introduce new evidence just discovered; and to obviate delay and enable the court to see and hear the witnesses to be called, complainant agreed to waive all objections and allow the testimony to be taken orally before the court at the time of the argument. Accordingly several witnesses were called, only two of whom testified to anything of consequence. These were William M. Ireland (R. 1422) and John P. Rees (R. 1406.) Ireland testifies in substance that in 1849, and in the Philadelphia post-office, he fastened to the side of a postmarker a stamp-canceller; that this device was used accordingly till 1853, and then it disappeared; that he left the office in 185 ; that he returned there in 1861, at which time separate post-markers and cancellers were used and continued to be used until 1863, when he suggested and caused

to be made and used a combined post-marker and stamp-canceller, just before the Government commenced furnishing such instruments for the use of the office.

Ireland's statements, as to what he did in 1849, are not entitled to credit.

1. Because, at that time he was a mere boy, only fifteen years of age, and his duties were not such as to direct his particular attention to the stamping of letters.

2. He evasively admits that what he did was after orders from the Post-Office Department; that the post-mark should be apart from the postage stamp; and all the evidence shows that the first order of this kind was issued in 1860.

3. This suit was pending for two years. Ireland knew of its pendency. Circulars were sent by the United States District-Attorney, as defendant's counsel, to the post-offices of the country, including that of Philadelphia, for evidence to anticipate Norton's invention. Ireland was on intimate terms with Parker, the special agent of the Post-Office Department, but nothing was heard or known of this evidence until the case was ready for argument, when its sudden discovery was as wonderful as its aptitude to the exigencies of the case.

4. Ireland was chief clerk of the Third Assistant Postmaster-General for a part of the year 1864, and from 1867 to 1876, and well knew of the contest going on during much of that time in the Post-Office Department, before Congress and in the courts, about the use by the Government, of Norton's combined post-marker and stamp-canceller; yet he never told the Postmaster-General — is not certain that he ever told anybody in the Department during all that time of his discovery in 1849.

5. Ireland having left the Philadelphia post-office in 1855 returned in 1861, and though the business of the office had greatly increased he saw the separate post-markers and can-

cellers used for two years before it occurred to him to suggest the combined instrument. Such an instrument had then been in use in the New York post-office for about two years, and before the Department in Washington for a much longer time.

6. It is incredible that if a combined post-marker and stamp-canceller was used in the Philadelphia post-office from 1849 to 1853 that it should then be laid aside, as the business increased, and be utterly forgotten until 1863.

7. His testimony shows that he in fact always recognized Norton as the inventor of the combined stamp.

8. He is expressly contradicted by Mr. Norton.

William P. Rees, a poor old man who remembers nothing not fitted to the exigencies of defendant's case, is brought forward to say that, in 1845, in the Philadelphia post-office, he attached a rater to a post-marker which was used there for a while and then cast away, and nothing of the kind has since been seen or heard of in that office. He left the office in 1851, but though he has never thought of the matter since, pretends that he now remembers the alleged display of Ireland's early genius.

Judge Wheeler saw and heard these witnesses and did not believe what they said, and this court, upon reading their testimony, cannot fail to reach the same conclusion.

It will be noticed defendant has offered no writing or record of any kind to anticipate said "additional description" of 1854. No reliance can be placed upon the best and most honest memories as to what was said and done in the course of business twenty-five years ago, especially when they conflict with writings made at or about the time. To make the most of the testimony given by defendant it only shows abandoned experiments. The things that were made, if as represented by said witnesses, were crude, imperfect contrivances, used a little while and then thrown aside.

Judge Wheeler says of these witnesses:

The defendant has introduced evidence tending to show that what is claimed to be the same invention was made by various other persons, and put into use at several post-offices prior to that date even, to wit, 1859. The most prominent are at the Philadelphia office, by William M. Ireland, in 1851; at the New York office, by James J. Riley, in 1852; at the Cleveland office, by Charles E. Wheeler, in 1853; and of these, that at the Cleveland office seems to be most confidently relied upon. If the question in respect to use at this office was to be determined upon a fair balance of proof, and upon the parol evidence alone, the balance might turn in the defendant's favor; but the evidence to defeat the patent by showing an invention *prior* to a clearly established one of the patentee ought to be as clearly established, to the extent, at least, of removing all fair and reasonable doubts. There is in the case important written evidence upon this point, and the whole is to be weighed together. Wheeler himself, on the twenty-eighth day of November, 1863, wrote to A. N. Zevely, Asssistant Postmaster-General, that he made the invention about the first of July, 1861, and that an order from the Department then issued led to it. On the seventh day of May, 1864, E. Cowles, postmaster at Cleveland, by whom Wheeler was employed, and at his instance, wrote to the Postmaster-General that the invention was made immediately upon the receipt of a certain order issued by Postmaster-General Holt. That order was issued at about the time of the invention stated by Wheeler in the letter, and could not have been issued long before. These deliberate statements, made by two persons separately, and at so near the time of the transaction in question, and giving circumstances accompanying it which in fact existed as they stated, and made with a claim of first invention which would interest them to state that the invention was made as early as the facts would warrant, and made in writings now produced, far outweigh in reliability statements made wholly from

memory fifteen years later, and further from the transaction. Taking the whole into account, the defendant has not shown by the requisite measure of proof that Wheeler invented what he did, before Norton did what he did.

The direct testimony as to what Riley invented is contradictory and unsatisfactory. Riley testifies that the instrument which he invented was made by Mr. Hoole, who is understood to be the manufacturer of stamps for the New York office. Hoole was sued by Shavor and Corse for infringing this patent, pleaded to the action, and a trial, verdict and judgment against him were had. He did not show this invention of Riley, which, according to Riley, he must have known of, in that defense. This goes strongly to show that Riley's statements are not correct.

Ireland was a boy fifteen years old in the Philadelphia office in 1851. He was also there, in the same employment, in 1861. He doubtless did do in 1861 what he says he did in 1851. At this distance of time he may have carried back in his mind what he did, with the associations of 1861, to the same associations existing in 1851. When he made it in 1861, he remarked to others that it was his, without stating that he had made it previously. It is manifestly difficult to distinguish occasions in memory after so great a lapse of time.

Prior to 1860 there was nothing to call the attention of those employed in post-offices, imperatively, to the necessity of such an invention; while, in the latter part of that year, the strict requirements of the Post office Department about cancelling postage-stamps separately, and the increased use of the mails consequent upon the war in 1861, brought the subject sharply up. This brought out contrivances for the same purpose in post-offices in various parts of the country, and more probably gave rise to those particularly mentioned, as well as to others about which evidence was given, but which have not been particularly discussed here.

J.

Several witnesses have been introduced by defendant to show that in the latter part of the year 1860 or the fore part of 1861, and after the said order of the Postmaster-General a canceller was tied, riveted, or brazed to the post-marker in three or four different post-offices in the country, and the evidence seems to establish the fact. These, however, were all abandoned, and the combined stamp as described in the patent in question, substituted. Conclusive evidence is given by complainant to show that these instruments were introduced after Norton had made, perfected, and furnished to the Post-office Department for experimental use said combined stamp.

On page R. 598 and following will be found the copy of an itemized account, made at the dates stated, taken from the books of Cyrus A. Sherwood, which shows two facts:

1st. That he manufactured stamps for Norton as early as January, A. D. 1857.

2d. That Norton was experimenting in the construction of stamps from that date till January, A. D. 1865.

Sherwood testifies (R. 139) that he first made a stamp for Norton that would post-mark a letter and cancel a stamp at the same time, in 1857, though it differed somewhat in form from the stamp in this case.

W. S. Davis, who was in 1858 assistant superintendent of the agency, having charge of stamps in the Post-office Department, testifies that he first saw Norton's combined post-marking and stamp-cancelling instrument, with an iron canceller for blotting postage stamps, in the latter part of that year, (R. 134.)

Hon. Horatio King testifies that, as Assistant Postmaster General, having supervision of the stamp business in the Department, he had conferences and conversations with Norton about his combined post-office stamp as early as 1859, and that he never knew or heard of such a thing before Norton's stamp was presented to him. (R. 130.)

On the 11th of April, 1859, Norton wrote to Mr. King, referring to former correspondence on the subject, and asking that his post-marking stamp, which post-marked the letter at the left of the postage stamp, and erased the stamp at the same operation, might be tested in the Troy post-office. (R. 548.)

On the 4th of May, 1859, Mr. King wrote to the postmaster at Troy, authorizing him to use "Norton's improved marking stamp" for three months. (R. 557.)

Norton testifies that in the fall of 1854, and also winter of 1857–'58, he presented his combined post-office stamp to the Department in Washington. (R. 143.) Judge Wheeler says:

"There is much controversy as to when, in fact, Norton first produced this invention. The application was made Jan. 5, 1863; but *that* date is not early enough to anticipate the knowledge and use of the invention by others clearly shown: therefore it rests upon the complainant to establish *prior* invention by Norton. It clearly and satisfactorily appears, from all the evidence, that he produced it before May 4, 1859. By letter dated that day, Horatio King, First Assistant Postmaster-General, authorized the postmaster at Troy, N. Y., to use for post-marking letters at that office, for the term of three months, one of Norton's improved stamps. Norton was an inventor of other improvements in such stamps; aud there is a question as to whether the stamp referred to in that letter was this one or some other. King's testimony and correspondence settle it that this is the one. After he went out of office, he was employed by Shavor and Corse to assist them about obtaining compensation for the use of this stamp, and was kept familiar with it all the while, and his testimony is, that this is the one.

"General John A. Dix was appointed postmaster at New York early in 1860. In August of that year he wrote to King about a similar contrivance which he had got up, and in a reply directed by King was warned that there was *a prior* invention, which might subject that office to a heavy charge, if his contrivance was used. This enables King to testify, with positiveness that entitles it to credit, that he had correspondence with Norton about this stamp before that time. One form of this instrument had a canceller made of cork. Norton permitted it to be used at the New York office to

test it. Its use commenced there soon after the correspondence of Dix with the Department in 1860, and it was found there when Abram Wakeman became postmaster in 1861, or thereabouts, as is shown by his letter to the Third Assistant Postmaster-General, dated Jan. 3, 1863. This correspondence, which does not depend upon mere memory for dates and circumstances, identifies this stamp very clearly. The complainant claims that the invention was made in 1853 or 1854, and described in an additional description of a caveat, filed about Aug. 7, 1854. This additional description produced from the caveat files does not appear to have ever been officially filed by the custodian of the records, and is admitted to be a copy made in 1864, said to have been put into the files by mistake, in place of the original, which is not produced. The defendant has put in evidence the record of proceedings by the Commissioner of Patents, disbarring Norton as solicitor of patents, for surreptiously placing this copy in the files, and adjudging it to be no part of the files; and claims that this destroys the effect of it as evidence. No evidence on which the Commissioner acted, nor any showing the misconduct of Norton, is produced. Norton testifies that the original was duly filed, and afterward copied, and the copy returned to the files, by mistake, as he supposes. The plaintiff claims that the action of the Commissioner legitimately shows nothing on this question, and that Norton's testimony is all the evidence there is properly bearing upon the subject. The defendant has introduced a letter from Norton to Wakeman, postmaster at New York, dated Feb. 6, 1864, when Norton was interested in this patent as part owner, stating that "the *double cancelling stamp now* used by you in your post-office *is my invention* as far back as the year A. D. 1856, as I can most fully and satisfactorily prove. It was patented to me in the early part of the year 1863, upon an application made by me a long time before then. I had several such stamps made in 1858, as I can prove by the person who made them," for the purpose of impeaching the testimony of Norton as to the caveat. The caveat as such, long before the application for the patent, ceased to be operative, because not followed up. The only use the copy found can be is as a piece of evidence. The judgment of the Commissioner, as such, extended only to the exclusion of Norton as solicitor, and not to the effect of the paper as evidence *en pais* (Act of July 8, 1870, sect. 16; Rev. Stat. U. S., sect. 487), although its effect upon the instrument as a caveat of

record might be greater. (Robertson *vs.* Secombe Manufacturing Company, 10 Blatch., 489.) What the weight of the evidence produced, and legitimately bearing upon the question, as to whether there was in fact an original paper of which the one now in the files is a copy, is not now considered, because it does not appear to be material. This letter of Norton's and its connection is stated, however, because, in connection with the evidence before stated, as to *when* he actually produced the patented article, it does appear to be somewhat material. It was introduced by the defendant as evidence. The part relied upon was that inconsistent with what Norton and the plaintiff now claim. But when so put in, it was legitimate evidence, according to what should appear to be its just weight, as well as to those parts in favor of, as to those against them. This is a well settled rule in respect to evidence of admissions. (Stead *vs.* Heaton, 4 T. R., 669; Davies *vs.* Humphries, 6 Mees & Welsh, 153; 1 Green Ev., § 201; Wright *vs.* Williams, 47 Vt., 222.) The latter tends to show that Norton actually had such stamps made in 1858. It was written before there was any controversy as to this fact, and is strongly corroborative of the correctness of the finding, that the invented and patented instrument was brought forward before May 4, 1859.

K.

Copies of several patents have been offered by defendant to show priority of invention in others, but they are so clearly irrelevant that further notice of them is not necessary, excepting perhaps the patent of 1859 to Low & Ransford. (R. 121.)

Norton, in the course of his experiments, seems to have invented a mode of cancelling stamps by cutting them with a series of knives attached to a stamp with revolving dates, and for this the patent of 1859 was issued to Low & Ransford, his assignees.

Nothing is claimed as an invention by this patent except these knives. As to this invention it may be remarked :

1st. It differs in the materials from which it is made, in the form of its construction and in the result produced from the invention in suit.

2d. All the witnesses who speak upon the subject testify that it was worse than useless, and was of no value as an improvement of the post-office stamp. It was frequently tried, and its use wholly abandoned. (R. 542, 841, 846.) When an invention is found to be worthless, a patent for it is invalid and fails. (Bliss *vs.* City of Brooklyn, 6 Fisher, 291.)

3d. Samuel P. Kettle, expert for complainant, and J. W. Robertson, expert for defendant, both testify in effect that the patent of 1859 and the patent in suit are for different inventions. (R. 103–909.)

4th. Norton invented the combined stamp now in use prior to 1859; if Ransford and Low took that stamp and changed it, substituting knives for cutting, instead of cork or rubber or iron for blotting, and obtained a patent for that change as an improvement, and subsequently, in 1863, Norton obtained a patent for said combined stamp, invented as aforesaid, the patent of 1863 would relate back to the time of the invention and is good as against the patent of 1859. (Fales *vs.* Wentworth, 5 Fisher, 305.)

5th. Admitting all that can be claimed for the patent of 1859, the use of the combined stamp made in accordance with the patent in suit, would be no infringement of it, for the cutters or knives are not employed in the latter. Mr. Justice Davis says, in Eames *vs.* Godfrey, 1st Wallace, 78: "The law is well settled by repeated adjudications in this court and in the circuit courts of the United States, that there is no infringement of a patent which claims mechanical powers in combination, unless *all* the parts have been substantially used. The use of a part less than the whole is no infringement." See, also, Gould *vs.* Rees, 15 Wallace, 187; Seymour *vs.* Osborn, 11 Wallace, 548.

TWO YEARS PRIOR USE.

Norton's patent of April 14, 1863, was issued under the acts of 1836 and 1839, and therefore it and its reissues are to be adjudged under those acts. (Colgate *vs.* Western Union Tel. Co., pamphlet copy, 130.)

L.

To sustain the defense on the ground of prior use it is necessary to show that the thing patented was in use more than two years, by the consent of the patentee, before application was made for his patent, or that the invention was abandoned to the public. Mr. Justice Woodbury, in Allen *vs.* Blunt, 2 Woodbury & Minot R's, 143, says:

"Hence, whatever may have been thought on this in England, as in Dolland's case, in the special language of their laws (2 Hen. Black, 487), or by Phillips here, page 395, before the act of 1839, it is clear under that act and the act of 1836, the intervening use in order to defeat a prior invention must be public and *with the consent of the inventor* and continue two years."

See, also, Pierson *vs.* Eagle Screw Co., 3 Story R., 408.

Curtis on Patent Law says, sec. 390:

"Of course mere delay to take out a patent unaccompanied by public use or sale of the same with *the consent* or *allowance* of the patentee before his application, however long may be the interval between the completion of the thing and the application, will have no effect upon the patent."

Parks *et al. vs.* Booth, Vol. 17, *Official Gazette*, page 1089.

No pretext is made that Norton, prior to his application for his patent of April 14, 1863, had any knowledge of the alleged use of anything like the stamp described in that patent anywhere except in the New York City and Troy post-offices. Assistant Postmaster-General King, upon the application of Norton, ordered the use of said stamp for three months in 1859 in the Troy post-office, for the purpose of testing its value. General Dix was postmaster in New York in August, 1860, and claims that at that time he caused a canceller to be soldered to the ordinary stamp, so that a letter could be post-marked and the postage stamp cancelled separately at one blow. His attention was called to an affidavit

made by him in February, 1864, in which he stated: "I found that Norton was an older inventor of the said stamp and cancelling device than I was. He consented to my using the same in the New York office, with a view of giving it a thorough trial, without charge for such use." His attention was also called to another part of the same affidavit in which he said: "I have no claim prior to his. I then believed and now believe the said invention was his as the original and first inventor and to be valuable and useful for the purposes aforesaid." General Dix does not remember the making of this affidavit but affirms its correctness by saying that these statements accord with what he had always said upon the subject. (R. 853.)

That the combined stamp was used in the New York post-office for the purpose of testing its value is evidenced by letters written at that time. On the 25th of July, 1862, Norton received a letter from the Post-office Department informing him that his letter of a prior date would be referred to the postmaster at New York for a full report as to his stamp, &c. (R. 541.) On the 7th of October, 1862, Norton received another letter from the Department from which it appears, that on the 2d of the same month he had suggested to the Postmaster-General cancellation by cutting the postage stamp as an improvement upon his "post marking and cancelling stamp," as originally presented, and doubts were expressed in that letter as to the value of the cutting device. (R. 541.) On the 3d of January, 1863, the postmaster in New York reported to the Post-office Department, that, at its request, he had been testing Norton's "double post-marking and cancelling stamp iron" in various ways, and had found it indispensable to that office. (R. 542.)

Mr. Norton states as to the arrangement in New York, and his delay in applying for a patent as follows:

"In the fall of the year 1860, the Post-office Department expressed a willingness or desire to use the invention above referred to, and contained in the bill in this suit, and had

some correspondence with the postmaster at New York with reference to the same. I consented that that invention might be used by the Government or Post-office Department simply and only for trial tests or experimenting; those tests or experiments were commenced in the post-office in the city of New York some time in the fall of 1860, or the early winter of that time; those experiments were continued during the year 1861, and for some time in the year 1862, at which time I called at the Post-office Department and made inquiries as to whether the tests that had been made were satisfactory to that department. I was told that no satisfactory answer could be given me at that time because no application of reference in writing had been made to the postmaster in New York; within a few days after that time I wrote a letter to the Postmaster-General requesting him to refer that invention to the post-office at New York for experimental tests; a few days afterward I received a letter from the Post-office Department saying, among other things, that my invention had been so referred, and in due time would be reported upon; on the 3d day of January, 1863, a report was made by the postmaster in New York to the Post-office Department, saying, among other things, that the tests or experiments had proven entirely satisfactory to the post-office at New York, and recommended the general adoption by the Post-office Department of that invention. On the 5th day of January, two days after that report was made, I filed my application for a patent on this invention in the Patent Office of the United States. Had the postmaster at New York made that report at an earlier time after December, 1860, I should have filed the application for a patent as soon as it could have been done, having my model and drawings prepared for that purpose some time in the early winter of 1861." (R. 143.)

Judge Wheeler says upon this point:

"This patent was granted while the Act of 1836 and that of 1839, in respect to the defense of public use and sale of the invention were in force. By the provisions of the Act of 1836, Sect. 15, it was only public use, or being on sale, with the consent and allowance of the patentee, before the application for a patent, that would defeat the patent. The Act of 1839 did not change the character of the public use, or being on sale, that would defeat a patent, but pro-

vided that no patent should be held invalid by reason of them, unless "such purchase, sale, or prior use, has been for more than two years prior to such application for a patent," Sect. 7. (Andrews *vs.* Carman, 13 Blatch., 307. Elizabeth *vs.* Pavement Co. 97 U. S. 126.) No use shown, except that at the New York office, was with the knowledge even of the patentee. The application was filed Jan. 5, 1863, so that a sale or use to defeat the patent must have been prior to Jan. 5, 1861, while General Dix was postmaster there. It is not very clear upon the evidence that this invention actually got into use there before that time, and this defense, like others of the same class, ought to be made out by clear proof. But, whether it was so in use before that time or not, it is quite clear, from all the circumstances attending the use, whenever it was had, that it was not a public use within the meaning of the statute, but a private use for testing the invention, and informing the inventor as to its perfection and usefulness, with the design on his part, all the while, to procure a patent for it, when it should prove to be ripe for that purpose. (Elizabeth *vs.* Pavement Co., 97 U. S. 126.) The correspondence between the inventor and the postmasters, and between them and the post-office departments, abundantly show this."

M.

To succeed with this defense of prior use the defendant must show what amounts to an abandonment to the public of his invention by Norton, and it must be clearly proven, and is not favored. (Jones *vs.* Sewall, 6 Fisher, 363.)

No case, it is believed, can be found where prior use, accompanied by an *assertion* of the inventor's right, has been held to invalidate his patent. (Mellus *vs.* Silsbee, 4 Mass., 108; Shaw *vs.* Cooper, 7 Peters, 319; Pennock *vs.* Dialogue, 2 Peters, 1.)

"It is also clear that where the act or acts of user were by way of experiment in order to perfect the invention the inventor does not lose his right." (Curtis Patent law, 387–389.)

Mr. Justice Story says in Wyeth *vs.* Stone, 1 Story R., 373, that to take away the right of inventor to his patent "the

public use must be either generally allowed or acquiesced in or at least be unlimited in time or extent or object."

No circumstance can be found in this case to indicate that Norton ever abandoned or intended to abandon his invention to the public, but on the contrary, his efforts since 1859 to have his right therein recognized have been remarkable for continuity and persistency.

N.

As to prior use: Must be with consent of inventor; clear proof required. (Jones *vs.* Sewall, 6 Fisher, 364.) Use must be more than two years with consent of inventor. (Sisson *vs.* Gilbert, 5 Fisher, 109.) Presumption against prior use. (Brown *vs.* Whitman, 5 Fisher, 526.) No delay in applying for a patent a bar unless the invention has been in use for more than two years with consent of inventor. (Russell *vs.* The Eden Manufacturing Co., 5 Fisher, 641.) Use must be public and common and with consent of inventor to defeat patent. (Amer. H. and L. Co. *vs.* Amer. Tool Manuf'g Co., 4 Fisher, 284.) No time elapsing after an invention before application for patent a bar if the invention has not been abandoned to the public, or been in public use with the consent of the inventor. (Wood *vs.* Cleveland R. R. Co., 4 Fisher, 557.) Prior use for two years must be with the consent of the patentee. (Bartholomew *vs.* Sawyer, 1 Fisher, 520. Ransom *vs.* N. Y., 1 Fisher, 273.) The two years' prior use must amount to abandonment. (Sanders *vs.* Logan, 2 Fisher, 173.)

O.

As to the right of the inventor to experiment: Experimental use allowed. (Nich. Pave. Co. *vs.* Elizabeth, 6 Fisher, 428.) An experimental use allowed that does not amount to a fraud upon the public. (Sisson *vs.* Gilbert, 5 Fisher, 109.) Inventors have the right to experiment before taking out patent. (Cox *vs.* Greggs, 2 Fisher, 177.)

P.

All the things used in 1860, including the one referred to by General Dix, claimed to be like Norton's invention, were nothing more than abandoned experiments. (Murphy *vs.* Eastman, 3 Fisher, 308. Hayden *vs.* Suffolk Manuf'g Co., 4 Fisher, 102, and Piper *vs.* Brown, 4 Fisher, 184.) They were more or less imperfect, and were laid aside, and the stamp according to Norton's patent substituted. (Allman *vs.* Holley, 6 Fisher, 538.)

Q.

Norton having followed up his invention with experiments for its improvement and the obtaining of a patent, is entitled to have such patent declared valid as against others who were negligent or less diligent in asserting their rights. In a race of diligence, he who perfects his invention and obtains a patent must be held to be the first inventor. (Taylor *vs.* Archer, 4 Fisher, 455. Reeves *vs.* Kingston Bridge, 5 Fisher, 462. National F. O. Co. *vs.* Arctic O. Co., 4 Fisher, 519.

R.

Various allegations are made in the answer as to Norton's patent of 1863 and its reissues, to the effect that they were obtained by frauds and misrepresentations, and are unlawful, invalid, &c. To all these it is a sufficient answer to say:

1st. That as the facts upon which these mere conclusions of law are founded are not set up, the defendant upon such a state of pleadings cannot avail himself of those defenses. (Gear *vs.* Grosvenor, 6 Fisher, 314.)

2d. Patent cannot be impeached collaterally for fraud. (Eureka Co. *vs.* Bailey Co., 11 Wallace, 488. Rubber Co. *vs.* Goodyear, 9 Wallace, 788.) Decision of Commissioner cannot be impeached collaterally. (Dorsey *vs.* Marsh, 6 Fisher, 395. A. Wood & P. Co. *vs.* G. F. Co., 4 Fisher, 324. Crompton *vs.* Belknap Mills, 3 Fisher, 547.)

S.

3d. When the Commissioner reissues a patent, it is conclusively presumed that all the facts necessary for that purpose were before him, and the Court can make no inquiry upon that subject not arising upon the face of the patents. (Weber *vs.* Gill, 6 Fisher, 93. Carver *vs.* Boston Elastic Co., 5 Fisher, 96.) Action of Commissioner in granting reissue final and conclusive. (Chicago Co. *vs.* Busch, 4 Fisher, 401. Putnam *vs.* Am. B. O. Co., 4 Fisher, 470.)

4th. No evidence has been adduced by defendant to show any fraud as alleged in the answer.

He has produced a certified copy of the file-wrapper and its contents as to Norton's patent of April 14, 1863, but for what purpose does not appear. They were objected to, and are not evidence. (Westlake *vs.* Carter, 6 Fisher, 521.)

T.

Defendant alleges that if Norton was an inventor as described and claimed in his patent of April 14, 1863, the thing he invented was of no utility or value.

To this there are two conclusive answers:

1st. The use of said invention by defendant is not only evidence of its utility, but he is thereby estopped from denying its value. (Smith *vs.* O'Connor, 6 Fisher, 473. Whitney *vs.* Mowry, 4 Fisher, 208. Hays *vs.* Sulsor, 1 Fisher, 533.)

2d. One of defendant's predecessors says: "The design of Mr. Norton is indispensable to us." (R. 542.) Postmaster-General Randall says as to Norton's cancelling stamp, "The Department has already saved several hundred thousand dollars by its use, and I have no doubt will continue to save large sums by its future use." (R. 555.)

Postmaster-General Creswell says: "The combined stamp has been demonstrated by continuous use during nearly eight years to be valuable in large post-offices and in the railway service. It is impossible to estimate with any degree of accuracy the amount of money which had been or which may be saved by its use." (R. 503.)

On R. 494 will be found the report of the Committee on Post-offices and Post-roads of the House, and on R. 497–499 two reports from the Committee on Post-offices and Post-roads in the Senate, all of which affirm the great utility of Norton's combined stamp.

All the witnesses on both sides in this case who speak upon the subject testify to its value as a labor-saving machine.

Defendant has made a feeble effort by the testimony of his expert, Robertson, to show that there was no invention about Norton's combined stamp, and therefore it was not patentable. His testimony, if it had any force, is not competent, for no such defense is made in the pleading. The answer denies the patentability of Norton's stamp because it had been anticipated by others, and not otherwise. Robertson produces a small clothes-marker and shows that if it was made over and into something else it would answer the purpose of Norton's stamp. The clothes-marker and the testimony with it are not admissable, because no notice of them was given in the answer as required by statute. (Railroad Co. *vs.* Dubois, 12 Wallace, 47.) Norton's experiments from 1857 to 1865, as evidenced by Sherwood's books (R. 598); the correspondence of the Post-office Department, showing that various devices for post-marking and stamp-cancelling were tried in the post-offices; the numerous patents and models offered by defendant; continuous experimenting in the New York post-office, as testified to by Yeomans, Ryan, and others (R. 841 and 846), by which the superiority of the Norton stamp over all others was demonstrated;—all these show that ingenuity upon this subject has been taxed, and by Norton alone with success.

Postmaster-General Creswell says of the Norton stamp: "Simple as it is, no other device has been hit upon that will do the work of this one without adding largely to the number of stamping-clerks employed, and consequently increasing the expenses of the Department." (R. 503.)

Robertson is the man who had a bitter controversy with Norton about the revolving dating-stamp, and though a swift witness for the defendant, his cross-examination shows an utter failure to swear away Norton's patent. He is also completely demolished by Mr. Kittle, the expert for complainant.

That Norton's combined stamp is patentable, appears from the following authorities: Forsyth *vs.* Clapp, 6 Fisher, 339. Penn. Salt Co. *vs.* Thomas, 5 Fisher, 151; Bailey W. & M. Co. *vs.* Lincoln, 4 Fisher, 379; Dennis *vs.* Eddy, 4 Fisher, 427; Watson *vs.* Cunningham, 4 Fisher, 531; Woodson *vs.* Simpson, 3 Fisher, 105; Purnell *vs.* Illinois Railroad Co., 3 Fisher, 333; Eames *vs.* Cook, 2 Fisher, 151; Flatbush *vs.* Cook, 2 Fisher, 671; Maury *vs.* Sizer, 1 Fisher, 17; Carver *vs.* Rice, *id.*, 198; Stanhope *vs.* Elkinton, *id.*, 350; Bell *vs.* Daniels, *id.*, 378; Mulford *vs.* Pierce, 14 Blatch., 141.

These cases hold that a combination of old elements, so as to produce a new and useful result, is patentable; that uitlity is evidence of patentability; that apparent simplicity of structure, if new and useful result is produced, is not a valid objection, and that patents have been granted and upheld for combinations as simple as Norton's combined stamp.

Judge Wheeler says: "That its production did involve the exercise of inventive faculties and skill is apparent from the various steps, trials, and tests by which it was reached, from the fact that so many other patents have been granted upon attempts approaching the same object without accomplishing it, and from the fact that the patent has sustained a suit for infringement of it against a party using the invention in fulfillment of a government contract."

U.

Aside from the above considerations, complainant's case stands upon other and impregnable grounds.

Mr. Ferry, in his report from the Committee on Post-offices and Post-roads of the House, in July, 1866 (R. 494), says of the stamp in question:

"The invention having been sufficiently proved, and its utility satisfactorily tested by uninterrupted use in various post-offices of the States, application was made to the Thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already referred to. Another claimant to said invention appearing, the committee of that Congress who were then considering the subject of compensation, decided that, since the validity of the title to the same was called in question, *that* should first be determined by the courts, and the case was accordingly thereupon remanded.

"By a transcript of the proceedings and judgment, now submitted as rendered in the United States Circuit Court of the Northern District of the State of New York, it appears that the question of validity of title was tried, and decided in favor of the patentees, Shavor and Corse. Again, therefore, the patentees appear before the present Congress, claiming a suitable remuneration for their invention, on condition of an assignment of all their right and title to the same to the United States."

Reference is here made to the suit of Shavor & Corse *vs.* Hoole (R. 514). Hoole was sued for an infringement of Norton's patent, in making stamps according to the description in said patent. His defense was prepared by an able expert, Mr. Stetson, and his counsel was the well-known and experienced attorney in patent cases, Mr. Gifford. The jury in that case, under the instructions of the court, found that—

1st. Norton was the first and original inventor of said stamp.

2d. That it was useful and valuable.

Some effort has been made to weaken the force of this verdict, upon the ground that Hoole, after filing his answer and fixing a day for trial, did not appear.

Verdicts given without trial and without collusion are of as much weight as any. (Potter *vs.* Fuller, 2d Fisher, 261.) Verdicts for nominal damages at law approved. (Clark *vs.* Fire Co., 2 Fisher, 233.) Not a particle of evidence is adduced to show collusion, and Mr. Hoole, in his deposition before the Court of Claims (R. 539) says:

"I was made a party to a proceeding instituted in the United States Court for the Northern District of New York to test the validity to this patent. I did not defend that suit at the instance of the United States. They did not give me any instructions in relation to it. I was not present at the trial; neither was my counsel, Mr. Gifford, of this city, who was to have been there, but did not get there, but he left the case in the hands of my expert in the case, who was present. I was not there, by advice of my counsel, Mr. Gifford. I called no witnesses for the purpose of proving the facts set up in my answer. Three witnesses, however, were subpœnaed, but it was not considered expedient by my counsel to try the case. I commenced the thing, believing that Marcus P. Norton was not the inventor of the patent. I came out of it believing that he was. The failure of my efforts to procure testimony to the contrary was the cause of my believing that Mr. Norton was the original first inventor.

Shavor and Corse sued the United States in the Court of Claims, upon an alleged contract for the use of Norton's stamp.

Issues were made in that case as to the invention and the utility of said stamp, and evidence given thereon.

The court found that there was no contract as alleged; but they also found that Marcus P. Norton's *invention* for post-marking and stamp-cancelling letters "had been of great use and value to the United States." (R. 332.)

Claims for the use of this invention were before the Thirty-eighth Congress, 1864 and 1865. Reports were made from

the Committees of Post-offices and Post-roads of the Senate and House in the Thirty-ninth Congress, 1866 to 1869, the former recommending the payment of $50,000 and the latter $100,000, which latter was adopted by the Senate. Reports were made from said committee of the Senate in the Forty-first Congress, 1869 and 1870, and the Forty-second Congress, 1871 and 1872. (R. 494, 497, 499, 506.)

Postmaster-General Creswell in 1871 investigated, by direction of Congress, the questions as to Norton's invention, and made a report thereon. (R. 503.)

All these judicial proceedings, investigations and reports hold and affirm that Norton was the first and original inventor of the combined post-marker and stamp-canceller, and that it is of great utility and value.

These proceedings estop the United States from now controverting those facts. It is inequitable at this time to question the correctness of the uniform judgments of courts, committees of Congress and Department officers upon this subject, covering a period of so many years.

V.

Defendant, as to infringement, denies that he is now using or has ever used any machine or device for the post-marking of letters or cancellation of the postage stamps thereon which is an infringement upon or violation of any right secured, if any there be, to the said Norton by said letters-patent of April 14, 1863, or to him or his assignees by any of the issues of said letters-patent.

This is no denial of infringement. It is a denial of a conclusion of law. If the infringement is not explicitly denied in the answer, it must be taken as admitted. (Stuart *vs.* Shartz, 6 Fisher, 35; Agawam Company *vs.* Jordan, 7 Wallace, 609.)

Infringement is also proven. (R. 131, 133.)

As to the liability of the defendant, two points are made in his behalf—

1st. That letters-patent do not exclude the officers and agents of the Government from using the patented article in the public service.

2d. The defendant infringed the Norton patent (if he infringed at all) as postmaster of the city of New York.

To these points there are several sufficient answers—

1st. Section 5 of the Act of 1836 (5 Statutes, 117), provides that "every patent shall contain * * * and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors and assigns * * * *the full and exclusive right and liberty* of making, using and vending to others to be used the said invention or discovery," &c. How can this right be full or how can it be exclusive if all the officers and agents of the Government can use the invention at pleasure?

2d. It was the intent and understanding of Congress that the officers and agents of the Government were excluded from the use of a patented article.

Section 1673 of the Revised Statutes provides that "No royalty shall be paid by the United States to any one of its officers or employes for the use of any patent," &c.

This clearly implies that the United States are bound to pay for the use of a patent outside of this prohibition.

Section 1537 provides that no patented article shall hereafter be purchased or used in connection with any steam vessels of war until the same has been submitted to a Board, &c. Here is a clear implication that war vessels of the Government have no right to use a patented article without acquiring the right under the patent.

3d. Acts have been passed by Congress for the relief of persons whose patented inventions have been used by the Government. (U. S. Statutes, vol. 17, page 677.)

4th. All of the proceedings in Congress relative to the patent in question indicate no doubt as to the obligation of the government to pay for the use of a patented article.

5th. Contracts have been made by the Departments of the Government to pay for the use of patented articles. (U. S. *vs.* Burns, 12 Wallace, 252.)

6th. All the authorities are clear to the effect that what the patentee acquires under his letters-patent is property. In McCowl *vs.* Everest *et al.*, 1 Wood's R., 201, Judge Wood says: "The property in a patent is just as much under the protection of the law as property in lands. The owner has the same right to invoke the protection of the courts, and when he has made good his claim to his patent and shown an infringement of it, it is the duty of the court to give him the same relief meted out to suitors in other cases." (Colgate *vs.* Mt. Ocean Tel. Co., *Official Gazette*, vol. 17, page 194.)

Now if a patent right is private property it is under the protection of Article 5 of the Constitution, which provides "nor shall private property be taken for public use without just compensation."

The General Government is bound by its contracts. (Sinking Fund Cases, 99 U. S., 719.)

A grant is a contract. (Fletcher *vs.* Peck, 6 Cranch., 87.)

In McKeever *vs.* The United States, 14 Ct. of Claims, 422, after a thorough discussion of this question the court holds that the General Government is bound by its letters-patent.

Defendant relies upon Feather *vs.* The Queen, 6 Best & Smith, Q. B. Reports, 257, in which it is held that a patent does not preclude the Crown from the use of the invention protected by the patent.

Whatever may be the rule in England, and though the Government here is not bound by the limitations and prohibitions of some statutes, the doctrine of this country is that the Government has no right to change or violate a grant which it has absolutely made and under which property rights have been acquired.

The English idea goes upon the assumption that the King can do no wrong, and as the infringement of a patent is a tort, it follows that the King cannot infringe. Furthermore an English patent is a special favor granted by the Crown to one subject to the exclusion of other subjects, but without prejudice to the royal prerogative. Chief-Justice Cockburn, in delivering the opinion of the court, in Feather *vs.* The

Crown, *supra* says: "It appears to us on the other hand, that there are parts of the letters-patent from which it is to be inferred that the Crown was not to be bound. The grant is of special license, full power and sole privilege and authority, &c., terms which appear referable to a right confined as against the fellow-subjects of the grantor rather than as against the Crown. This is followed by a prohibition to all and every person and persons, bodies politic and corporate, and all other of our subjects whatsoever against making, using or practicing the invention upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command, and such offenders are further answerable to the patentee in damages. It is obvious that none of these provisions by which the exclusive right of the patentees are protected can be applicable to the Crown; all tend to show that the privilege was intended to be against fellow-subjects."

Letters-patent in this country grant the "full and exclusive right" and there is no room for inference or any ground to suppose that the officers and employes of the Government are not thereby, with respect to the right granted, put upon the same footing with other citizens of the country. Mr. Justice Field says in United States *vs.* Burns, 12 Wallace, 252: "An officer in the military service, not specially employed to make experiments, with a view to suggest improvements, devising a new and valuable improvement in arms, tents or any other kind of war material, he is entitled to the benefit of it, and to letters-patent for the improvement from the United States equally with any other citizen not engaged in such service, and the government cannot, after the patent is issued, make use of the improvement any more than a private individual without license of the inventor or making compensation to him."

As to the point that defendant was postmaster in New York, Chief-Justice Cockburn, in Feather *vs.* The Queen, *supra*, says:

"But in our opinion no authority is needed to establish that a servant of the Crown is responsible in law for a tortuous act done to a fellow-subject though done by the authority of the Crown, a position which appears to us to rest on principles which are too well settled to admit of question, and which are alike essential to uphold the dignity of the Crown on the one hand and the right and liberties of the subject on the other. We entertain no doubt that if the effect of the letters-patent had been to exclude the Crown from the use of the invention an action could have been maintained by the patentee against any one by whom the invention had been used in the public service. On the other hand, as the infringment of a patent right constitutes a tort or wrong in the proper sense of the term, and as no wrongful act can be alleged against the Crown, we are of opinion that even if our opinion upon the first question had been in favor of the suppliant a petition of right would not be open to him as a means of redress." (See also Entick *vs.* Carrington, 2 Wel., 275; Money *vs.* Leach, 3 Burr, 1742; Mostyn *vs.* Fabrigos, Cowper, 161; Johnston *vs*, Sutton, 1 Term Rep., 502; Wils *vs.* McNamara, 1 Term Rep., 536; Sutherland *vs.* Murray, 1 Term Rep., 538.)

Judicial or *quasi* judicial officers are not personally liable for an error of judgment, but it is well settled in this country that ministerial and executive officers are personally liable for an injury to person or property not authorized by law, and good intentions or orders from superior authority do not excuse them.

Marshals, sheriffs and constables are liable for injuries resulting from their official acts not warranted by law. In Buck *vs.* Colbath, 3 Wallace, 334, Mr. Justice Miller, in delivering the opinion of the court as to the liability of U. S. marshals in executing ordinary writs of attachment or execution, says:

"The officer has a very large and important field for the exercise of his judgment and discretion. First, in ascertaining that property on which he proposes to levy is the property

of the person against whom the writ is directed; Secondly, that it is property which by law is subject to be taken under the writ; Thirdly, as to the quantity of such property necessary to be seized in the case in hand. In all these particulars he is bound to exercise his own judgment and is legally responsible to any person for the consequences of an error or mistake in its exercise to his prejudice. He is liable to plaintiff or defendant or to any third person whom his erroneous action in the premises may injure. And what is more important to our present inquiry, this court can afford him no protection against the parties so injured. (See also Weber *vs.* Henry, 16 Mich., 399; Rhodes *vs.* Patterson, 3 Cal., 469; Hallowell & Bank *vs.* Howard, 14 Mass., 181; Walcot *vs.* Pomeroy, 2 Pickering, 121; Campbell *vs.* Phelps, 17 Mass., 244.)

Military and naval officers of the Government are liable for their official acts not warranted by law.

Little *et al vs.* Baneme *et al.*, 3 Cranch, 170, is a case in which it was held that a commander of a ship-of-war of the United States, in obeying his instructions from the President of the United States, acts at his peril. If those instructions are not strictly warranted by law he is awswerable in damages to any person injured by their execution.

In Mitchell *vs.* Harmony, 13 How., 115, it was held that a military officer in the discharge of his official duty was liable for private property which he had caused to be destroyed, Mr. Chief-Justice Taney, in delivering the opinion of the Court, says: "And upon principle, independent of the weight of judicial decision, it can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior."

Burns *vs.* Clarke, 5 Otto, 204, is a case in which a military officer was held liable for property destroyed, for the reason that the *locus in quo* was not Indian country, as he supposed it to be.

Mr. Justice Clifford, in delivering the opinion of the Court in the case of Comnegys *vs.* Newton, 4 Otto, 234, says: "Pub-

lic employment is no defense to the employe for having converted the private property of another to public use without his consent and without just compensation. Agents of the public have no more right to take such private property than other individuals." To the same effect is the decision of the Court in Brady *vs.* The Atlantic Works, 4 Clifford, 408, Judge Wheeler says:

"One ground upon which the defendant claims he does not infringe is, that, in all he has done, he has acted as the officer of the Government in the performance of his duties for the benefit of the Government, and that the monopoly granted, in granting the patent, did not extend to nor cover any use by the Government. But the exclusive use of the invention granted to the patentee is property; and this property is now owned by the plaintiff. The grant saved nothing for the use of the Government; it was exclusive absolutely throughout the United States. It was granted by express law of Congress, pursuant to the Constitution, without which it could not exist. But all property is upheld by law, either expressly or impliedly enacted or adopted, all of which is the law of the land, the same as the satutes upholding patents are. This property, like all other private property recognized by law, is exempt from being taken for public use without just compensation by the supreme law of the land. (Amended Constitution of the United States, Art. V.); nor can it be so taken by any officer, at will, in time of peace, leaving the owner to seek compensation. Mitchell *vs.* Harmony, 13 How. 115. The property in a patented invention stands the same as other property in this respect. (United States *vs.* Burns, 12 Wallace, 246. Cammeyer *vs.* Newton, 94 U. S. 225.)

There was no law that required Mr. James to use Norton's invention. There was no order of the Postmaster-General requiring him to use it. The instruments he used were made in New York city under his directions; were paid for by him, and charged according to his judgment. (R. 1506.)

Defendant says, in his answer, that he has acted in this matter "with the consent, approbation and approval, and under the direction of the Postmaster-General." Assuming that he

used Norton's invention this averment does not show that he was required or commanded to do so by the Postmaster-General. It does not appear that the use of the invention was not his voluntary act.

The averment is fatally defective in all respects. Mr. Justice Field, in Bean *vs.* Beckwith, 18 Wallace, 515, says: "Whenever one justifies in a special plea an act which in itself constitutes at common law a wrong upon the process, order, or authority of another, he must set forth substantially and in a traversable form the process, order, or authority relied upon, and that no mere averment of its legal effect without any other statement will answer.

X.

No notice is taken by defendant of complainant's claim for damages, and of course the allegations of the bill in that respect are admitted.

Y.

Very much of defendant's testimony has been directed to an attack upon the veracity of Mr. Norton. Early in the history of this stamp business he fell into a controversy with Green, Ransford, and their coadjutors, by whom he has been pursued with an untiring and merciless hostility. While the Post-office Department and the Committees of Congress have acknowledged the great public utility and benefit of Norton's combined stamp, these men, by their machinations, have managed to defeat all claims upon the Government for its use. They were the chief actors in the proceedings to expel Mr. Norton from the Patent Office. They instigated the indictment, a copy of which has been thrust into this record, to create prejudice against Norton it must be supposed, for it has nothing to do with the case. When this suit was commenced, squat like a toad at the ear of Eve, they made themselves the advisers of defendant's counsel, and under their inspiration the defense has been carried on,

as though its chief object was to punish and destroy Norton. To this end the confidence of private and professional correspondence has been violated. Whatever malice or falsehood has left upon the records or files of the Departments has been forced into service, and, finally, a mighty effort was made with the money and detective power of the United States to impeach his testimony. This last was a wretched failure and sixteen witnesses (including the said Green and Ransford, whose evidence in another case is offered in this,) testify for defendant upon this point, several of whom have had personal difficulties with Mr. Norton, and others say little to his prejudice.

Seventy-four of his neighbors and acquaintances come forward to bear evidence in his favor. Ought not this overwhelming defeat of an attempted impeachment to strengthen Mr. Norton's testimony in this case? This suit is between Campbell and James. Norton is not a party to it. What he has said and done, therefore, is of no consequence, if the evidence proves the plaintiff's right of recovery. If Norton had not been called as a witness, defendant would have argued that complainant was afraid to call him. Upon the record and documentary evidence, it is believed the case is good without Norton's testimony.

Struggling in misfortune and sickness for a great number of years, with his personal enemies on the one hand and the power of the Government on the other, it is not to be wondered at if Mr. Norton has been drawn into some apparent inconsistencies of word or action, but there is nothing material in this, which cannot be satisfactorily explained by the light of surrounding circumstances.

Let it not be forgotten that defendant is a mere infringer; he does not pretend to be an inventor, or claim under any patent. He has simply appropriated another man's property. He now tries to defend his own wrongful act by showing that Norton has dealt unjustly or unfairly with A., B., or C. A., B., and C. are strangers to defendant, and to this suit. They are not complaining of Norton. This defendant

is not their guardian. He cannot wrong complainant because Norton has wronged somebody else. Where an infringer has seized and used a patented invention without any pretense of right, the court will be slow to grant him protection in his tort, because he can throw mud at the inventor.

To protect the defendant the Government has interposed. Its money, its influence, and its officers have been at his service. Time and again the public authorities have acknowledged that Norton was the inventor of the stamp used by defendant, and that it was of great valne to the country; but now they seem determined, by means of this suit, to destroy if possible those acknowledged rights.

It is confidently believed that this injustice cannot prevail, and that the prayers of the complainant will be granted by the court.

BRIEF ON EXCEPTIONS TO MASTER'S REPORT.

MASTER'S REPORT.

OPINION OF CIRCUIT COURT THEREON.

The complainant, Campbell, and defendant, James, have both appealed from that part of the decree of the court below overruling their respective exceptions to and confirming the Master's report.

Complainant claims that the Master's allowance to him was not as much as it ought to have been, and said defendant claims that he is not chargeable with any damages or profits, and that the Master's report should have been to that effect. Both appeals may be disposed of in one argument.

Complainant's exceptions are as follows:

EXCEPTION No. 1.

For that the said Master, after finding the fact to be that time was saved in the making up and in the despatch of the mails for transportation by the use of the machine or device containing the said new and useful improvements in post-office post-marking and cancelling hand-stamps described in the specifications, shown and illustrated in the drawings, and embraced in and covered by the several claims of the letters-patent, specified and described in the bill of complaint in this suit as "*Division A*," dated the 4th day of October, A. D. 1870, and No. 4,143, the same being a *reissue* of the *letters-patent* mentioned in the bill of complaint as having originally been granted and issued to Marcus P. Norton on

the 14th day of April, A. D. 1863, held and decided that he could make no allowance of damages or profits therefor, because the *pecuniary* value of the time so saved was not proven.

Whereas, the said Master should have made an estimate of the value of such time, taking into consideration all the evidence and circumstances of this case, and allowed the same as damages or profits.

EXCEPTION No. 2.

For that the said Master, after finding the fact to be that "more perfect and efficient work is done by the said combined patented instrument, both in the making of the postal mark and in the cancellation of the postage stamp, than by any other instrument known or used in the post-offices prior to the use of such combined instrument," held and decided that he could make no allowance of damages or profits therefor because the *pecuniary* value of the said superior advantages of the said combined instrument was not proven.

Whereas, the said Master, taking into consideration all the evidence and circumstances of the case, should have made an estimate of the value of said superior advantages, and allowed the same as damages or profits.

EXCEPTION No. 3.

For that the said Master, after finding the fact to be that the use of the said machine or combined instrument had conduced to the regular and speedy transmission of matter through the mails, held and decided that he could make no allowance of damages or profits therefor, because the *pecuniary* value thereof was not proven.

Whereas, the said Master, taking into consideration all the evidence and circumstances of the case, should have made an estimate of the value of said advantages, and allowed the same as damages or profits.

EXCEPTION No. 4.

For that the said Master, after finding the fact to be that the saving of space or room was an advantage derived from the use of the said machine, or combined instrument, held and decided that he could not make an allowance therefor, because the "New York post-office is a building owned by the government, and more space could be provided if necessary, without additional cost either to the postmaster or the Government of the United States."

Whereas, the said Master should have allowed the value of said advantage as damages or profits on the evidence produced before him on that subject.

EXCEPTION No. 5.

For that the said Master found the gains and profits accruing to said defendant, Thomas L. James, in the *Third* Division of the New York post-office, from April 1, A. D. 1873, to January 1, A. D. 1877, to be the saving of the salaries of six clerks during said time, at an annual salary each of $700, amounting to $15,750.

Whereas, the said Master should have found the said gains and profits, during said period, to be the saving of the salaries of twelve clerks, at an annual salary of $700 each, amounting to $31,500.

EXCEPTION No. 6.

For that the said Master found also that the gains and profits accruing to the said defendant, Thomas L. James, in the said *Third* Division of the New York post-office, from January 1, 1877, to January 1, A. D. 1880, were the saving of the salaries of nine clerks therein, at an annual salary of $700 each, amounting to $18,900.

Whereas, the said Master should have found the said gains and profits during said period to have been the saving of the salaries of eighteen clerks, at an annual salary of $700 each, amounting to $37,800.

EXCEPTION No. 7.

For that the said Master found, as a part of said defendant's gains and profits, the saving of the salary of one clerk in the "Foreign Department," from April 1, A. D. 1873, to January 1, A. D. 1880, at an annual salary of $700, amounting to $4,725.

Whereas, the said Master should have found, instead thereof, the saving of the salaries of two clerks, at an annual salary of $700, amounting to $9,450.

EXCEPTION No. 8.

For that the said Master found, as a part of said defendant's gains and profits, the saving of the salary of one clerk in the "Fourth Division," from April, 1873, to January, 1880 (a period of six years and nine months), at an annual salary of $700, amounting to $4,725.

Whereas, the said Master should have found, instead thereof, the saving of the salaries of two clerks, at an annual salary of $700 each, amounting to $9,450.

EXCEPTION No. 9.

For that the said Master found, as a part of the said defendant's gains and profits, the saving of the salaries of four clerks "in the various city stations of the post-office," from April 1, A. D. 1873, to January 1, 1880 (a period of six years and nine months), at an annual salary of $700 each, amounting to $18,900.

Whereas, the said Master, instead thereof, should have found the saving of the salaries of eight clerks during said period, at a salary of $700 each, amounting to $37,800.

EXCEPTION No. 10.

For that the said Master found the total amount of said gains and profits to be $63,000.

Whereas, he should have found them to be $136,000 (one hundred and thirty-six thousand dollars).

EXCEPTION No. 11.

For that the said Master found and reported the said $63,000 as gains and profits.

Whereas, he should have found the same as damages, upon the whole evidence, as by law provided.

EXCEPTION No. 12.

For that the said Master did not assess the damages of the complainant, Christopher C. Campbell, at $136,000, or any other sum.

Whereas, he should have found and assessed, on the whole evidence, the sum of $136,000 (*one hundred and thirty-six thousand dollars*) to be the damages of the complainant, *Christopher C. Campbell*, in consequence of the infringements stated in said decretal order of September 1, 1879.

These exceptions were all overruled by the court below, and complainant assigns for error the ruling of said court upon each and all of said exceptions.

COMPLAINANT'S CLAIM.

1st. That by the use of said improvement one man has been enabled to do the work which it took two men to perform before said improvement was made.

2d. That clearness and perfection of impression have been accomplished by the use of this improvement which have never been attained by the use of any instrument, before or since said improvement was discovered, and which clearness and perfection of impressions defendant testifies are of great value.

3d. That the use of said improvement has greatly conduced to expedition in the handling and transmission of letters which said defendant also testifies is of great value.

4th. That valuable space or room is saved by the use of this improvement.

AS TO THE FIRST CLAIM.

Let us suppose that a letter is laid upon a table upon which the postage stamp is to be cancelled, and the post-mark made by separate instruments, this may be done in two ways: One man may cancel the postage stamp with a suitable instrument, and then laying it down take another instrument and use it to post-mark the letter; or one man may use one instrument and another man the other, the process is to strike the face of the instrument upon an ink-pad and then apply the inked face to the letter or postage stamp, as the case may be. Now, the first question is, can a man strike the ink-pads with an instrument upon which the cancelling and marking faces are combined, as quickly as he can with an instrument having upon it only one of said faces? No one has pretended to negative this inquiry, and common observation and experience affirm it.

Second. Can a man apply the double-faced instrument to the letters, so as to cancel the postage stamp and make a post-mark thereon outside of the postage stamp, as quickly as he can apply a separate post-marker or a separate stamp-canceller to a letter, so as to make the work of the latter as perfect as the work of the former? Several of the witnesses attempt to negative the inquiry; but the reasons which they give for their opinions show that the opinions are unsound. To a person of ordinary understanding it would seem to be too plain for controversy; that it would take no longer to strike a letter using one handle having two faces attached to it than it would to strike a letter using the same handle with a single face attached to it. Indeed, keeping in view

the fact that clearness and perfection of impressions are necessary, it would seem to be the dictate of common sense that the broader the surface, within reasonable limits, to be applied to the letter, the more expeditiously the instrument could be used. The only reason given why a post-marker alone can be used quicker than the double instrument is this: that with the single instrument a blow may be struck anywhere on the letter away from the address, while with the double instrument the blow must be so struck as to bring the canceller upon the postage stamp. Considering that the space upon the face of a letter in which the blow by the single or double instrument must necessarily be struck varies from three to five inches one way, and from one to two inches the other way, it seems absurd to say that it would take any more time to direct a blow to one than to another part of this space.

Be this, however, as it may, it is obvious that more care and skill and time are required to imprint accurately upon a letter words and figures with a small upright instrument like the old-fashioned post-marker than with the larger, better adjusted and carefully balanced combined instrument now in use.

That a man can apply the double instrument to a letter so as to do efficient work as often as he can the single post-marker in a given space of time, is manifest from the nature as well as from the evidence in the case.

But, it is said that the separate canceller can be used quicker than the combined instrument. One reason for that opinion is, that a roller can be used, and another reason is, that several stamps can be effaced with one inking of a separate instrument. The question is not what can be possibly done by way of experiment or otherwise; but, the question is, in the ordinary transaction of business, if a separate canceller was used, would a given number of postage stamps be cancelled, as effectually and in less time than they are now

the use of the combined instruments. Let it be remembered that all the witnesses say, that the effectual cancellation of the stamp is very important. Steel has been adopted in place of cork or rubber or wood, because it is said to break the enamel or fibre of the stamp, and thus prevent its re-use. It is evident that while a roller or a canceller used upon several stamps with one inking might to some extent blot the stamps, their re-use can only be prevented by some means that will mar the face of the stamp and at the same time thoroughly impregnate it with ink. The argument or theory of the witnesses seems to be this: That a separate canceller can be used quicker than the canceller in the combined instrument, because the operator must look after the post-marker in using the latter; and they then argue that the separate post-marker can be used quicker than the post-marker in the combined instrument, because the operator of the latter must look after the canceller, thereby assuming what is manifestly untrue—that it is easier, and takes less time to look after two instruments operated separately than it does to look after the same two instruments combined together and operated as one.

There is, of course, nothing in the idea that one instrument is lighter than another; for any instrument can be made of the proper weight. When the statements of the witnesses are carefully scanned, it will be seen that they support the view that twice the number of men now employed would be necessary if the combined stamp were not used. All of the witnesses who speak upon this subject (excepting Mr. Kittle) are employes of the Post-office Department, and testify with evident reluctance in favor of the complainant. Yeomans, Gayler, Lawrence, Steele, Buchard, Bogia, Wareing, Richards, and defendant James, are witnesses, some of whom have very little and others no practical knowledge of stamping; Magee, Beach and Andrews are the practical stampers who testify. Magee, in his answer to questions No. 59 (R. 1523), and 71, 73 and 69 (R. 1524), Beach, in his answers to ques-

tions 48 and 49, (R. 1528,) shows that separate instruments would take twice as much time and labor as the combined instrument. And Andrews, in his answer to question 72 (R. 1535), and to question 79, shows in effect the same thing, though he tries to make it appear otherwise. With these is to be taken the opinion of Mr. Kittle (R. 1485), which ought to be adopted, as his reasons show its absolute correctness to any man of common sense.

Superadded to the saving of clerk hire by the use of the combined instruments, are the following considerations:

1st. The dispatch of business—that is to say one man with the combined instrument, can handle a given number of letters in half the time that would be taken if a separate canceller and a separate post-marker were used, which would of course necessitate two separate handlings of the letters. Expedition in the transmission and delivery of letters is a great object in the postal service—postal cars, letter carrie rs, &c. &c., occasion great expense, and all to this end.

2d. The efficiency and perfection of the work. This is, very important, and after experimenting for years nothing has been found in these respects to equal the Norton improvement.

3d. The saving of space and room—that is to say that two men each operating a separate instrument will take double the room occupied by a man using the combined instrument and accomplish no more, perhaps less, work.

No specific pecuniary value is attached to these considerations by the witnesses, neverthelesss they are "advantages." Reference is made for authority upon this point to the Suffolk Company *vs.* Hayden, 3 Wallace, 315. That was a case when there had been no sales of the patent right or license for the use of it, and general evidence as to the utility of the invention was admitted. The Supreme Court, Mr. Justice Nelson, delivering the opinion, said:

"There being no established patent or license fee in the case, in order to get at a fair measure of damages, or even an approximation to it, general evidence must necessarily be resorted to. And what evidence could be more appropriate or pertinent than that of the utility and advantage of the invention over the old modes or devices that had been used for working out similar results. With a knowledge of these benefits to the persons who have used the invention and the extent of the use by the infringer, a jury will be in possession of material and controlling facts that may enable them in the exercise of a sound judgment to ascertain the damages, or, in other words, the loss to the patentee or owner by the piracy instead of the purchaser of the invention." No witnesses in this case testified to any amount of damages in dollars and cents; but the jury, upon general evidence as to the utility and advantages of the invention, rendered a verdict in favor of the plaintiff of $1,774, which was affirmed by the Supreme Court.

In the late case of Judson *vs* Bradford *et al.* Patent Office Gazette, No. 4, vol. 16, 1879, Mr. Justice Clifford recognizes the decision, and says upon the subject of damages: "Neither party having furnished any definite evidence as to the amount of the injury sustained by the plaintiff the Court is compelled to estimate the same from evidence introduced upon the subject weighed in review of the whole evidence, as the question must be, the Court finds," &c. &c.

Here is a case when the Court "estimated" the amount of damages from general evidence as to the utility of the invention.

It follows from these authorities, that the Court in this case may estimate and fix any amount in dollars and cents which it may consider a fair measure of damages to the complainant, taking into consideration the economy of time and labor, the increase of speed in the transaction of business, the efficiency and perfection of the work, and the saving of

room, which advantages are undeniably accomplished by the Norton invention over the "old modes and devices" that were used before that invention was made. If it is not necessary that the complainant should adduce any evidence as to the money value of these advantages. That is to be fixed by the judgment of the Court.

SEVERAL QUESTIONS ARE MADE BY THE DEFENDANT.

1st. That complainant cannot recover those damages or profits which accrued prior to the date of the assignment to him by Helen M. Ingalls.

The infringements, it is admitted, commenced when the defendant became postmaster in New York, to wit, on the 1st of April, A. D. 1873, so that the accounting must go back to that date irrespective of the question of ownership; it is contended by complainant, that the bill shows, and so does the evidence, that complainant Campbell is the owner of all claims arising out of infringements upon said invention since the reissue of the patent to Helen M. Ingalls, October 4th, 1870. Reference is made to the case of Dibble *vs.* Augar, 7 Blatchford, 86, which affirms the right to assign such claims and in many respects is like the case under consideration. Reference is made to folios 60, 62, 64, 65, 67, 68, 69 of complainant's amended bill (R. 23) to show that the claims accruing before the said assignment are set up and claimed in said bill.

Three exhibits were filed with the Master, upon two of which the handle is directly over the post-marker, and it is claimed that these might have been used instead of the Norton invention; and therefore the measure of damages or profits is the difference between the advantages in the use of these and the Norton invention.

There are several conclusive answers to this claim.

1st. The rule set up here only applies where damages or profits are claimed for an improvement upon what has already been patented when it becomes necessary to determine what the liabilities of the infringer are for the use of the improvement, outside of the use of that which was before patented. Here the claim is for the entire instrument—the combination of the post-marker and stamp-canceller. That claim has been decreed to be good, therefore the measure of damages is the difference between the advantages of using this combination and the use of what was in use before the combination was invented.

2d. When defendant James became postmaster in 1873, the combination of a post-marker and stamp-canceller, with which the letters could be post marked and the postage stamp cancelled at one blow, was covered by complainant's patent, or if not it was covered by the patent of 1859. (R. 1270.) The two Exhibits referred to present such a combination, and therefore they could not be used by defendant without infringing complainant's patent. (See Kittle's testimony.)

3d. In Mowry *vs.* Whitney, 14 Wallace, 651, the Supreme Court says: "The question to be determined in this case is this: What advantage did the defendant derive from usiug the complainant's invention, over what he had in using other processes then *open* to the public and adequate to enable him to obtain an equally *beneficial* result. The fruits of that advantage are his profits."

Was the use of the combination of the post-marker and stamp-canceller, so as to post-mark a letter and cancel the postage-stamp with a single blow, open to the public in 1873?

Again, it is plain to any man of common sense that the use of said Exhibits with handle on one side cannot be made to produce a result equally beneficial as the instrument used

by Mr. James since he became postmaster. This is also clearly established by the testimony. Mr. Andrews states this positively in his answer to question 37 (R. 1533), and gives his reasons on (R. 1532), to wit: that the instruments with the handle over the post-marker are too heavy on the side. This accords with Judge Wheeler's views, and is the plain dictate of common sense. Experiments have been tried for years to find something better or that would produce beneficial results equal to those produced by the Norton invention, but without success. Reference is made to the following evidence on that point: Yeoman (R. 841), Andrews, Ques. 81, 82 and 83. (R. 1536) before the Master. Postmaster Creswell's Report, (R. 503) in which he says: The combined stamp has "been demonstrated by continuous use during nearly eight years to be valuable in the larger post-offices, and in the railway service. Simple as it is no other device has been hit upon that will do the work of this one, without adding largely to the number of stamping clerks employed."

This is proof that nothing was open to the public, that would produce equally as beneficial results.

Mr. James testifies that he never saw or heard of an instrument like defendant's Exhibit No. 4, before this suit was brought, so that it is evident that the use of such an instrument was not open to the public. (R. 1507.)

There is no evidence that instruments constructed like defendant's Exhibits No. 4 and 6, were open to the public in 1873, or have been since that time. Said Exhibits were made since this accounting commenced. There is no evidence that anything like them was ever before made by anybody outside of the original Exhibits in this case. There is no evidence that any such instruments have been made or sold or used anywhere by anybody since 1873.

Judge Sawyer says, in Knox *vs.* The Great Western Quicksilver Mining Company, Patent Office Gazette, vol. 14,

No. 25, 1878: "The comparison must be with machines at the time of the infringement *both known and open* to public use."

4th. Reliance is placed by defendant upon some remarks of Judge Wheeler in his opinion, to the effect that there is a difference between a combined instrument with a handle on one side, and an instrument with the handle in the middle. Manifestly there is such a difference and greatly to the advantage of the latter; but the question is: Is the difference patentable? Norton's patent covers a "metal canceller fastened or secured to the immediate side of the post-marking device." Folio 161, Complainant's, vol. 1. So that the difference between Norton's invention, Exhibit No. 4, is in the location of the handle. Is the removal of the handle an inch or half an inch one way or the other patentable?

Looking at the remarks of Judge Wheeler, it will be seen that he refers to something that Ireland, Riley & Wheeler pretended to have produced in 1851, 1852 and 1853. Judge Wheeler, after deciding that they did not produce any such things as they claim, says, in addition, that if they did, there is a material difference between their productions and the Norton invention. No instruments made in 1851, 1852 or 1853 have been exhibited in this case. Some pieces of wood tied together with twine or wire, under the instructions of defendant's counsel since this suit was commenced, have been brought into Court, and the witnesses, whose testimony Judge Wheeler utterly discredited, are made to say that they made structures like these in 1851, 1852 and 1853. The absurdity of setting up these things for any purpose in this case is only equalled by the falsity of the testimony about them.

The defendant makes the point that he is not liable, because he is a public officer, and none of the advantages infringing the Norton patent are for his personal benefit, but go to the Government.

There is nothing in this point upon principle and authority.

1st. Mr. James shows by his own testimony that he is personally responsible for the infringement of complainant's patent.

He does not pretend that he was instructed by the Postmaster-General to use the combined stamp invented by Mr. Norton, or any other particular kind of stamp; on the contrary, he states that he had laid aside the stamp which he first used, and substituted the one used in the London office, because, in *his judgment*, the latter was preferable, and he acted, therefore, in the matter according to his own judgment. He ordered the stamps in quantity and kind, as he wished; he paid for them, and they were manufactured in New York by his authority.

Section 3860 of the Revised Statutes provides that "the Postmaster-General may allow to the postmaster at the city of New York and to the postmasters of offices of the first and second classes, out of the surplus revenues of their respective office, that is to say, the excess of box rents and commissions over and above the salary assigned to the office, a reasonable sum for the necessary cost of rent, fuel, lights, furniture, stationery, printing, clerks and necessary incidentals, to be adjusted on a satisfactory exhibit of the facts and no such allowance shall be made except upon the order of the Postmaster-General." The business in the New York city post-office, under this section, it is understood, is transacted as follows: Mr. James, by the permission of the Postmaster-General, places in the office of the Assistant Treasurer in New York city a certain amount of the receipts of his office to his credit. He draws against this amount to pay clerk hire and other expenses and is charged therewith. Practically, therefore, Mr. James hires his clerks and pays them out of the proceeds of his office. Whatever, therefore, he

saves in clerk hire by using Norton's invention he primarily saves for himself, though the ultimate advantage is to the Government.

2d. Inventions patented are property to be treated by the Courts, in case of a trespass or tort committed upon them, as houses and goods are treated when a trespass is committed upon them.

3d. If the Court decides that the official character of Mr. James is no defense, and that he is an infringer, it follows that he is liable like any other infringer for the damages and profits occasioned and made by this infringement.

Undoubtedly in a Court of Equity, if two or more infringers are before the Court, and one of them has received all the profits, the Court will enter its decree for profits exclusively against him; but it will not exempt an agent, sued alone, from the payment of profits made by his infringement, when his principal is not amenable to or within the jurisdiction of the Court.

Suppose that Mr. James should take possession of and use a house in New York for a post-office without the consent of the owner, could he defeat a suit against him for the rent of the house by saying that he used it in the public service and not for his private advantage. Suppose he should seize the horses and wagon or the boat of a citizen for the transportation of the mails, and should be sued therefor, could he defend upon the ground that they were seized and used in the public service? If such suits can be defeated upon such grounds, then it follows, as the Government cannot be sued, that private property can be taken for public use without just compensation, which is in the very teeth of the Constitution. If such suits can be maintained at all, then the Court must give to the owners a "just compensation" and a "just compensation" in a suit against a public officer

wrongfully taking private property, is, of course, the same as a "just compensation" for property so taken by a private citizen.

Teal and Tilton, 12 Howard, 272.
Elliot *vs.* Swartout, 10 Peters, 157.
Mitchell *vs.* Harmony, 13 Howard, 115.
Bates *vs.* Clarke, 5 Otto, 204.
Allen *vs.* City of New York, *Official Gazette*, vol. 17, page 1281.

It is immaterial whether the amount awarded against the defendant is called profits or damages. If he is not liable for profits, as such, he is liable for the same amount as damages. Profits and damages are the same thing.

Mr. Justice Strong, in delivering the opinion of the Supreme Court, in Mowry *vs* .Whitney, 14 Wallace, 653, says:

"The profits which are recoverable against an infringer of a patent are, in fact, a compensation for the injury the patentee has sustained from the invasion of his right. They are the measure of his damages. Though called *profits, they are really damages*, unliquidated until the decree is made."

To the same effect are all the authorities. In Brady *vs.* The Atlantic Works, Patent Office Gazette No. 23, vol. 15, 1879, Mr. Justice Clifford, in delivering the opinion of the Court, says:

"Gains and profits are the proper measure of damages in equity suits, except in certain cases where the injury sustained by the infringement is plainly greater than the aggregate of what is made by respondent."

See also Knox *vs.* The Great Western Quicksilver Mining Co., above cited.

In Whitemore *vs.* Cutler, 1st Gallison, 478, Judge Story instructed the jury that if they were of the opinion that an user of the machine is actually proved in this case, *the rule of damages* "should be the value of the use of such a machine during the times of the illegal user."

In Conover *vs.* Knapp, 4 Fisher, 63, Judge Ingersoll, with the approval of Judge Nelson, instructed the jury, "that the actual damages are the profits made by the defendant." See also:

Sewell *vs.* Collins, 1st Fisher, 297.
Page *vs.* Ferry, " " 316.
Bell *vs.* Daniels, " " 380.

In the great case of the Household Co. *vs.* Neilson, decided in the House of Lords in 1843, the Lord Justice Clerk instructed the jury as follows: "The only other point that arises on the supposition of your finding for the pursuer is the question of damages. Damages are claimed of two kinds. You are aware that the amount of the damages arises in regard to, and is of course involved in the consideration of the first issue. The amount of damage you may give according to the circumstances, proved. I must own that I think the damages should have been much more satisfactorily proved, if it was to be proved in pounds, shillings and pence in regard to the colliery. But still there is no contradicting evidence."

"The saving spoken of, viz., two pounds and two shillings per ton, is not contradicted. The answer that was put was this: Be it that the manufacture was conducted at that rate of saving; still, I have not made profit on this whole concern. That is no answer in point of law and no evidence was tendered to show that the saving was overrated. Whether that saving comes to thirty-four hundred pounds, as calculated, it is for you to say. *I am bound to tell you, in point of law, that the pursuer is entitled to claim the benefit arising out of the saving made by his apparatus*," &c.

No exceptions were taken to these instructions, and they were allowed to stand as the unquestioned law of the case. The jury found a verdict of three thousand pounds for the pursuer. (Webster's Reports, 697.)

Section 4921 of the Revised Statutes provides that the complainant shall be entitled to recover the damages "the

complainant has sustained," and this without reference to who has or has not been benefited by the infringement. Some of the Courts, in speaking upon the subject of profits, say that their allowance stands upon the principle of converting the infringer into a trustee for the patentee, as regards the profits thus made.

Any point made by the defendant upon this question may be answered this way:

1st. An infringer is a tort feasor, and is not therefore in fact a trustee for the patentee, by fiction of law the Courts will convert him into such so as to subserve the ends of justice. This is not intended to be restrictive of the rights or remedies of the patentee; but on the contrary, is intended to enlarge them. This doctrine cannot be applied to the defeat a patentee, but may be applied to establish the liability of an infringer. When, therefore, the question arises between a patentee or his assignee and an infringer who claims to be the agent of a party not subject to the jurisdiction of the Courts, this doctrine is inapplicable, or if applicable in such a case, then by another equitable fiction to prevent a failure of justice, the Courts will hold or treat the agent as a principal. The law must be administered as much in one case as another, so as to give the patentee a just compensation for his property, and the Courts have repeatedly decided what this just compensation is.

2d. All the cases hold that the rule of recovery against a public officer who commits a trespass upon private property is precisely the same as the rule of recovery against a private citizen in a similar case. Upon principle, therefore, and all the analogies of the law, the defendant cannot claim any exemption, upon the ground that he is a public officer.

Possibly it may be suggested, as affecting the amount of the complainant's recovery, that the Norton invention is valuable only when used in the post-offices of the country; but there is no force in such an objection.

To hold otherwise, would be to hold that all inventions only adapted to and intended to be exclusively used on railroads, telegraphs, steamboats, fire-engines, &c., might be seized and used without just compensation to the owner. All improvements in fire-arms and ammunition and military equipments intended for the army would be open to confiscation by the Government. Indeed nearly every invention is intended for some particular business or special field of labor outside of which it is of no value; but in the hundreds of cases in the Courts involving such inventions it has never been held that a party pirating such invention and using it in the business or field of labor to which it is adapted is not responsible to the patentee or his assignee for the benefits and advantages resulting to him from such piracy.

In an action at law, where there is no evidence of a license fee or royalties, and none can be produced, as in this case, then the rule of the plaintiff's damages are the profits made by the defendant.

Sec. 4921 of the Revised Statutes gives a court of Equity the same jurisdiction that a court of law formerly had as to damages. Damages alone were recoverable in actions at law and proof as to profits was not material except to show a rule of damages; when, therefore, under said section any circumstance prevents a recovery of profits in a court of Equity a recovery for damages may be had and the profits may be made a rule for such recovery, as in actions at law. Mr. Justice Miller says, in Burdell *vs.* Denig, 2 Otto, 720: "Profits are not the primary or true criterion of damages for infringement in an action at law. *That rule applies eminently and mainly to cases in equity, &c*". Now if the court should be of the opinion that because the defendant is a public officer he is not liable for profits as such, then he should be held liable for damages as such, and the "savings" or "profits" made by the illegal use of the patented invention should be made the rule of such damages.

In the case of Black *vs.* Munson, 14 Blatch., 267, Mr. Justice Hunt says: "In an action in equity (which in this case) profits made by the (assignee) infringer by the use of the improvement constitutes the general measure of damages. Sales, or a royalty established on the other hand constitute the primary criterion of damages in actions at law, but in any court this latter rule can only be applied where there is a fixed and established price at which a license is granted."

Courts of Equity can call the recovery damages or profits, as the equities of the case seem to require, for in such courts they are substantially the same thing, the object being to give to the patentee compensation for the invasion of his rights.

Mowry *vs.* Whitney, 14 Wallace, 653.

Profits, where the claim is not for the manufacture or sale, but for the use of the patented machine, are what the defendant has saved by the use of such machine.

In Conover *vs.* Mers, 11 Blatch., 197.

Judge Woodruff held that the complainant was entitled to recover 80 cents per cord for wood split by a wood-splitting machine patented to complainant and illegally used by defendant, it appearing that there was a saving of 80 cents per cord on the use of the patented machine over the cost of splitting by hand. To the same effect,

12 Blatch, 20.

McKeever *vs.* the United States, 14 Court of Claims, 396, is a case in which the argument against the plaintiff's right of recovery was in many respects like that used by defendant's counsel here, but the court held that the Government was liable on an implied contract for the use of a cartridge box partly invented by the plaintiff, and estimated his damages upon the ground that he had produced the best evidence upon that subject of which the case was susceptible.

The above case, referred to the master by the decree dated 1st of September, 1879, is one somewhat peculiar in its character.

It is for the infringement of a patent, and although against the defendant, James, personally, any recovery which may be had against him will be for "gains, profits and advantages" which have "arisen or accrued," not to him individually, but by his use of it in his official capacity as postmaster of the city of New York. The court has held that the patent, which is the subject-matter of the suit, has been used by him without authority of law; and hence that he is personally responsible, the same as any public officer is, who takes private property for public use without the authority of the owner.

In the presentation of the case to the Master, numerous questions have been raised by the counsel, which it seems necessary to consider and determine, in order that the findings of the Master may be intelligible and reviewable, and that all the points made by the counsel may fully appear on exceptions (if any) which may be taken to the Master's report.

It appears to be conceded, that this invention is one which can be used only by, and be of benefit to, the Government in the conduct of its general postal service. The court says, in its opinion, "Upon the whole case it appears that in fact and in law Norton was the original and first inventor of this patented invention;" and, further, that "the patent is for a *machine* or *instrument* that will do both of these things at one blow," that is, the post-marking of the letter, and the cancellation of the postage stamp. It further appears from the opinion of the court and from the evidence before the court on final hearing, that by a strict requirement or order of the Postmaster-General, made on the twenty-third day of July, 1860, the post-marking and the cancelling of the postage stamp were required to be placed upon all letters separately. It appears that previous to that time the post-mark was stamped upon the postage stamp, and thereby in a measure

acted as canceller of it. This requirement or order of the Post-office Department called for the discontinuance and abandonment of this mode of stamping and cancelling, and required the use of two separate stamps, one for the post-mark and the other for cancelling the postage stamp. It seems to have been this requirement or order of the Post-office Department that brought into use in the New York post-office the combined instrument (see opinion of the Court) by which the post-marking and the cancelling of the postage stamp was done by a combined instrument; that is, by a single blow of one and the same instrument, by one and the same hand, instead of by two blows or impressions made by two separate and distinct instruments, requiring two persons, or the double use of the hand of the same person upon the two instruments.

This invention, it appears, was in use in the New York post-office at least as early as 1861, and was found there in use on the first day of April, 1873, by the present postmaster, James, when he was appointed postmaster, and is still in use there. According to the decree of the court, James is an unlawful user of such patented invention, and an infringer.

The decree sets forth—

"First. That the letters patent are good and valid.

"Second. That Marcus P. Norton was the original and first inventor. * * *

"Third. That the complainant, Christopher C. Campbell, is the exclusive owner *in trust* of such letters-patent.

"Fourth. That the said Thomas L. James has infringed upon the said letters-patent No. 4,143, hereinbefore described, * * * and charged in the said bill of complaint.

"Fifth. That an account be taken of the profits, gains and advantages which have in anywise been received or made, or which have arisen or accrued on account of the infringements aforesaid; and also of the damages in addition thereto, if any, which the said complainant has sustained by reason of the infringements aforesaid.

"Sixth. That the said complainant do recover of the said defendant, Thomas L. James, his costs, charges and disbursements to be taxed.

"Seventh. That it be referred and the same hereby is referred to Kenneth G. White, of the city of New York, to ascertain and take, and state and report to the Court, an account of the gains, profits and advantages which the said Thomas L. James has in anywise received or made, or which have arisen or accrued on account of the infringements aforesaid; and also of the damages in addition thereto which the said complainant has sustained by reason of said infringements."

The Master, having now stated his understanding of the decision of the Court, and what is referred to him under the decree based upon such decision, will consider the questions raised before him by the counsel for the respective parties. It is claimed by counsel for complainant—

First. That by the use of the patented instrument one man has been able to do the work which it took two men to do before the invention of such instrument.

Second. That more perfect and complete work is done by the use of said patented instrument than was attained by any other instrument known or used before or since the patent was granted; that such instrument makes clearer and more perfect impressions of the postal-mark, and also more complete and perfect cancellation of the postage stamp.

Third. That the use of said patented instrument has greatly conduced to the regular and speedy transmission of letters through the mails.

Fourth. That, by the saving of the number of clerks necessary to be employed, valuable space or room is saved in the post-office. Each and all of these, it is claimed, enter into and make part of the gains, profits and advantages derived from the use of the invention.

It is claimed on behalf of the defendant that no gains, profits or advantages are shown to have accrued to or been

received by the defendant, James, *personally* from the manufacture or use of the patented invention; that whatever use he has made of the invention has been as an officer of the United States, and in that capacity alone has he infringed the patent, and if any gains, profits or advantages have accrued, they are for the benefit of the United States, and not for his benefit.

Second. That as to any gains, profits or advantages which have arisen or accrued to the Government by reason of the infringement, there can be no recovery, as there have been no sales of the patented invention, and no profits, strictly speaking, have accrued from its use, as the post-office is not a profit and loss concern; that admitting, for argument's sake, that there has been a saving of time by the use of the combined post-marker and the postage stamp canceling patented instrument, there is no evidence of the pecuniary value of such saving of time offered; that the evidence makes nothing clear except that more clerks would be needed to post-mark and cancel the same number of letters in the same time with the separate instruments than with the patented instruments; that this is not a proper measure of profit; that the salaries of the additional clerks have nothing to do with the question; that the real advantages which the *Government* has received, are two—

First. A post-mark on the envelope, distinct and separate from the cancellation-mark on the postage stamp.

Second. Attaining this result in such time as not to delay the mails.

That there can be no *pecuniary* value attached to these advantages; that the comparison of the patented instrument with separate instruments is unjustifiable; that combined instruments, in which the canceller was attached to one side of the post-marker and where the two were not balanced on the handle, were open to use during the period of infringement and long before the patent was grantsd; that, if it is proper to make any comparison in this case to ascertain the advantages received by the *Government* by the use of the

patented improvement, such comparison should relate to this unbalanced combination.

Third. That the statute which allows damages, in addition to profits, to be recovered in equity, has been construed to mean that damages in excess of or beyond the amount of profits made by defendant may be recovered; and that no damages, as such, to the complainant, are shown to have been sustained.

Fourth. That the time to be covered by the account of the Master should be limited to cover only the infringements that have taken place since the assignment to Campbell (January 2, 1877;) that the account should commence with that date.

Fifth. That as to the alleged advantages other than clerk hire, the evidence does not show satisfactorily that they exist; that no evidence of their pecuniary value has been given, and they cannot be considered in stating an account of profits in equity.

These are substantially all the questions raised before the Master on this accounting; and, as counsel for both parties have made a request of the Master that he would, in his report, consider and pass upon each one of them, he will do so.

The first question (the saving in the number of clerks) raised by the complainant's counsel will be considered last.

As to the second question, it seems from the testimony of all the witnesses called, who are employees in the New York post-office, that more perfect and efficient work is done by the patented combined instrument, both in the making of the postal-mark and in the cancellation of the postage stamp, than by any other instrument known or used in the post-office prior to the use of such combined instrument.

As to the third question, it appears that the use of the combined instrument has conduced to the regular and speedy transmission of matter through the mails, assuming, of course, that had not such combined instrument been used, two separate instruments, one for post-marking and the other

for cancelling the postage stamp, would have been used and no additional clerks been employed.

Fourth. Assuming that an additional number of clerks would be necessary to the proper performance of the work in the post-office, there would be, necessarily, more space or room required for them, and consequently under certain circumstances that would be an advantage or saving derived from the use of the invention in question. It has been proved, before the Master, that there is a saving of the number of clerks, as will hereafter more fully appear. But such advantage or saving, so far as room is concerned, in the New York post-office, or so far as the defendant James is concerned, does not appear to have any pecuniary value in this case, as the post-office in the city of New York is a building owned by the Government, and more space could be provided if necessary, without any additional cost either to the postmaster or the Government.

As to the first question raised by the defendant, that "no gains, profits, or advantages are shown to have accrued to or been received by the defendant, personally," &c., this question is disposed of by the decision of the Court, as already stated in this report.

The second point made by the counsel for the defendant James embraces several questions. The first is, "that no gains, profits or advantages have arisen or accrued to the Government by reason of the infringement, as there have been no sales of the patented invention."

As to the fact of there having been no sales of the patented invention, that, of itself, amounts to nothing, as the claim here is for its use, and it is for such use that any profits made are claimed by the complainant.

Defendant's counsel admits, for argument's sake, that there may have been a saving of time by the use of the combined patented instrument, but that no evidence has been offered of the pecuniary value of such saving of time. This is so. The evidence of saving of time in the making-up and dispatch of the mail, as the Master understands it, is to show

that this is one of the "*advantages*" derived from the use of the combined instrument, and he is asked to take this into the account in estimating or determining what "*gains and profits*" have arisen or accrued to the defendant thereby, complainant's counsel claiming that the Master is authorized and called upon to fix and report some sum as an amount to be awarded for these "*advantages.*" That there has been such advantage, there seems, from the testimony, to be no question; but, as the pecuniary value of such advantages has not been proven, the Master is not authorized, as he understands the decision of the Courts, to merely estimate or conjecture an amount. As to the question raised of the saving of clerks and clerk-hire, that will be, as has been before stated, considered hereafter.

Counsel claims that the real and *only* advantages which have arisen to the Government or to the defendant, are:

First. A post-mark on the envelope, distinct and separate from the cancellation-mark on the postage stamp; and

Second. Attaining this result in such time as not to delay the mails.

That both are great advantages, and that such advantages have been secured to the Government by the invention in question there can be no doubt. It is certified by the order or requirement of the Postmaster-General to be absolutely necessary to the postal service; also by the communications of different postmasters-general to Congress, and the various reports of successive congressional committees, all of which appear in the testimony for final hearing in the case, and which is offered in evidence before the Master; and also by the testimony of each and all of the witnesses from the New York post-office produced before the Master. No evidence is produced showing what the actual *pecuniary* saving by either has been, and hence none can be reported by the Master.

It is claimed by counsel for the defendant, that what he designates as the balancing of the handle, or the placing of it equidistant between the post-marker and the stamp-canceller is a material element of the patented combination, and

that if the handle is not so placed in the center, or equidistant between the two stampers, such an instrument is no infringement of the patent in question; and he urges that, in the ascertainment by the Master of gains, profits and advantages, comparison should be made between the stamper having the so-called balanced handle and a stamper where the handle is not so balanced. He has produced before the Master two instruments which are marked "K. G. W. Master's Exhibits, Nos. 4 and 6," and which he claims are not within the patent, and which are therefore open and free to be used in the post-office; and has produced witnesses as to their recent trial there.

The answers to this claim are:

First. That such claim is not warranted by the opinion of the Court as the Master understands it.

Second. It is not warranted by a proper construction or interpretation of the patent in controversy.

Third. The proofs in the case show, and the decision of the Court also shows, that Norton himself was the first and original inventor of such device; that is, a combined stamper and canceller, in which the handle was not placed in the middle, but on one side, over the postage-stamper. The use, therefore, of such device was not open to the defendant or the Government, and for this reason no comparison in the ascertainment of profits can be made between the two. Further, the witnesses who have been produced on the part of the defendant before the Master, and who are employed as regular stampers in the post-office, say that the instruments Nos. 4 and 6 are not as efficient for the work to be done in the post-office as the instrument heretofore used there, and which the Court has declared an infringement, nor does it produce "*equally beneficial results.*"

And the proofs show that such instrument was never used in the post-office, except experimentally, and then only since the commencement of the proceedings before the Master, and was made expressly for use upon this reference. The Master cannot assent to the claim made by counsel.

It is also claimed, that, under the statute which allows damages, in addition to profits, to be recovered in equity, no damages as such have been proven in this case or can be allowed. No damages apart or separate from profits, as the Master understands it, are claimed. The claim is for the profits made by the defendant, which, under the decision of the Courts, are the same thing as damages and are called damages. As said by the Supreme Court of the United States, in Mowry *vs.* Whitney, 14 Wallace, 653, "Though called profits, they are really damages uuliquidated until the decree is made." And in Patent Office Gazette, No. 23, vol. 15, 1879, the Court says, "Gains and profits are the proper measure of damages in equity suits." Justice Strong says, "The rule of damages should be the value of the use of such a machine during the time of the illegal user." Counsel for defendant also claims that the time to be covered by the account should be limited to the time of the assignment to the complainant, Jan. 2, 1877. But there is no such limitation in the decree or order of reference. And the assignment to Campbell shows not only the assignment of the patent, but the assignment of all past profits and damages. The account should therefore cover the entire period of the use of the patent by the defendant James since he became postmaster; that is, since April 1, 1873.

It now only remains for the Master to determine what have been the pecuniary gains, profits and advantages which have been derived by the use of the invention in the New York post-office during the term of the present postmaster Thomas L. James.

Mr. James himself and various of his subordinates have been examined before the Master on this question. There is some variance in such testimony as to the actual saving in clerk-hire by the use of the invention over and above what would be necessary in case the combined instrument was dispensed with, and two separate instruments to perform the same work were used. Mr. James himself says that in his judgment it would require about one-third more clerks than

are now employed in the stamping departments. Upon being recalled he is asked—

"81. Q. If you had been compelled to separate those instruments and use the post-marker by itself, and the postage-stamp-canceller by itself,it of course would have required additional labor.

"A. Certainly.

"82. Q. Have you examined the subject sufficiently to form an estimate as to the amount of saving in labor in the New York post-office by the use of the combined post-marker and stamp-canceller in place of a separate post-marker and a separate stamp-canceller?

"A. Yes, sir; I have thought the thing over.

"83. Q. You can state it, if you please.

"A. I think I have stated it in my direct examination.

"84. Q. No, sir, you did not state that.

"A. It would cost from seven to nine thousand dollars more a year to cancel separately and post-mark separately."

Mr. Yeomans, the superintendent of the Third Division in the post-office, says that he now employs in his division twenty clerks, and that it would require, in his judgment, nine more to do the same work if separate instruments were used, and that their average would be seven hundred dollars per annum each.

Mr. Gaylor, who is general superintendent of the city department, testifies that he has in his department in the post-office building three clerks engaged in post-marking and cancelling postage stamps on letters with the combined instruments, and that if separate instruments were used for the same purpose he would require one additional clerk. He testifies in relation to the different post-office stations in the city, which are also in his charge as superintendent, that the clerks in those stations are employed, each day of twenty-four hours, eighty-four hours and forty-five minutes in the post-marking and cancelling of stamps on letters. He says that in his judgment it would require one-third more time to do the work if separate instruments were used. Or,

taking Station A as an example, where thirty and a-half hours are consumed each day, it would take ten more hours in a day, or "it might possibly take more than that; it might take twelve hours; but I am not very competent in my opinion about that, because I do not have immediate supervision of any of that work." He has furnished a statement, which is put in evidence, showing the "average number of letters, &c., post-marked daily," "number of clerks employed," "time consumed daily in stamping."

Mr. Lawrence, who is the superintendent of the Foreign Department of the New York post-office, says that if he was called upon to use the separate instruments for post-marking and cancelling postage stamps, "I should want one more man, and should make application for it."

Mr. Steele, who is assistant superintendent of the Third Division (same division as Yeomans), says he thinks if separate instruments were used it would require eight or nine more men.

Mr. Waring, also assistant in the Third Division, testifies to the number of combination stamps used in different years since 1872.

These are all the witnesses called on behalf of the complainant as to the profit or saving arising from the use of the combined instrument; and, as will be seen, all are called from the post-office itself. One other witness (Kittle) was called as an expert to give his opinion as to the use of the combined and separate instruments, and he says that it would "take just about as near double the number as you could imagine" of clerks to do the same work with the separate instruments as it would with the combined instrument.

The defendant has called eight witnesses in his behalf, all to testify as to the use of a combined instrument with the handle placed over the post-marker, and not equidistant between the two stampers. Six of these witnesses used this instrument, or saw it used in the New York post-office, within a few days of giving their testimony. It was used

there experimentally for a few days, and solely for the purpose of being used as evidence on this reference. The other two witnesses were from the Philadelphia post-office, and were examined upon the hearing of the case before Judge Wheeler at Brattleboro', and their testimony is disposed of by him. The Master, in a former part of his report, has disposed of the question sought to be raised by this testimony.

The testimony of some of these witnesses in regard to the use of the combined instrument, as compared with the single instrument, in the New York post-office, is important. They are practical *stampers* there, and, as appears, the most experienced and expert. They are asked by complainant's counsel, on cross-examination, to give their experience, and do so.

Magee says he has post-marked and cancelled with combined instrument 5,500 postal cards in 55 minutes. He is asked how many he could *post-mark* with a single instrument, without the *canceller*, in a minute, and says: "I don't know that I could do a hundred, because it is more difficult to use a single stamp." He is further asked:

"73 Re-D. Q. If you use a separate post-marker simply on a handle, with which you can put the impression anywhere on top of the envelope, why can't you use that as rapidly?

"A. Because, the base of it being so small, you have to take more time to make an impression.

"74 Re-D. Q. Have you ever tried it?

"A. Yes, sir; I tried it this morning for the first time."

Beach says, "I put the post-mark and cancellation-mark on in same time it would take to put *post-mark* on alone with separate instrument.

"47 + Q. It takes you as much time to put that post-mark on the back as it would to put the post-mark and cancellation on the front?

"A. Yes, sir; just the same.

"48 + Q. So you give the post-mark and cancellation-mark in the same time as you give the post-mark with the separate instrument?

"A. Yes, sir."

Andrews says he has stamped with *combined* instrument five thousand postal cards in twenty-three minutes. He says he could not stamp the *post-mark* much faster with a single stamp for a short time, but might stamp a third more if he used it all day.

It results from the testimony, and the Master hereby finds and reports, that the gains and profits which have arisen or accrued to the defendant James under the decree, in the saving of salaries alone, and independent of any advantages which it appears have been derived from saving of time and labor, the better performance of the post-marking, and more complete cancellation of the postage stamp, and speed in dispatching the mail, are as follows, viz.:

The saving of the salaries of six clerks in the Third Division of the New York post-office from April 1, 1873, to Jan. 1, 1877 (three years and nine months), at an average annual salary each of $700..	$15,750
The saving of the salaries of nine clerks in the same division from Jan. 1, 1877, to Jan. 1, 1880 (three years), at an average annual salary each of $700.....	18,900
The saving of the salary of one clerk (in the "Foreign Department") from April 1, 1873, to Jan. 1, 1880 (six years and nine months), at the annual rate of $700...	4,725
The salary of one clerk in the Fourth Division from April, 1873, to January, 1880 (six years and nine months), at the annual salary of $700	4,725
The salaries of four clerks in the various city stations of the post-office from April 1, 1873, to Jan. 1, 1880 (six years and nine months), at an average salary each of $700.....	18,900
Total.....	$63,000

All of which is respectfully submitted.

KENNETH G. WHITE, *Master.*

Dated New York, Jan. 2, 1880.

Judge Wheeler upon the exceptions to the Master report says:

"This cause has now been heard upon the report of the master and exceptions thereto, as to the liability of the defendant, James; and upon the stipulations under which the which the other defendants became parties, and by which their rights as between themseves and the plaintiff were submitted to the court, and the evidence in support of their respective claims, as to those rights.

From the report it appears that the defendant, James, became postmaster at the city of New York, on the 1st day of April, 1873, while the patent in suit was owned by Helen M. Ingalls, and commenced using the patented invention, and has ever since continued the use in performance of his duties; that on the 2d day of January, 1877, she conveyed the patent to the plaintiff, and assigned to him her claims for past infringements; and that the gains and profits to the defendant, James, in the saving of salaries of clerks to perform the duties required of him by the Post-office Department, have been *sixty-three thousand dollars*, due to his infringement.

The principal and controlling questions arising upon the report and exceptions are, whether the plaintiff is entitled to recover in this suit, as well for the infringement *before* the assignment to him, as for that *after;* and whether the defendant, James, is liable to account for the gains and profits received by him as postmaster, either as such or as damages.

It is not pretended by or on behalf of the defendant, but that an assignee of such claims may maintain a suit upon them, in his own name in equity (2 Story's Eq., § 1007); but it is insisted that the bill in this cause does not cover such claim; and that the evidence does not show an assignment of such claim from Miss Ingalls to the plaintiff. It is true, as was stated when this cause was decided on the former hearing, that the pleader does not appear to have framed his bill with that aspect in mind; but what was said then, was

not said upon examination and deliberation, as a full disposition of the question, but only in passing as illustrating the other question then being considered, so the question is open now, whether the bill is sufficient to cover *that* claim. As to that, the bill sets forth the infringement by the defendant, while the patent was owned by Miss Ingalls; and sets forth *in haec verba* the assignment from her to the plaintiff, of the patent; also, of "all the right, interest and claim for and to the past use of said invention and improvements under the said letters-patent;" and besides praying for an injunction and for an increase of damages, "in addition to the profits and gains to be accounted for by the defendant," it has a prayer for "such other aud further relief as shall be agreeable to equity." This, meagerly, it is true, but after all, substantially, sets forth the claim and assignment, and a prayer for relief as applicable to that as to the other parts of the case. Perhaps there should be a special prayer for an account as to either aspect; but, if one is required, it is quite strongly hinted at, if not very aptly inserted. The proof of the assignment consists of the instrument set forth; and that seems to be amply sufficient to cover this claim. The plaintiff is entitled to recover for the whole time, if any one is, as the case now stands, and it appears that he can recover in this suit, if anywhere, without doing violence to any of the settled rules of pleading.

The other is much more the important question. Whatever question there might be, if the subject was new, it now seems to be settled, that savings in cost by infringement of a patent may be recovered as profits. (Cawood Patent, 94 U. S., 695; Elizabeth *vs.* Pavement Co., 97, U. S., 126.) The defendant saved the sum named by using the patented invention. It is said that the Master erred because the defendant might have used another form of stamps, which would not have been an infringement, and that the saving by using the patented invention instead of that would have been much less than the saving reported. It does not appear however, but that such use of the other form would have been an

infringement; and if that appeared, it appears that the other form was not known to the defendant, and that the saving reported was, in fact, saved by substituting the patented improvement for what was known, and would probably otherwise have been used. The saving therefore appears to be wholly due to the infringement.

It is said too, that this patent is for a device that can only be used in the postal service, which is wholly monopolized by the Government of the United States, which could send letters without post-marking them at all, or lessen the frequency of the mails so that the post-marking could be done separate from the cancellation of the stamps by the old method, without increase of clerical force, at its pleasure, thus leaving this patented invention subject, as to use or value, entirely to the will of the Post Office Department, so that the use of it in the postal service, would not deprive the owner of any opportunity to have it used otherwise, and could not damnify him; and, that, therefore, no damages can be recovered in this case; and that no profits can be recovered because there is no party before the Court, or that can be brought before the Court, who has received any. If it were true, that because all those who can make use of a patented invention, could also do without it, and that this fact was shown that no injury resulted to the owner of the patent from such use, and cut off all claim for damages, there are probably few inventions that would sustain claims for damages at all. People could do as was done before the discovery, and leave the inventor to the enjoyment of his invention by himself. But the Master has not reported any damages beyond the profits, and it does not seem that the defendant can be held liable for damages if he cannot be for profits, unless it may be for taking the profits and placing them beyond the reach of the plaintiff. The Post Office Department required the mails to be sent with certain frequency, and that the postage be paid by stamps on letters, and that the letters should be post-marked, and the stamps

cancelled separately, and required that the defendant should do this at the New York office, either himself or by the employment of clerks. The defendant says in his testimony that the clerks are paid by the Government. This is doubtless true in practical effect, so far as he is concerned, still it is to be presumed that the business is done according to the law, and probably did not intend to testify that it was in any respect done contrary to the law. The law is that the Postmaster-General may allow to the postmaster at New York city, and to certain others, out of the surplus revenues of their respective offices, that is to say, the excess of box rents and commissions over and above the salary assigned to the office, a reasonable sum for the necessary cost, among other things, of clerks, to be adjusted on a satisfactory exhibit of the facts. (Rev. Stats., sec. 3860.) The defendant is therefore to be taken to have made this saving out of moneys actually received into his hands from the profits of his office. He saved it by using the invention in the performance of duties which he was required to do, and had just so much more money left in his hands by reason of the infringement when the duties were done. He did this as postmaster, but he was not obliged to do it. He could have refused the office, or resigned it, or have let this invention alone. He was not subject to any restraint, physical or moral, that he could not make subservient to his own choice. His choice was to use this invention and make this gain. When made, it belonged to the Orator. He paid it over to the Government, and it passed beyond his reach and the Orator's unless it is recovered in this suit, and reimbursed to him under the law. He has not these profits now; and would not have them if he had cast the money into the sea; he has had them as he would have had them then. The situation of the defendant is very different from that of the cit, of Elizabeth in Elizabeth *vs.* Pavement Co., 97 U.S., 126. The city had not saved or made anything by the infringement, and was not liable for profits in any view, whether anyone else was or not, and never had been. Here the defendant has paid over to the Government

what belonged to the owner of the patent, but that is no just answer to the claims of the owner, now belonging to the Orator. Justice can only be done by requiring the defendant to restore the gains to those to whom they belong, and leave him to be protected as the law provides; and in doing this no injustice will be done to anyone. That his official character did not excuse the infringement has already been held, upon what seems to be abundant authority, in this case. If he is liable as an infringer as if he were an ordinary individual, he must be liable to the extent of the consequences as an ordinary individual would be without regard to his reckoning over with the Government. His official character is not any shield against the owner of the patent, although it may be a source of indemnity against the consequences.

BRIEF AS TO THE CLAIMS OF CLEXTON & CASWELL.

Campbell, the complainant, has appealed from that part of the decree of the court below recognizing said Clexton & Caswell as having any rights in the subject-matter of this suit.

The question on this appeal arises out of the following facts:

On the 23d of October, 1869, Charles Eddy became the owner of one undivided one-third interest in the re-issued patent upon which this suit is brought in trust for himself, Albert C. Corse, and Jacob Shavor. R. 147.

On the 27th of March, 1879, said Corse conveyed all his interest to Caroline G. Caswell. R. 1628.

January 16, 1880, Caroline G. Caswell conveyed to Herbert M. Caswell. R. 1630.

January 16, 1880, Herbert M. Caswell conveyed to Horace J. Caswell, one of the appellees in this suit. R. 1631.

On the 31st of March, 1879, the firm of Eddy, Corse & Co., consisting of Charles Eddy, Albert C. Corse, Augustus P. Corse, and George C. Baldwin, Jr., made a general assignment for the benefit of their creditors of all their firm and individual property, except such as was exempt by law from levy and sale upon execution to J. Albert Cipperly and Charles N. Stannard. R. 1632.

On the 7th day of January, 1880, Cipperly and Stannard conveyed all the interest of said assignors or either of them in said re-issued patent to Samuel R. Clexton, one of the appellees and an appellant in this suit.

On the 3d of March, 1880, Jonathan Richardson and Charlotte S. Shavor sold and conveyed to said Samuel R. Clexton all the right in said re-issued patent which they had as administrator of the estate of Jacob Shavor, deceased. R. 1638.

On the 9th of March, 1880, Clexton conveyed to Horace T.

Caswell all the right that he acquired from Corse under and through said assignment of Eddy, Corse & Co. and said conveyance of Cipperly and Stannard to him.

Eddy became a party defendant in this suit after the evidence for complainant Campbell and defendant James was closed, upon an agreement with Campbell that the case should be heard upon the pleadings and evidence as they then stood, unless the Court should otherwise order. (R. 1577). Eddy afterward applied to the Court for leave to introduce evidence to show that a certain instrument referred to in said agreement and dated October 7th, 1871, was cancelled. Such leave was granted by the Court.

Caswell & Clexton, under this and without any other or further order of the Court, came in and filed the conveyance and assignments above referred to, and they were thereupon made parties to the suit, and the court directs in the final decree that out of the $63,000 found due from the defendant James, $13,500 shall be paid to the said Clexton and $7,000 to the said Caswell.

Complainant Campbell assigns for error the rulings of the Court below:

1. In allowing the said conveyances and assignments to be filed in this cause or in considering them or either of them as evidence.

2. In allowing the said Clexton & Caswell to become parties to this suit.

3. In allowing and decreeing to said Clexton & Caswell, or either of them, any sum or sums of money or any part o the recovery in this case.

ARGUMENT.

There are no pleadings in the case showing what the alleged rights of said Clexton & Caswell are in the patent in suit, or how they acquired any rights therein, or anything upon which the other parties of the suit can take issue.

Complainant Campbell has had no opportunity to controvert the claims of the said Caswell & Clexton, or to introduce any evidence to show tnat they are not entitled to any portion of the recovery in this case.

The court below erred in ordering that the following assignments or conveyances be admitted as evidence in this suit to wit:

Said conveyances from Albert C. Corse to Samuel R. Clexton, and from said Clexton to Horace T. Caswell, and from said Caroline G. Caswell to Herbert M. Caswell, and from Herbert M. Caswell to Horace J. Caswell, because there were no pleadings or issues in the case to to which they were applicable or under which their value or effect could be tried, and because complainant Campbell had no opportunity to controvert with evidence their validity.

Said conveyances from Albert C. Corse to Caroline G. Caswell, and said assignment by Eddy, Corse & Co. to Cipperly & Stannard, and said conveyance from Cipperly & Stannard to Samuel R. Clexton were illegally and erroneously treated by the court below as evidence in this case, for the following reasons:

1. There was no order of the court below admitting them as evidence, and they were filed among the papers in the case without any leave or order of the court, and after the Master's report was made.

2. They were not evidence, because there were no pleadings or issues in the case under which their value and effect could be tried, and complainant had no opportunity to controvert with evidence their validity.

3. The conveyance from Cipperly & Stannard to Samuel R. Clexton was not acknowledged, and there was no proof of its execution. As to the conveyance by Jonathan Richardson and Caroline S. Shavor, as administrators of Jacob Shavor, there is no evidence that said Richardson and Caro-

line S. Shavor are his administrators, and it does not appear that they had authority to sell or convey the interest of said Jacob Shavor in said patent, of any, and said conveyance is not evidence in this suit for any purpose.

On page 577 of the Record will be found the following conveyance:

WHEREAS, the letters-patent of the United States of America were duly granted and issued to Marcus P. Norton, of the city of Troy, county of Rensselaer, and State of New York, upon certain improvements in post-office post-marking and cancelling hand-stamps, dated and numbered as follows, to wit: January 14, 1862, No. 34,184; December 16, 1862, No. 37,175; April 14, 1863, No. 38,175; reissued August 23, 1864, No. 1,748. Also letters-patent for internal revenue cancelling stamp, dated August 15, 1865, No. 49,432. Also letters-patent for improvement in post-marking and cancelling hand-stamps, issued July 13, 1869, and ante-dated to June 10, 1869, No. 92,688. And also letters-patent for post-marking letters and cancelling postage stamps by cutting the same, and dated August 9, 1859, No. 25,036, and extended for seven years by the Commissioner of Patents. And whereas Charles Eddy, of the city of Troy, county of Rensselaer, and State of New York, has consented to accept the right, title and ownership of each and every of said letters-patent, in trust for the sole benefit of the owners thereof, in accordance with a memorandum in writing of even date herewith. And whereas it is desirable that but one person shall have the management and control of the said patents for the sole purpose of effecting settlements under the same with any and all infringers of the same, or any one or more thereof, or with whomsoever may use the inventions and improvements contained in the said letters-patent or any of them, which settlement for the past or future use may be in any way the said Eddy may deem proper and expedient.

Now, therefore, for and in consideration of the sum of one dollar, and in the further and other valuable considerations which we now and hereby duly acknowledge the receipt of the same, we, Jacob Shavor and Albert C. Corse, of the said city of Troy, county and state aforesaid, have sold, assigned and transferred, and do now now and hereby sell, assign and transfer unto the said Charles Eddy, in

trust, in the manner so as aforesaid stated, all the right, title and interest of every name and description which we now have in, to, or for the said letters-patents, and the inventions and improvements therein named, described and claimed as new and patentable, or in either of them, to have and to hold the same, and each and every thereof, in trust as aforesaid, with full power to enforce settlement and payment for the past or the future use of the said inventions and patents, o either of them; he, the said Charles Eddy, having full and absolute control of each and all of the said several patents hereinbefore named by date as well as by numbers, commencing with the date of each thereof, intending herein and hereby to sell, assign and transfer unto him, the said Charles Eddy, in trust, all our right, title and interest and ownership in any or all the said several letters-patent, from the date of each of the same and until the expiration of the term for which they were respectively granted and issued unto the said Marcus P. Norton. And hereupon and hereby, the said Charles Eddy is vested with full and absolute power over and control of any and all settlements, and to settle and receipt for, and to sign any and all necessary papers concerning either the past or future use of the said inventions and patents, or either one or more thereof, in settlement and paymentfor such use by and with person or persons, corporations, Government, or any body whomsoever.

In testimony whereof we have, on this 18th day of December, A. D. 1876, hereunto set our hands and seal in presence of two witnesses, namely,

C. H. McGrath.
C. G. Eddy.

Jacob Shavor. [seal.]
Albert C. Corse. [seal.]

Recorded January 11, 1878.

No title to the letters-patent in this suit or any part thereof passed from Eddy, Corse & Co. to Cipperly & Stannard, by virtue of said assignment, for the following reasons:

1st. No schedule of the property assigned was attached to said assignment, as required by the laws of the State of New York, Acts of 1778, Chapter 318, and no reference is made in said assignment to said letters-patent.

2.d Said assignment purports to convey the co-partnership and individual property of the said members of the said firm, but at the time it was made (as appears from the above Exhibit) Eddy was the trustee for Shavor & Corse and others interested in said patent, so that their interests were not only joint as between themselves, but were also joined to the interest of other persons. Does said assignment convey property held in trust by Eddy?

3d. Said assignment expressly excludes from its operation and effect such property of the assignors "as is exempt by law from levy and sale under execution." Letters-patent are not subject to levy and sale upon execution. (Stevens *vs.* Cady, 14 How., 531. Stevens *vs.* Gladding, 17 How., 447.) No right in a patent passes to an assignee in insolvency by order of the Court. It can only pass by a written assignment, signed by the owner of the patent. (Gordon *vs.* Anthony, vol. 16, No. 25, *Official Gazette.*

4th. Is property held in trust, according to the terms of the above exhibit, subject to levy and sale upon execution?

While the above cited conveyance remains in full force and effect, it is submitted that Shavor & Corse have no claim against an infringer, or joint owner with Eddy, of said letters-patent. Their claim if any is wholly against Eddy, because by said conveyance, he is invested not only with all their right and title, but "with full and absolute power over and control of any and all settlements, and to settle and receipt for and to sign any and all necessary papers concerning either the past or future use of said inventions," &c., &c.

Corse had no interest in said patent which he could convey to Caswell, nor had the administrators of Shavor any interest which they could convey to Clexton. All the right that Corse & Shavor have, until said conveyance is in some way altered or annulled, is a right to call upon Eddy, their trustee, for an accounting or for the performance of his trust.

Said conveyance above quoted recites: "And whereas Charles

Eddy, of the city of Troy, county of Rensselaer, and State of New York, has consented to accept the right, title and ownership of each and every of said letters-patent in trust for the sole benefit of the owners thereof in accordance with a memorandum in writing of even date herewith." No memorandum is produced, nor is there any evidence as to what it contained, or as to the terms or conditions upon which Eddy accepted said trust, and it was impossible, therefore, for the court below, with any reasonable certainty, to determine what were the respective rights and interests of said Eddy, Shavor & Corse in the patents referred to in said conveyance.

Judge Wheeler seems to think complainant, Campbell, is not interested in the claims of Caswell & Clexton, and therefore has no right to object to their appearance and proceedings in the case, but the decree below takes a part of the money recovered by his suit against James and gives it to Caswell & Clexton *non constat* that it would have been given to Eddy. Eddy had a perfect right, by virtue of the above-quoted conveyance, to litigate or to settle with Campbell as to the interests in the patent so conveyed to him, and the court cannot know that Campbell was not greatly prejudiced by the interference of Clexton & Caswell.

Campbell has a perfect right to resist the payment of any part of the money recovered in this case to an improper party, and it is no answer to say that, if the improper party does not get it, somebody else will. Moreover, it appears that Campbell is the successor in interest to Eddy.

Judge Wheeler held that any title to the patent or any part thereof, vested in Eddy, did not pass by virtue of said assignment for the benefit of creditors, because said assignment exempted from its operation property not subject by law to levy and sale upon execution, and a patent was such property; but he further held that any interest that Eddy had in claims for the infringement of said patent at the time of said assignment passed thereby to the assignees, because they were choses in action.

This latter ruling is erroneous. Can the owner of a patent assign a claim for its infringement, and authorize the assignee to bring a suit thereon in his own name, the title still remaining in the assignors?

Section 4919 of the Revised Statutes provides, "That damages for the infringement of any patent may be recovered by action on the case in the name of the party interested, either as patentee, assignee, or grantee." Does not "assignee or grantee" here clearly mean assignee or grantee of the patent?

Section 4921, providing for proceedings as to patents in courts of equity, clearly implies that the right to recover damages and profits in such courts is incident to the ownership of the patent.

Judge Blatchford, in Gordon *vs.* Anthony, decided this question and held that, "No person can bring a suit for profits or damages for infringement who is not the patentee or such an assignee or grantee as the statute points out. A claim to recover profits or damages for past infringement cannot be severed from the title by assignment or grant, so as to give a right of action for such claim in disregard of the statute. The profits or damages for infringement cannot be sued for except on a basis of a title as patentee, or as such assignee or grantee to the whole or part of the patent, and not on the basis merely of an assignment of a right to a claim for profits and damages severed from such title."—*Official Gazette*, *vol.* 16, *page* 1135.

The Circuit Court had no jurisdiction of theclaims of Caswell & Clexton.

Practically their proceedings if anything was a suit upon alleged contracts and conveyances to recover from Eddy what he had received or was about to receive as the trustee for Shavor and Corse, their alleged assignors.

All these proceedings depend wholly upon the laws of the State of New York, and the ordinary rules of chancery courts. No reference to, or construction of, the patent laws

is involved, or any question made as to the validity of the patent. The papers show that all parties are citizens of the State of New York.

Hartel *vs.* Tilghman, 99 U. S., 547, seems to be conclusive against the right of Caswell & Clexton to prosecute their claims in a Federal court.

GEO. H. WILLIAMS,
Counsel for Christopher C. Campbell.

OFFICE SUPREME COURT U. S.
FILED
JAN 3 1881
JAMES R. McKENNEY, CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

THOMAS L. JAMES, APPELLANT, *vs.* CHRISTOPHER C. CAMPBELL ET AL., APPELLEES.	No. 945.
SAMUEL R. CLEXTON, APPELLANT, *vs.* THOMAS L. JAMES ET AL., APPELLEES.	No. 1098.
CHRISTOPHER C. CAMPBELL, APPELLANT, *vs.* THOMAS L. JAMES ET AL., APPELLEES.	No. 1101.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Briefs for Thomas L. James.

In the Supreme Court of the United States.

THOMAS L. JAMES, APPELLANT, DEFENDANT, *v.* CHRISTOPHER C. CAMPBELL, APPELLEE, complainant, Charles Eddy, Horace T. Caswell, and Samuel R. Clexton, appellees, defendants.	No. 945.

BRIEF FOR THE APPELLANT.

This is an appeal from the final decree of the circuit court of the United States for the southern district of New York in the suit brought by appellee Campbell against the appellant for the alleged infringement of reissue letters patent No. 4143, wherein an injunction on account of profits and an assessment of damages were prayed for.

The appellant is the postmaster at the city of New York, and the infringement complained of consisted in the use for a number of years at the post-office there of nstruments (complainant's model Exhibits A and B) for the postmarking of letters and the cancellation of the postage stamps thereon.

The original patent No. 38175 was issued to Marcus P. Norton as the inventor, on the 14th April, 1863 (1 Rec., 458). It has been three times reissued and assigned

many times. The reissues and assignments present a variety of questions which will be adverted to particularly hereafter.

In place of the original bill an amended bill (vol. 1, record page 23) was filed, which differed from the original chiefly in adding allegations of a reassignment of the patent from Wm. W. Secombe to Helen M. Ingalls (who was Mr. Campbell's immediate assignor), whereas the original contained only allegations of a revester of title owing to the pretended non-performance of the terms of a deed of trust.

The answer was also amended, and as amended (1 Rec., 56) presented the following defenses:

1. Complainant not the owner of the patent (1 Rec., 60, 61).
2. No patentable invention shown (1 Rec., 62).
3. Abandonment (1 Rec., 64.)
4. Two years' prior use in this country (1 Rec., 64).
5. Such use for two years with patentee's consent and allowance (1 Rec., 64).
6. Improvement had been patented before Norton made his supposed discovery (1 Rec., 62, 63).
7. Norton not the first inventor (1 Rec., 63).
8. Reissues void (1 Rec., 62, 60; 58–9).
9. No infringement (1 Rec., 64).
10. No liability to suit under the circumstances shown (1 Rec., 64–5).

The answer contains the statutory notice as to prior patents, use, knowledge, and invention. It is also supplemented by stipulations under which testimony on James's behalf was taken at Wheeling, Cincinnati, and Cleveland (1 Rec., 659, 660), and the English patent of Bern (2 Rec., 882–3) was put in evidence. By a further

stipulation, evidence as to the defenses of prior invention and prior use in the Philadelphia post-office was put in before Judge Wheeler at the hearing (2 Rec., 1404–1447.)

The usual formal replication to the answer was filed, and proofs were thereupon taken and filed by both parties.

Appellee Eddy claims to own a portion of the patent and of the interests thereunder. He was not a party to the suit as originally framed, but after the taking of proofs by Campbell and James had ceased he was admitted on complainant's motion as a party defendant. (For the stipulation between him and Campbell and the order, see 1 Rec., 654–8.)

Appellees Clexton and Caswell also claim interests in and under the patent through Eddy. They were admitted as parties defendant on their own motion still later in the cause. As between Eddy, Caswell, and Clexton, of the one part, and James of the other part, there are no pleadings, and consequently no controversy. They are proper and, perhaps, necessary parties, because without them the court could not satisfactorily determine the extent of Campbell's interests, supposing him entitled to the prayer of his bill in other respects.

The cause was heard in the first instance by the honorable Hoyt H. Wheeler, district judge of Vermont, assigned to hear circuit court cases. He signed an interlocutory decree, in respect to which several errors will be assigned, that Campbell was the exclusive owner in trust of the patent subject to the right of Ingalls and Eddy; then the patent was good and valid; that James had infringed; that Campbell recover his taxable costs,

charges, and disbursements of James; and that it be referred to Kenneth G. White, esq., as master, to state an account of profits and of damages *in addition*, if any.

Thereupon proofs were put in before the master by both Campbell and James; the said master reported that the profits realized from the infringement were the sum of $63,000; and to such report James filed eighteen exceptions. In the mean time proofs were taken between Campbell, of the one part, and Eddy, Caswell, and Clexton, of the other part, and between Eddy, of the one part, and Caswell and Clexton, of the other part, as to the ownership of certain undivided interests in the patent and of the claims thereunder.

The cause then came on to be heard again before Judge Wheeler on said report and the exceptions thereto, and on said proofs as to ownership of interests. After consideration he signed the final decree from which appeal is taken, wherein the exceptions of both parties are overruled, the master's report is in all things confirmed, the interests of the parties other than James are adjudicated, and a recovery from James to the amount of $63,000 and costs is directed in their favor for their respective shares.

ASSIGNMENT OF ERRORS.

The errors apparent in the record, which affect this appellant and invalidate the final decree so far as it is against him, are contained in the findings and direction of the interlocutory and final decrees, which we now refer to, namely:

1. That Campbell is the exclusive owner in trust of said reissue No. 4143, subject to the rights of Helen M. Ingalls and of Charles Eddy thereto, if any.

First specification.—The circuit court should have found that the reassignment referred to in the bill as from Wm. W. Secombe to Helen M. Ingalls, did not convey this patent and that Secombe's title did not revest in Ingalls.

Second specification.—The circuit court should have found that the instrument set out in full in the bill and there called an assignment from Ingalls to Campbell is not an assignment of this patent within the meaning of the patent law, and did not convey to Campbell the title to this patent, and did not invest him with a right to sue in his own name.

2. That the said reissued letters patent No. 4143 are good and valid and that said Norton is the original and first inventor of the improvement described in the original patent and in the several reissues.

First specification.—The circuit court should have found that said improvement had been patented before the supposed discovery thereof by said Norton.

Second specification.—The circuit court should have found that said Norton was not the original and first inventor of said improvement.

Third specification.—The circuit court should have found that said improvement had been known and used by others in this country before Norton made his supposed discovery thereof.

Fourth specification.—The circuit court should have found that said improvement had been publicly used in this country for more than two years before said Norton's application for the original patent, in some places with and in others without his consent and allowance.

Fifth specification.—The circuit court should have found that said improvement, or material parts thereof, had been abandoned to the public before said Norton's application.

Sixth specification.—The circuit court should have found that the specifications, claims, and drawings of said reissue No. 4143 do not show patentable invention.

Seventh specification.—The circuit court should have found that said reissue is void, because it is not for the same invention as the original patent.

Eighth specification.—The circuit court should have found that said reissue is void, because the description of invention therein is vague, obscure, inexact, and misleading, and because the alleged invention or discovery is not particularly pointed out and distinctly claimed.

Ninth specification.—The circuit court should have found that said reissue is void, because based upon an assignment and surrender of the reissue of 1869, which reissue was issued without authority of law (on the basis of a forged assignment of the reissue of 1864 and of an unauthorized surrender of said reissue of 1864) to a person who was not an "assign," within the meaning of the statute allowing reissues, of the persons to whom the original patentee had assigned the original patent.

3. That this appellant has infringed said reissue; whereas the circuit court should have found that there has been no infringement.

4. That said Campbell do recover his costs, charges, and disbursements to be taxed.

First specification.—The circuit court should have decreed that the bill be dismissed with costs to James.

Second specification.—The circuit court should have found specially that Norton was not the original and first inventor of what is claimed in the first claim of the reissue patent in suit; that no disclaimer was entered at the Patent Office before the commencement of this suit; that consequently no costs are recoverable.

5. "That an account be taken of the profits, gains, and advantages which have in anywise been received or made, or which have arisen or accrued," and of the damages in addition thereto, if any, which complainant has sustained, and that the master state, &c., "an account of the gains, profits, and advantages which the said defendant, Thomas L. James, has in anywise received or made, or which have arisen or accrued on account of the infringements aforesaid," and of the damages in addition thereto, if any, which complainant has sustained.

First specification.—The circuit court should have confined the account of gains, profits, and advantages to such gains, profits, &c., as James *himself* has made or such as have accrued *to him*.

Second specification.—The statute which ostensibly gives to complainants in equity, upon a decree for infringement, the right to "recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby," impairs the right of trial by jury guaranteed by the Constitution, and is consequently void.

6. That James's exceptions to the report of the master be overruled, and that said report be in all things confirmed.

Specification.—The conclusion of the report is that "the gains and profits which have arisen or accrued to the defendant James *under the decree* in the saving of salaries alone" are the sum of $63,000. This conclusion is preceded by an opinion stating findings of fact and law (see the report 2, Record, p. 1548.) Each of James's eighteen exceptions to this report were overruled whereas they should each and all have been allowed. Said exceptions are as follows:

I. Said defendant excepts to the master's finding and report, and to his statement of the account, on the theory that the time to be recovered by the accounting commenced when the said defendant first became postmaster, to wit, in April, 1873; because said master should have found and reported that under the case stated in the bill of complaint, such time did not begin earlier than the date of the assignment from Helen M. Ingalls to the complainant, to wit, January 2, 1877.

II. Said defendant excepts to the master's report, for that, whereas it was referred to the master by the interlocutory decree "to ascertain and take, and state and report to the court an account of the gains, profits and advantages which the said defendant Thomas L. James has in anywise received or made * * * by reason of the infringements aforesaid," the master has failed to make any report on the subject.

III. Said defendant excepts to the master's report for that, the master should have found and reported on the uncontradicted evidence of said defendant, that he, said defendant, has not in any manner received or made any gains, profits, and advantages by reason of said infringements.

IV. Said defendant excepts to the following finding in said report: "the Court has held that the patent which is the subject-matter of the suit has been used by him without authority of law, and hence, that he is personally responsible, the same as any public officer is, who takes private property for public use without the authority of the owner." For that it was not referred to the master to make any finding or report upon the subject.

V. Said defendant excepts to the following finding in the report: "as to the first question raised by the defendant that no gains, profits, or advantages are shown to have accrued to or been received by the defendant personally, &c.; this question is disposed of by the decision of the court as already stated in the report." For that said question was not so disposed of, and for that

it was not referred to the master to determine whether or not said question was so disposed of.

VI. Said defendant excepts to the report for that, whereas it was referred to the master to ascertain and take, and state and report to the court, an account of the "damages in addition," which the complainant has sustained by reason of the infringements, nothing has been reported on the subject.

VII. Said defendant excepts to the report for that, under the reference recited in the last exception, the master should have reported that no damages were proved to have been sustained by the complainant by reason of the infringements, no evidence of any damages having been put in before him.

VIII. Said defendant excepts to the finding in the report as follows: "Which, to wit, profits made by the defendant under the decision of the courts are the same thing as damages, and are called damages." For that, profits made by the defendant are not the same thing as damages.

IX. Said defendant except to the following finding in the report, in answer to defendant's claim that unbalanced combined instruments were open and free to be used.

"The answers to this claim are:

"1st. That such claim is not warranted by the opinion of the court as the master understands it.

"2d. It is not warranted by a proper construction or interpretation of the patent in controversy.

"3d. The proofs in the case show, and the decision of the court also shows that Norton himself was the original and first inventor of such device, that is, a combined stamper and canceller, in which the handle was not placed in the middle, but on one side over the postage-stamper. The use therefore of such device was not open to the defendant or to the government, and for this reason no comparison in the ascertainment of profits can be made between the two."

A. Because such claim is warranted by the opinion of the court.

B. Because it is warranted by a proper construction of the patent in controversy.

C. Because neither the proofs nor the opinion of the court show that Norton was the original and first inventor of such unbalanced combination.

D. Because the fact if true, that Norton was such original and first inventor, is immaterial.

E. Because such unbalanced combination is adequate to the work of efficient postmarking and cancelling at a less expense than would be necessary if separate postmarkers and cancellers were used, and was open to the defendant and to the government to use during all the period of infringement as appears from the testimony of master's witnesses Burchard, Bogia, Wareing, O'Connor, Magee, Beach, Andrews, and Richards, and from the testimony as to the unbalanced combined instruments used in the New York, Geneva, Buffalo, Cleveland, Janesville, Cincinnati and Philadelphia post-offices, made and sold by J. H. & E. S. Zevely, and disclosed in the patent of August 9, 1859, prior to the issuance of the patent in suit.

X. Said defendant excepts to the report for that, if saving of expense or salaries is or is shown to be by the evidence a proper measure of gains and profits in this suit, which defendant protests is not the case, the master should have found and reported in lieu of the finding recited in the last exception, on the evidence referred to under E in that exception, that unbalanced combined instruments adequate to the work of efficient postmarking and cancelling at a less expense than would be necessary if separate postmarkers and cancellers were used, were open and free to the defendant to use during all the period of infringement, and that comparison ought to be made between such unbalanced combined instruments and the infringing machines in determining what saving has been made by the use of said infringing machines.

XI. Said defendant excepts to the report for that, in lieu of the items of savings in salaries reported, the same being based upon a comparison of the infringing

machines with separate postmarkers and cancelers, the master should have reported that no evidence of a saving in salaries or expense in using the infringing machines rather than unbalanced combined instruments, is proved by the evidence to have been made.

XII. Said defendant excepts to the report for that, in lieu of the items of savings in salaries reported, the master should have reported on all the evidence before him, that no pecuniary gains, profits, or advantages were proved to have arisen or accrued by reason of the infringements.

XIII. Said defendant excepts to the finding in said report, as follows: "That more perfect and efficient work is done by the patented combined instrument, both in the making of the postal mark and in the cancellation of the postage-stamp, than by any other instrument known or used in the post-office prior to the use of such combined instrument."

A. Because it is not supported by evidence.

B. Because it is contrary to the weight of evidence.

C. Because the testimony before the master of the witnesses from the New York post-office shows that the improvements in postmarks and cancellation marks is not due to the patented features of the infringing machines, but to other causes.

XIV. The said defendant excepts to the finding and report of the master, "that the gains and profits which have arisen or accrued to the defendant James under the decree, in the saving of salaries alone, and independent of any advantages which it appears have been derived from saving of time and labor, the better performance of the postmarking, and more complete cancellation of the postage-stamp, and speed in dispatching the mail, are as follows, viz, &c., &c." (Here follow the items at the end of the report.)

A. Because it is not supported by the evidence.

B. Because it is contrary to the weight of the evidence.

C. Because it is not relevant to any of the matters referred to the master by the interlocutory decree herein.

D. Because it is based on estimate, conjecture, and guess, and not upon any certain data established by evidence.

E. Because the testimony of defendant James that he has neither made nor received any gains, profits, or advantages from the use of the infringing machines is uncontradicted.

F. Because it was not referred to the master by the interlocutory decree herein, to find and report on the question whether, as a matter of law, under the decree gains and profits (if any), which have arisen or accrued, have arisen or accrued to the defendant.

G. Because under the circumstances of the case as developed by the evidence before the master the savings in salaries is not a proper or lawful measure of gains, profits, and advantages arising from the use of the infringing machines.

H. Because the saving in salaries is not shown by the evidence to be a proper or lawful measure of gains, profits, and advantages arising from the use of the infringing machines, there being no evidence to show that the end or purpose accomplished by the use of the infringing machines has a pecuniary value equal to, or greater than, or standing in any ascertained ratio to the salaries of such additional clerks as would be required to accomplish the same end and purpose by other means.

I. Because the gains and profits itemized in this finding are arrived at, as appears by preceding parts of this report, by considering how many additional clerks would be required to accomplish the same result if separate postmarkers and cancelers were used in lieu of the infringing machines, whereas the unbalanced combined instruments (which [as appears from the evidence referred to under E, in the 9th exception] were, prior to the issuance of the patent in suit, used in the New York, Geneva, Buffalo, Cleveland, Janesville, Cincinnati, and Philadelphia post-offices, made and sold by J. H. & E. S. Zevely, disclosed in the patent of August 9, 1859, and are capable of effective use for the purpose of postmarking and canceling at a less expense than would be neces-

sary if separate postmarkers and cancelers were used) were open and free to be used by the defendant during all the period of infringement.

XV. Said defendant excepts to the report because the finding that the saving in salaries, itemized and reported, is gains, profits, and advantages which have arisen or accrued, is inconsistent with and repugnant to the following finding: "No evidence is produced showing what the actual pecuniary saving by either has been, and hence none can be reported by the master," referring to the two advantages, to wit, first, "a postmark on the envelope, distinct and separate from the cancellation mark on the postage stamp," and, second, "attaining this result in such time as not to delay the mails," which constitute the end or purpose for the accomplishment of which the infringing machines have been used.

XVI. Said defendant excepts to the finding and report and to the statement of the account on the theory that by the use of the patented instrument the salary of one clerk has been saved in the foreign department of the New York post-office during all the time between April 1, 1873, and January 1, 1880.

To support this exception said defendant claims that there was no evidence before the master that warranted this finding, and such finding is inconsistent with Mr. James's uncontradicted testimony. (Master's Rec., p. 116, fol. 375. Appeal Rec. 2, p. 1508.)

XVII. Said defendant excepts to the finding and report and to the statement of the account on the theory that by the use of the patented instrument the salary of one clerk has been saved in the fourth division of the New York post-office during all the time between April 1, 1873, and January 1, 1880.

To support this exception said defendant claims that there was no evidence before the master that warranted such finding; and such finding is inconsistent with Mr. James's uncontradicted testimony. (Master's Rec., p. 116, fol. 375. Appeal Rec. 2, p. 1508.)

XVIII. Said defendant excepts to the finding and report and to the statement of the account on the theory

that the salaries of four clerks have been saved in the various city stations of the New York post-office during all the time between April 1, 1873, and January 1, 1880.

To support this exception said defendant claims that there was no evidence before the master that warranted such finding; and such finding is inconsistent with Mr. James's uncontradicted testimony. (Master's Rec., p. 116, fol. 375. Appeal Rec. 2, p. 1508.)

7. That Christopher C. Campbell, the complainant, is the owner in trust of an undivided two-thirds part of the said reissue patent No. 4143.

8. That Charles Eddy, individually and as trustee for Horace T. Caswell and Samuel R. Clexton, is the owner of an undivided one-third part of said reissue patent No. 4143.

9. That the gains, profits, savings, and advantages which have been made or which have arisen or accrued on account of the infringements upon and in violation of the rights under and secured by said reissue patent No. 4143 are the sum of sixty-three thousand dollars ($63,000).

10. That Campbell, the complainant, do recover of James, this appellant, the sum of $42,000, and the taxed costs, $1,470.40, making in all the sum of $43,471.40.

11. That Charles Eddy, individually and as trustee for Samuel R. Clexton and Horace T. Caswell, do recover of James, this appellant, the sum of $21,000.

12. That James, this appellant, pay to the clerk of said circuit court within twenty days from the entry of said final decree, with interest thereon from the date of said decree, the sum of $64,471.40, for the benefit of Campbell, the complainant, Clexton, Caswell, Eddy, and Campbell, assignee of Eddy.

13. That, in default of such payment by James, this

E. Whether the time covered by the account, as stated by the master, is correct.

F. Whether the 13th exception is well taken.

G. Whether the 16th, 17th, and 18th exceptions are well taken.

VII.—Of the rights in this suit of the adverse parties other than Campbell as against James.

VIII.—Of the disposition of the appeal.

I.—Of the Title.

The patent in suit, reissue No. 4143, was granted October 4, 1870, to Helen M. Ingalls, as the assignee by mesne assignments from Norton, the patentee of the original patent, whose wife is Miss Ingalls's sister.

In the bill, Campbell deduces his title from Ingalls, by referring specifically to the following assignments:

Ingalls to William W. Secombe in trust, dated March 4, 1871. (Printed in the record at page 487 of vol. 1.)

The Secombe Manufacturing Company and William W. Secombe, president, to Ingalls, dated July 10, 1873. (Printed in the record at page 493 of vol. 1.)

It is also alleged that Secombe had failed to perform the terms of his trust, and that consequently the title reverted (see amended bill, 1 Rec., 30), and this is the only allegation on the subject in the original bill (1 Rec., 6).

Ingalls to Campbell in trust, dated January 2, 1877. (Printed in the bill, 1 Rec., 31–4.)

We attack the second and third links in this chain.

A. As to the alleged transfer, either by assignment or reverter, from Secombe to Ingalls.

There is no dispute in fact that the assignment of

March 4, 1871, conveyed what title Ingalls then had in trust to Secombe. The bill alleges it, and complainant is bound by his allegations. (Vattier *v.* Hinde, 7 Pet., 252; Langdon *v.* Goddard, 2 Story, 275.) It is essential to Campbell's case, therefore, that a retransfer should be made out.

The alleged reassignment (1 Rec., 493) will first be considered. Our positions with regard to it are that it does not convey anything held by William W. Secombe individually or as trustee, and that the patent in suit is not part of the subject-matter conveyed.

The instrument is signed "Secombe Manufacturing Co. [seal.]" "W. W. Secombe, president, [seal.]" In the second and third paragraphs Secombe is described twice by the words "as president" of the company. Further on he is mentioned five times, and each time, as well as in the signature, he is described by the word "president," the little word "as" being omitted.

Now, in what capacity did Secombe execute this instrument? Was it the intention, deducible from the instrument, to convey his individual interests in the patents described, or did he act merely as agent of the company?

Judge Wheeler held (2 Rec., 1455–6) that the execution above indicated made the instrument Secombe's individual deed, carrying whatever title he had in the subject of the conveyance.

In this we submit the learned judge was wrong.

The cases which he cites show the nature of the error. They are Combe's case (9 Co. Rep., 75); Clark *v.* Courtney (5 Pet., 319); Isham *v.* Bennington Iron Co. (19 Vt., 230); Miller *v.* R. R. Co. (36 Vt., 452); and Brinley *v.* Mann (2 Cush., 337). In each of these cases the ques-

tion was whether a transaction *which by law had to be performed by deed* had been validly performed by an agent who executed the deed by signing his own name and affixing his own seal, and it was held on immemorial technical principles that such execution made the instrument his deed, and not that of his principal, no matter how clear the intention to act for the principal appeared in other parts of the instrument. But some of these very cases point out "a clear distinction between acts done *in pais* and solemn instruments or deeds, as to their mode of execution by an attorney." (Story J. in Clarke *v.* Courtney, *supra*, where Combe's case is cited at large.) Now, an assignment of a patent need not be by deed. Any instrument in writing showing the intention will answer. (Rev. Stats., sec. 4898.) Secombe's seal may be regarded as surplusage; when the law does not require an instrument to be sealed the "presence or absence of that formality is wholly immaterial." (Gibson *v.* Warden, 14 Wall., 247, citing Milton *v.* Mosher, 7 Metc., 244; Tapley *v.* Butterfield, 1 Metc., 515; Despatch Line *v.* Bellamy Man'g Co., 12 N. H., 234.)

It is clear, therefore, that in construing this instrument we are not hampered by the technical rules applicable to deeds. We have only to arrive at the intention of the parties from the terms used.

The first paragraph of the instrument (1 Rec., 493) recites the issuance of various patents, describing most of them very vaguely and none of them with precision.

The second paragraph recites that the "aforesaid" inventions and patents have been assigned to the Secombe Manufacturing Company, and that the several deeds of assignment have been recorded in the Patent Office

March 4, 1871, conveyed what title Ingalls then had in trust to Secombe. The bill alleges it, and complainant is bound by his allegations. (Vattier *v.* Hinde, 7 Pet., 252; Langdon *v.* Goddard, 2 Story, 275.) It is essential to Campbell's case, therefore, that a retransfer should be made out.

The alleged reassignment (1 Rec., 493) will first be considered. Our positions with regard to it are that it does not convey anything held by William W. Secombe individually or as trustee, and that the patent in suit is not part of the subject-matter conveyed.

The instrument is signed "Secombe Manufacturing Co. [seal.]" "W. W. Secombe, president, [seal.]" In the second and third paragraphs Secombe is described twice by the words "as president" of the company. Further on he is mentioned five times, and each time, as well as in the signature, he is described by the word "president," the little word "as" being omitted.

Now, in what capacity did Secombe execute this instrument? Was it the intention, deducible from the instrument, to convey his individual interests in the patents described, or did he act merely as agent of the company?

Judge Wheeler held (2 Rec., 1455–6) that the execution above indicated made the instrument Secombe's individual deed, carrying whatever title he had in the subject of the conveyance.

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This paragraph also refers to such recorded assignments for a fuller description of the inventions and patents assigned to said Secombe Manufacturing Company. It concludes by again referring, with some tautology, "to the invention and to the several letters patent mentioned in the said deeds of assignment to the said Helen M. Ingalls by the said Marcus P. Norton and by the said Helen M. Ingalls and said Marcus P. Norton or either of them to the said Secombe Manufacturing Company, *or to William W. Secombe as president of the said manufacturing company*, for a more full and perfect description of the said several letters patent and inventions and improvements so sold and conveyed and herein and hereby sold and conveyed as hereinafter written."

The third paragraph recites the desire of Miss Ingalls to obtain each and every of the "*aforesaid* letters patent, inventions, and improvements now held and owned by the said Secombe Manufacturing Company, or by the said William W. Secombe *as president*."

The fourth paragraph states a consideration of $1,000, and a further consideration that Norton "shall make no claim against the said Secombe Manufacturing Company for professional services rendered." (Note that W. W. Secombe is not named at all here.) It then proceeds as follows, dropping "as" before "president:" "We, the said Secombe Manufacturing Company, and William W. Secombe, president," have sold, &c., unto the said Helen M. Ingalls "each and every of the *said* inventions, improvements, and letters patent."

The fifth paragraph states an intention to convey also every application for reissue or extension then pending in the Patent Office "in which said Secombe Manufacturing Company *or by said William W. Secombe*" President

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If anything is plain in this clumsily drawn instrument it is that the different forms of expression concerning Secombe have always one and the same meaning, namely, that Secombe is acting as the agent of the company. There is nothing to indicate that he was acting for himself individually. In a common law pleading, and perhaps in a deed of land, the suffix "president" might be construed as mere description of the person, but in informal documents, such as an assignment of patents is, the parties will not be presumed

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to have had the nice distinction between "*president*" and "*as president*" in mind.

It should be remembered also that Secombe did not hold the patent in suit absolutely. His title was a trust title. The beneficiaries of the trust to be sure were Ingalls and Norton's wife and children, but of course the instrument must be construed as though there were no kinship between the *cestuis que trust.* An intention on Secombe's part to divest himself of his trust title ought to be expressed clearly.

We have next to consider what the subject-matter of this conveyance is, or rather whether the patent in suit is any part of such subject-matter. Much that was necessarily said on the question of the capacity in which Secombe acted is also relevant here.

We shall attempt first to extract the meaning from the words of the document itself, from the references *aliunde* contained therein, and from the circumstances shown by the record to have existed at the time of its execution; then we shall endeavor to discover the practical construction put upon it by the parties.

The first paragraph recites the issuance of various patents upon Norton's application and petition, describing them vaguely.

The patent in suit was issued to Norton on the 14th April, 1863, under the title in the patent itself, "Improvement in post-office stamps" (1 Rec., 459), and in the annexed schedule, "Improvements in post-marking and canceling revenue and postage stamps," &c., &c. (*idem*). It was reissued to Shavor & Corse as assignees on August 23, 1864, under the title in the patent itself, "Improvement in post-office stamps" (1 Rec., 463), and in the annexed schedule, "Improvements in post-marking letters, pack-

ets, &c., and canceling postage-stamps thereon" (*idem*). It was again reissued to Norton on August 3, 1869, under the title stated in the patent itself, "Post-office post-marking and canceling hand-stamps" (1 Rec., 471), and in the schedule annexed, "Improvements in post-marking letters, packets, &c., and in the canceling of the postage-stamps thereon." (1 Rec., 472.) It was again and lastly reissued to Ingalls as Norton's assignee on October 4, 1870, under the same titles in patent and schedule as last specified. (1 Rec., 480, 481.)

In addition to the patent in suit the record shows that patents having the following titles have been issued on Norton's application:

1. No. 25036, August 9, 1859, for "Improvement in post-marking stamps," or as it is called in the schedule "Post-office postmarking stamp." (2 Rec., 1271.)

2. No. 34184, January 14, 1862, for "Hand-stamps for post-office," or as it is called in the petition, "Improvement in post-office postmarking hand-stamps." (1 Rec., 585–6.)

3. No. 37175, December 16, 1862, for "Postmark and canceling stamp," or as it is called in the schedule, "Improved postmarking and canceling stamp." (2 Rec., 1277).

4. No. 106716, August 23, 1870, for "Improvement in hand-stamps," or as it is called in the schedule, "Improvements in a device or instrument for printing, dating, and canceling internal-revenue or other stamps of value by cutting or puncturing the same." (1 Rec., 625, 626.)

5. Reissue No. 4144, division B, October 4, 1870, for "Improvement in hand-canceling stamps," or as it is called in the schedule, "Improvements in a device or machine for printing, for dating upon, and for canceling

internal-revenue stamps of value by cutting," &c. (1 Rec., 488, 489.)

Turning back now to the first paragraph of the assignment, we find that none of the phrases there used aptly describe the improvement covered by the patent in suit, and that all of them may be well satisfied by limiting them to other patents. The phrase "hand-printing and dating stamps" fits nothing accurately; but it approaches the titles of several patents much nearer than it does any of the titles of the patent in suit. The phrase "post-office postmarking stamps" differs only in a single letter from the title given in the schedule of patent No. 25036, and it is nearly the same as the title given in the schedule of patent No. 34184. The phrase "internal-revenue dating and canceling stamps" could not by possibility relate to the patent in suit.

The phrase "and also during the years 1870 and 1871" is broad enough to cover the patent in suit which was reissued on October 4, 1870, but it is abundantly satisfied, so far as regards the year 1870, by confining it to reissue No. 4144, which was granted to the Secombe Manufacturing Company on October 4, 1870, as the assignee of Ingalls and Norton.

The result of this analysis is that the first paragraph does not *necessarily* include the patent in suit.

The draftsman of the instrument saw that the description of the subject of conveyance lacked precision; accordingly he framed the second paragraph, the sole purpose of which is to identify the patents conveyed. It is said there—

1st. That "the *aforesaid* inventions and letters patent" have been assigned to the Secombe Manufacturing Company, by Norton, and by Ingalls, Norton's assignee.

2d. That such assignments have been recorded and are now of record in the Patent Office.

3d. That reference is made to such recorded instruments for a more full and perfect description of the patents, inventions, and improvements "herein and hereby sold and conveyed."

In the latter part of this paragraph a doubt seems to have entered the mind of the draftsman as to whether he had correctly remembered the form of the assignments to the Secombe Manufacturing Company. Accordingly he indicates that the record may show that the patents had been conveyed to the company directly or to the company by assignment to Secombe as president thereof.

The third paragraph sums the whole matter up in brief, and as plainly as words can do it, by stating that "each and every of the *aforesaid* letters patent, inventions, and improvements" are "*now held and owned by the said Secombe Manufacturing Company or by* the said William W. Secombe as president."

In these first three paragraphs the subject-matter of the conveyance is defined, roughly it is true, but in such manner that by investigation the precise description can be ascertained. There is nothing in the rest of the instrument which alters in any respect a single line of this definition.

The consideration clause in the fourth paragraph shows that the consideration moved to the Secombe Manufacturing Company, so far as it shows anything upon that point. The grant in the same paragraph is of the "*said* inventions, improvements, and letters patent," which means of course those described in the first three paragraphs. The fifth paragraph is confined to applications for reissues and exten-

sions then (in 1873) pending in the Patent Office. In like manner the sixth paragraph is confined to rights arising out of contracts in respect to *said* inventions and patents.

From all this it is plain that *the subject-matter of this assignment is patents held by the Secombe Manufacturing Company, or by W. W. Secombe, as president of said company, and obtained by assignments which are of record from Norton directly, or from Norton through Ingalls.* Was the patent in suit ever so held?

(1) If so, it is Campbell's part to show it. The burden is on him to make out his title.

(2) The assumption that it was would contradict the bill which alleges specifically transmission of title from Ingalls to Secombe, from Secombe to Ingalls, and from Ingalls to Campbell, and so by implication asserts that the title was never in any other person.

(3) Defendant's Ex. 15 H. (2 Rec., 1142–'60) is a bundle of papers in regard to which the Commissioner of Patents certifies that it is a true copy "of all assignments of record" under the patent in suit. It contains no assignment to the Secombe Manufacturing Company or to Secombe as president.

(4) Ingalls testifies that the only persons to whom she ever assigned the patent were Campbell and Secombe, individually. (1 Rec., 779–'80.)

(5) Norton testifies that he never assigned the patent in suit to the Secombe Manufacturing Company or to Secombe as president thereof. (1 Rec., 438.)

It is certain that the patent was never conveyed to the Secombe Manufacturing Company or to Secombe as president thereof, and it necessarily follows that it is not covered by the assignment under consideration.

This conclusion is strengthened by the following circumstances:

(1) Secombe's connection with this patent seems to have commenced shortly before August 15, 1870. On that day Norton agreed under seal to give him ten per cent. of such sum as the Postmaster-General should allow in settlement for the use of the patent (2 Rec., 1152). At this time Norton's assignment to Ingalls had been executed but not recorded (1 Rec., 478–'9). Accordingly, on October 4, 1870 (the day the patent in suit was reissued), Ingalls, under seal, ratified Norton's above agreement (2 Rec., 1153). Throughout this ratification Secombe is referred to individually except when Ingalls states that she has assigned division B (reissue No. 4144 of October 4, 1870) to the Secombe Manufacturing Company "*according to the terms and provisions of a certain memorandum agreement in writing signed by the said W. W. Secombe as president of said company, having authority so to do.*" This shows that Secombe was even so early acting in two capacities, perfectly well understood by himself, by Ingalls, and by Norton. As to division B, and perhaps other patents like it, he dealt with Norton and Ingalls as president of the company. As to the 1863 patent he had advanced money as an individual, and he dealt with them and was recognized by them in his individual capacity. This being so, one cannot help believing that the intention would have been more clearly expressed if the assignment under consideration had been designed to cover the patents held by Secombe as an individual.

(2) It is not remarkable that the Secombe Company should at this time have been willing to part with the patents held by it. For early in 1873 these patents had

been held worthless in the suit brought by T. J. W. Robertson against the company. This suit is referred to several times in the testimony (2 Rec., 894, 920; 1 Rec., 261, 423–'4, 433), and is reported in 10 Blatch., R., 489.

But it would be very strange indeed if Secombe had been willing to surrender his title to a patent in respect to which he had expended at least ten thousand dollars (see agreement appended to his declaration of trust, 1 Rec., 597). Ingalls admits that even the trifling consideration of $1,000, stated in this assignment, was not in fact paid. (1 Rec., 780.)

But there are other matters of still greater significance. This is a case where, owing to the vagueness of the terms used, the practical construction which the parties by their subsequent acts have put upon the instrument carries great and perhaps controlling influence. (Chicago *v.* Sheldon, 9 Wall., 54, bottom; Railroad *v.* Trimble, 10 Wall., 377, middle.)

That Ingalls did not consider that Secombe had conveyed the patent back to her appears very clearly from her assignment to Campbell. (1 Rec., 31; 2 Rec., 1157.) That document recites with tedious particularity every reissue and every antecedent assignment, but it makes no mention of an assignment from Secombe; it recites only that Secombe had failed to perform the terms of his trust, and that, consequently, the title reverted. Moreover, Ingalls, by her agreement of October 4, 1870, made Norton her agent in respect to transactions with Secombe under this patent. (2 Rec., 1153; see also agreement appended to declaration of trust; 1 Rec., 597 and Norton's testimony, 1 Rec., 161, middle, 2 Rec., 1499, 1500.) Norton's acts are therefore her acts. It is

through Norton also that we are able to get at Secombe's views, he having died shortly after this bill was filed and before the replications and answer were put in.

Norton, while under examination as a witness for Campbell, in answer to a question whether, to his knowledge, Secombe claimed, subsequent to July 10, 1873 (the date of the alleged reassignment), any right or interest in or under the patent in suit, answered as follows (1 Rec., 144):

"He never did to me; nor have I ever known that he made, or pretended to make, any claim of the kind stated in the question."

The conclusive contradiction of this testimony which the record presents shows both that Secombe, to Norton's knowledge, did make such a claim, and that Norton, Ingalls's agent, acted for years after 1873 as though Secombe had the title.

On a further cross-examination of Norton, specially ordered (1 Rec., 422) by Judge Blatchford after the proofs had closed, eleven of his letters to Secombe, ranging in date from March 25, 1876, to February 6, 1877, were put in evidence as Defendant's Ex's, 190–201, inclusive. (1 Rec., 423–451.)

We cite especially Ex., 198 (1 Rec., 447), as presenting Secombe's position clearly. Norton there says:

"I have thought you would reconvey the patent, &c., upon the terms mentioned in the paper I inclose herewith, which is to pay you all you have paid out, with interest thereon. This paper will secure that to you, or else Miss Ingalls gets no title. * * * *This saves to you all that you ask in your letter of the 4th instant.*"

The inclosed paper (Ex. 199, 1 Rec., 448) is *a draft reassignment of the patent in suit to Ingalls.* Its terms are not unfavorable to Secombe; and Norton's reasoning,

that if Secombe would "let the title become easy" (Ex. 197; 1 Rec. 446–'7) he could make new arrangements by which money could be raised to pay expenses, and perhaps something could be realized to reimburse Secombe for all his outlays" (Ex. 200, 1 Rec., 450), is persuasive; nevertheless Secombe did not sign the document (Ex. 201, 1 Rec., 451); he evidently preferred to maintain his grip upon the title, as the best security.

As to Norton's views (they are relevant, as he was acting for Ingalls), every letter shows that the position of the parties is considered the same as it had been since Ingalls's assignment to Secombe, in 1871. See especially:

(1) Exs. 192 193, 194, 195, 197 (1 Rec., 442–446), where money is requested to be used in the effort to secure compensation for the patent.

(2) Ex. 196 (1 Rec., 445), where Secombe is asked to help "under the deed of trust you now hold, and now in force, and will be so long as you fulfill its provisions;" and Exs. 197, 193, 192, 191 (1 Rec., 441–446) to the same effect. They show that the deed of trust (under which Secombe got title from Ingalls) was at that time deemed to be still possessed of legal vitality and force.

(3) Norton, in his cross-examination, tries to break the force of these letters by stating that in the spring of 1876 he made a new verbal arrangement with Secombe, part of which was that Secombe was to furnish money, and they were to be *guided* (not bound) by the terms of the old deed of trust, and that it was to such new arrangement that the letters refer. Aside from the inherent improbability of such a verbal agreement; aside from the significant fact that the letters make no mention of it, but do ask Secombe to give up the title;

aside from the implied contradiction the letters as a whole present, there is a direct express contradiction in Ex. 201 (1 Rec., 451), which contains these words: "I would like to make this effort, for the time is most gone for which the patent was granted—there are only two or three years more. *You have had it in your hands more than six years.*"

We have thus analyzed the assignment itself, shown the surrounding circumstances by writings made before this suit was thought of, and out of the mouths of our antagonists demonstrated the practical construction of the parties.

In conclusion, we submit that in this instrument Secombe acted only as agent, and is not bound personally or as trustee thereby. If we are wrong in that we submit further that only his individual interests in the subject-matter described are affected, and that such subject-matter does not include this patent.

Under this head the only remaining question for consideration is the alleged reverter of title from Secombe by reason of failure and refusal to perform the trust.

The assignment of March 4, 1871 (1 Rec., 487), vested all of Ingalls's title in Secombe in trust for herself, her "sister Minnie D., wife of said Marcus P. Norton, and the children of said Marcus P. Norton." Secombe accepted the title subject to this trust, as appears from his cotemporaneous declaration of trust (1 Rec., 596). The consideration stated is nominal. But it appears that Secombe had been at a heavy expense in regard to the patent (1 Rec., 597, bottom; 2 Rec., 1153, 1152), and the motive of the transfer to him was doubtless to give him security for the sums so expended.

Complainant's position upon this matter has been

strangely vacillating. In the recitals of the assignment from Ingalls to Campbell, and in the original bill, nothing else is relied on. In the amended bill prominence is given to the assignment of July 10, 1873, providentially discovered, according to Norton, after the original bill had been filed. (For a diverting account of this discovery see 1 Rec. 165–7.)

In complainant's *prima facie* case not a particle of evidence was given to sustain the allegations as to reverter; no attempt even was made to prove the declaration of trust executed by Secombe cotemporaneously with the assignment from Ingalls to him. Reliance was placed solely upon the assignment. In the *rebuttal* proofs all the evidence there is upon this subject was introduced.

Norton then swore that the following statements in his letter of November 27, 1876, were correct (compare 1 Rec., 168 with 2 Rec. 1394):

"I little care whether he (Secombe) signs the paper I sent him or not, because he has utterly failed in his trust, and the title reverts, at least all the title he ever had. He took no absolute title, but a title subject to a certain trust; whenever the trust fails, then fails the title. He failed in that trust more than four years ago; and when called on for money to carry out the trust, then he refused, and has so refused three or four times, and I have it in writing."

Aside from this this there is not a particle of evidence in the record that Secombe either failed or refused to perform his trust. We submit in regard to it:

(1) The testimony was incompetent in rebuttal. It was duly objected to on that ground, and ought to be disregarded.

(2) The only *fact* stated is that Secombe had refused money. But the purposes for which money was asked are not stated. It may be that they were not such as a prudent

trustee should have expended money upon. Indeed, this testimony (if we may dignify it by that name) is a bundle of *conclusions*, in drawing which Norton has assumed the functions of the court.

(3) Secombe's declaration of trust (1 Rec., 596) did not bind him to advance money absolutely and in any event. The agreement was that *out of any money coming into his hands* he would pay all necessary expenses. It is not shown that in fact any money did come into his hands.

(4) Norton's statement, "He failed in that trust more than four years ago" (reckon from November 27, 1876), is contradicted by his letters to Secombe in 1876, where he speaks of the trust as then in force, and of the title as then vested, and as having been for six years continuously vested, in Secombe. (See Exs. 190–201, inclusive; 1 Rec., 441–451.)

Apart from the utter inadequacy of the evidence, the theory of law on which Campbell stands is unsound. The assignment to Secombe contains no condition or limitation in the legal sense of those words. It vests the full legal title in him, subject to a trust. His cotemporaneous declaration of trust (1 Rec., 596) is an acceptance of the title and of the trust. Complainant's proposition, briefly stated, must therefore be this: when a patent has been conveyed in trust, and is so accepted by the assignee, his subsequent failure or refusal to perform the trust causes the title to revert to the settlor of the trust. No authority sustaining this extraordinary proposition was cited in the court below, and it is safe to say none can be, for it is inconsistent with the principles that lie at the base of legal and equitable titles.

The creation of a trust divests the settlor thereof of all his title in the property settled, and divides the title into

two parts, one legal, vested in the trustee; the other equitable, vested in the *cestuis que trust*. Courts of law recognize only the legal title; consequently, no mere failure or refusal to execute the trust can affect the legal title at all, much less send it back to the settlor, whose interest has wholly ceased. The *cestuis que trust* have a remedy, of course; but it lies in an appeal to the chancellor, who will compel the unfaithful trustee to convey the legal title to a new trustee, or will give other suitable relief. But until there is a decree by the court of equity, there can be no change in the legal title.

In this case Ingalls, the settlor of the trust, happens to be also one of the beneficiaries. But there are others in whom equitable rights of property were vested by the creation and acceptance of the trust. Can it be *seriously* claimed that any act or omission on Secombe's part could deprive them of these rights? That is what the argument for reverter necessarily implies.

Furthermore, patents are creatures of statutes. The right to assign them is purely statutory, and the mode of assignment specified in the statute must be followed. That mode is by an instrument in writing. By such an instrument Secombe got the title, and he can lose it only by the same means.

In the court below Campbell's counsel argued that the facts relative to this matter of title in Secombe were the same as in Railroad *v.* Trimble (10 Wall., 367), where the contract was held still-born, the parties by their acts having manifested a consent that it should never go into operation; but here the facts are very different. There is no question that the assignment to Secombe vested the title in him. The bill alleges it, and the evidence shows it.

It was also urged that the utmost James could ask was that the representative of Secombe should be made a party to the suit. We submit that is not so. The bill alleges title in ~~Secombe~~ Campbell in a particular way. That title failing, the bill must be dismissed (see Vattier *v.* Hinde, 7 Pet., 252; Langdon *v.* Goddard, 2 Story, 275.)

The defense is meritorious; for, if any liability exists, it is to Secombe, and not to Campbell, and in a suit by Secombe we could not defend by showing that we have paid the judgment in this case to Campbell, the bill and other parts of the record showing that Campbell claims not in privity with Secombe, but by title paramount.

Shortly after the rendition of the interlocutory decree herein, David A. Secombe, the brother and administrator of Wm. W. Secombe, filed a bill in the circuit court, southern district of New York, praying that the title might be declared to be in him, and that James might be directed to pay the judgment in this case to him as administrator, and that Campbell might be enjoined from collecting such judgment. To this bill James demurred generally, and Judge Wheeler sustained the demurrer for lack of privity between Campbell and Secombe. The opinion has not yet got into the reports, and, accordingly, we hand up a certified copy of the bill, demurrer, and opinion, as an authority upon the point now under consideration. It follows, of course, that we should have no defense on the score of title, should Secombe file a bill against us, charging an infringement and praying an account.

II.—*Of the validity of the patent.*

A. The validity of the patent depends of course largely upon the date of the patentee's supposed inven-

tion; and in determining that date it is necessary to know what the supposed invention is; in other words, what the correct construction of the patent is, and to such construction the light afforded by the state of the art is essential. What the state of the art was, the court can best decide when all the evidence upon that point and upon the question of priority is before it.

Here we shall content ourselves by stating such facts relating to the art as cannot well be disputed; then we shall state *provisionally* the construction of the patent which it is understood the circuit court adopted; and finally we shall go into a discussion as to the date of Norton's supposed invention.

(1) Facts bearing upon the state of the art. The patented instrument is really a printing-machine. It belongs to the same class of instruments as the common hand-stamps used for printing names upon clothing. Campbell's expert, Kittle, says that he knows that such stamps were in use and on sale as early as 1850. (1 Rec., 243–4). Defendant's model, Ex. 169, is such a stamp. It was purchased by defendant's expert, Robertson, in Broadway, New York City, prior to March 10, 1856. (2 Rec., 884–'5).

One form of the patented instrument has a canceler consisting of a metal tube with an elastic "die or type" therein made of cork, rubber, or wood used endwise. Wood type so constructed that the end of the grain should be the acting surface, held in place by "chases" "frames" "rings and tubes" (which also prevented them from being crushed by the power of the press) were in common use among printers as early as 1850, and probably much earlier than that (2 Rec., 884, 886; 1 Rec., 244–'5).

Campbell's expert, Kittle, testified that it has also long been common among mechanics to put rings of metal around mallets, chisel handles, beetles, spiles, &c., to prevent bruising or splitting. (1 Rec., 97.) If the court will examine dictionaries upon this point (as it may do, Brown *v.* Piper, 91 U. S., 37) it will find in the dictionary of Charles Richardson, London, 1839, the following definition of ferrule: "A i
the end of a staff, &c., to strengt e
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The use of the patented machine contemplated in the patent consists, in part, of the cancellation of postage-stamps. Postage-stamps were first authorized by Sec. 11 of the act of March 3, 1847 (9 Stat. at Large, 201. Sec. 3 of the act of March 3, 1851 (9 Statutes, 589), made it the Postmaster-General's duty to issue them. The latter act also reduced the rate on ordinary letters from five to three cents. Section 4 provides "that it shall be the duty of every postmaster to cause to be defaced, in such manner as the Postmaster-General shall direct, all postage-stamps attached to letters deposited in his office," &c. In the postal regulations of 1847 (No. 501, page 70) is the following: "Stamps so affixed are to be immediately canceled in the office in which the letter or packet may be deposited, with an instrument to be furnished to certain of the offices for that purpose. In post-offices not so furnished, the stamps must be canceled by making a cross (X) on each with a pen." The regulations of 1852 (Sec. 380 and 382, page 86) contain the following on the

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same subject. "Sec. 380. The cancellation should be effected by the use of black printers' ink wherever that material can be obtained, and when it cannot the operation should be performed by making several heavy crosses or parallel lines upon each stamp with a pen dipped in good black writing ink. SEC. 382. The use of the office dating or postmarking stamp as a canceling instrument is prohibited—unless it be used with black printers' ink and in such manner as to thoroughly effect the object." These regulations of 1852, are repeated in the regulations of 1857 (secs. 336 and 338, page 84) and in those of 1859, secs. 395 and 397, p. 118. On the 23d of July, 1860, General Dix, then postmaster at New York, was imperatively forbidden to use the postmarker as a canceler. (See defendant's Ex. 6, 2 Rec., 1142.) Similar instructions were given at about the same time to several other post-offices. (Cincinnati, 1 Rec., 830; Cleveland, 1 Rec., 172, 208; Buffalo, 1 Rec., 807.)

Postmarking stamps (in shape like defendant's model Ex. 4, but of different sizes) have been used in the postal service since Jackson was President (2 Rec., 1407; 1 Rec., 217; 1 Rec., 801; Chambers' patent of September 23, 1851, 2 Rec., 1284; drawings between pp. 1282 and 1283).

Cancelers having a brad-awl handle of wood and a metal base piece (like defendant's model Ex. 4 in shape, but smaller in size) have been in use since postage-stamps were first introduced. Rating stamps (used in early times for marking the rates of postage on envelopes) were also used; they were sometimes made like the cancelers, partly of wood and partly of metal, but oftener wholly of wood (1 Rec., 218, 222, 801, 803; 2 Rec., 861.)

Though the Post-Office Department furnished separate cancelers, yet, down to 1860 the clerks were prone to

save themselves trouble by using the postmarker as a canceler. The extracts from the Post-Office regulations heretofore quoted show that they were not *imperatively* forbidden to do this.

(2.) As to the construction (provisional) of the patent.

Judge Wheeler did not discriminate between the different claims of the patent. He says generally (2 rec., 1453), "The invention in controversy combined the advantages of a safe and effective canceller, well balanced upon the same handle with the postmarker, for the first time." And what he says on the subject of infringement (2 Rec., 1457) also shows that he considered the balancing of postmarker and canceler on the same handle as the soul of the patented invention. We infer therefore that he considered all the claims as substantially the same.

It seems to us that the first and second claims (1 Rec., 486) will not bear this construction; the first appearing to be for a separate canceler, and the second for a combination of postmarker and canceler in which the canceler is a metal tube holding an elastic blotter.

The third claim, which at first blush appears to be for a process, would, probably, if that construction were given to it, be invalidated by two prior patents issued to Norton (presently to be referred to) for combined postmarkers and cancelers, the process of using which, as described, is identical with the process described in this patent. The claim must be taken to be for the described *means*, whatever they are, of postmarking and canceling.

On the principle ruled in O'Reilly *v.* Morse (15 How., 62), the fourth claim would be invalid in form if the

concluding words, "in the manner substantially as herein described," are considered to modify *postmarking* and *canceling*, which, grammatically, they seem to modify. Taking those words as modifying the introductory words *employment and combination*, this claim, like the third, is for the described means of postmarking and canceling.

The point of most importance is whether the balancing of postmarker and canceler shown in the patent is a material element in the combination. Is the patent broad enough to cover an instrument in which the handle is directly over the postmarker, the canceler being on one side (*e. g.*, model Exs. 135 and 136), or is it confined to instruments which have the postmarker and canceler balanced on the handle? This distinction must be kept in mind while the evidence as to the date of Norton's invention and as to priority is under consideration.

(3.) As to the date of Norton's supposed invention.

The defendant introduced evidence which proved (so clearly that probably no question will be made about it here) that both the balanced and unbalanced instruments had been either patented or in use prior to January 1, 1861. This evidence with other evidence as to anticipation will presently be adverted to.

The burden was thus thrown upon the complainant to prove that the patented invention was made earlier than that date, and he put in some evidence for that purpose, which will now be considered.

The rule of law governing this matter is thus stated by Mr. Justice Clifford, in Johnson *v.* Root, 2 Clifford, 116:

"Beyond question the patent was *prima facie* evidence that the plaintiff is the original and first inventor of

what he has described therein as his invention, and, when taken in connection with his original application, is *prima facie* evidence that the invention was made at the time the application was filed. Presumptions were in favor of plaintiff to that extent, but when he proposed to show that his invention was of a date prior to his original application he took the burden upon himself, and to maintain that theory it was incumbent upon him to prove, by competent and sufficient evidence, that he made the invention at the period suggested, and that he reduced the same to practice in the form of an operative machine; and if he failed to prove either of the elements of the proposition, then the verdict should have been for the defendants."

The record contains evidence supposed to bear upon this question, which will be considered under the following heads:

a. Sherwood's testimony (1 Rec., 139) and complainant's paper Ex. J, K, L (1 Rec., 598).

b. Davis's testimony (1 Rec., 134).

c. King's testimony (1 Rec., 130) and complainant's paper Exs. "King, A, B, C" (1 Rec., 595), "X X—King" (1 Rec., 548) referred to therein; also defendant's paper Exs. 6 and 163 (2 Rec., 1142, 1361), probably referred to in King's testimony.

d. Letter of Postmaster Wakeman to Third Assistant Postmaster-General, dated January 3, 1863, complainant's paper Ex. T, T (1 Rec., 542).

e. The pretended amendment of Norton's caveat of October 20, 1853 (1 Rec., 455; 2 Rec., 1341, *et seq*).

f. The testimony of Norton himself (1 Rec., 142 *et seq*).

While examining this evidence, we ask the court to keep in mind the following facts in addition to the distinction between balanced and unbalanced instruments: First, that on Agust 9, 1859, a patent for a combined

postmarker and canceler was issued on Norton's application to Ransford & Low, his assignees (2 Rec., 1270); that on January 14, 1862, a patent for a postmarking stamp was issued to Norton (1 Rec., 585), and that on December 16, 1862, another patent for a combined postmarker and canceler was issued to Norton (2 Rec., 1276). It is, of course, all important to determine whether complainant's evidence relates to the patent in suit or to these patents. If it is not clear what the evidence relates to, complainant's case is not made out, the burden being on him.

(*a.*) As to Sherwood's testimony (1 Rec., 139–142); under objection to the form of the question this witness was asked when he first made a stamp for Norton which would postmark a letter and cancel a stamp thereon at the same time. He answered that, as nearly as he could remember, it was in 1857.

On cross-examination he stated that his recollection had been refreshed by his books of account. These books were not produced, but a copy was.

This reliance upon a copy when the original could have been produced is very suspicious, and shows the witness's statement as to dates to be unreliable.

Moreover, the witness gave a sufficient description of the instrument asked about on direct examination to prove that it was in all respects quite unlike the patented instrument.

(*b.*) As to Davis's testimony (1 Rec., 134–136).

This witness cannot fix the date when he saw the instrument which he did see more accurately than that it may have been in 1858, 1859, or 1860; and he says that he understood Norton had several patents, and the instrument he saw was the one patented in 1859.

(*c.*) As to King's testimony (1 Rec., 130–134).

King was Acting Postmaster-General from 1858 to 1861. The court below laid great stress upon his testimony, and it will accordingly be carefully examined. We do not claim that it is false. We do claim that it does not appear to relate to the instrument covered by this patent, and that it is insufficient to show the perfected invention of any instrument.

On direct examination the witness was asked only to identify certain letters as having been written or received at their dates, namely, his letter to postmaster at Troy, dated May 4, 1859 (complainants' Ex. King A, B, C, 1 Rec., 595); Norton's letters to witness, dated April 2, 1859, April 11, 1859, and October 31, 1859 (complainants' Ex. X, X, 1 Rec., 548–9). Then he said that, independent of any writings, he remembered that as early as 1859 he had correspondence and conferences with Norton "relative to A combined postmarking and stamp-canceling instrument." On cross-examination he fixes the date by the fact that he knew such correspondence with Norton took place prior to certain other correspondence which he or the department had with General Dix, who was postmaster at New York early in 1860. The correspondence with General Dix referred to was probably the letters Defendants' Exs. 6 (2 Rec., 1142) & 163 (2 Rec., 1361), though King does not say so.

This is all of the testimony as distinguished from the correspondence. Note that King does not describe any stamp. He does not know that any stamp existed as an operative machine; he merely had talk and correspondence with Norton relative to *some* combined postmarker & canceler.

Let us now examine the correspondence.

Probably it is a fair inference from King's testimony, though not stated as a fact, that his letter to the postmaster at Troy of May 4, 1859 (1 Rec., 595), was a part of the correspondence which he spoke about in reference to A combined postmarker and canceler. That letter merely authorized the Troy postmaster to use for three months "Norton's improved marking stamp" for "*postmarking* letters." From Norton's letters of April 11 and October 31, 1859 (1 Rec., 548–9), it appears that this instrument had a canceler attachment; but it does not appear whether the combination was that described by Sherwood, that of the 1859 patent, that of the 1862 patent, or that of the patent in suit.

If now we turn to the Dix correspondence some light will be thrown on the matter. Dix, having been instructed to use a separate instrument for canceling (in place of the postmarker which had been frequently employed for that purpose), says in his letter to King, of August 8, 1860 (2 Rec., 1142):

"It occurred to me that the 'separate instrument' required by the department might be attached to the postmarking stamp, and I sent for the stamp maker and gave him my idea, which he has carried out very well. *The canceling stamp is soldered on to the other, so* that one handle answers for both, and the double operation is performed by one blow."

This is clearly a description of an *unbalanced* instrument, and Dix's testimony in this cause (2 Rec., 849) shows such to have been in fact the construction of the instrument here described.

Now mark the reply. It is signed by the Acting First Assistant Postmaster-General, but appears to have been dictated by King, who was then Acting Postmaster-General (1 Rec., 130). It is dated August 10, 1860 (2 Rec.,

1361). "I have to acknowledge," it says, "the receipt of your letter of the 8th instant in relation to canceling stamps. The arrangement is an excellent one, and will save much labor in making up the mails, but I fear the attachment you have affixed to your marking stamp has *not only been thought of before, but has actually been patented.* If so, it may at some future time subject your office to a heavy charge to the patentee for its use, or perhaps to a lawsuit. The Postmaster General therefore desires that you will give the matter such timely attention as will be calculated to avoid such consequences."

From this letter it is tolerably clear that King believed that Norton's combined stamp was the one patented in 1859. And it is certainly clear that King did not know the distinction between *balanced* and *unbalanced* stamps, and that his testimony and correspondence are no evidence of the existence of a *balanced* stamp in 1859 or in 1860.

Judge Wheeler says in his opinion (2 Rec., 1450–1):

"Norton was an inventor of other improvements in such stamps; and there is a question as to whether the stamp referred to in that letter (King's letter of May 4, 1859, to the Troy postmaster, 1 Rec., 595, referred to above), was this one (the patented stamp) or some other. King's testimony and correspondence settle it that this is the one. After he went out of office he was employed by Shavor and Corse to assist them about obtaining compensation for the use of [*t*] his stamp, and was kept familiar with it all the while; and his testimony is that this is the one."

Judge Wheeler construes the patent to be for a balanced instrument; consequently this is a finding that a balanced instrument was referred to in King's letter of May 4, 1859.

The learned judge is in error when he says (as he does say in substance) that King's testimony is that that letter relates to a balanced stamp. King nowhere says that, nor anything that can be construed to amount to that.

It appears that King was at one time employed as agent by Shavor & Corse (assignees of the patent in suit, by assignment, dated April 20, 1863, 1 Rec., 462); that he was also employed as agent by Norton in 1861 or 1862, long before he had heard of Shavor and Corse, and long before the patent in suit was issued or applied for. But it does not appear that he was familiar with the detailed construction of any of the stamps, that in respect to which he was employed by Shavor & Corse, or that in respect to which Norton first employed him, or that referred to in his letter of May 4, 1859. How, then, can his testimony be construed to be that all these stamps were identical in construction? The Dix correspondence, already cited, shows affirmatively that he did not distinguish between balanced and unbalanced instruments, and that he believed the unbalanced instrument constructed by Dix to be covered by the patent of 1859. The questions put to King on his direct examination relate merely to a combined post-marker and canceler, not to a balanced instrument, nor to the instrument described in the 1863 patent.

d. Judge Wheeler (2 Rec., 1451) also put some reliance upon the letter of Postmaster Wakeman to the Third Assistant Postmaster-General, dated January 3, 1863 (1 Rec., 542).

Wakeman might have been examined as a witness. On what principle the unsworn historical statements contained in this letter, and written and signed by his secretary,

are competent evidence, does not obviously appear. The letter was offered in evidence twice and duly objected to on both occasions as irrelevant, immaterial, and as containing statements not sworn to (1 Rec., 137, 185, 186). Its statements ought not to be regarded.

Further, the letter states that Norton's double postmarking and canceling stamping-iron "was in use in this office when I first entered upon my duties." Judge Wheeler says that Wakeman became postmaster "in 1861, or thereabouts" (2 Rec., 1451). The record does not show this. The evidence is that Dix entered Buchanan's cabinet from the New York post-office in January, 1861 (2 Rec., 849); that in 1861 William B. Taylor was postmaster (the witness Ryer states that combined stamps were introduced in the New York office in 1860; that he first heard of Norton's patent [N. B.—This must have been the 1859 patent, as the patent in suit was not then issued] about a year afterwards, and that William B. Taylor was then postmaster—1 Rec., 345, near bottom, 846, near bottom); and that in 1862 or 1863, or thereabouts, Wakeman became postmaster (1 Rec., 840).

We submit, therefore, with regard to this letter, first, that it is not competent evidence of the facts stated therein, and second, that it does not tend to prove that Norton had invented the patented stamp prior to 1862.

e. As to the pretended amendment of Norton's 1853 caveat.

A *portion* of the present contents of this caveat file is contained in Complainant's Ex. C (1 Rec., 452). The *whole* is contained in Defendants Ex. 160 (2 Rec., 1340).

The caveat of October 20, 1853, relates to a "machine for mailing and folding letters." The file contains nothing which has any bearing whatever upon the patent in

suit except the paper (marked Exhibit B) which bears the date August 7, 1854. This paper contains a much fuller description of the alleged invention in suit than is contained in the original patent (1 Rec., 459). It resembles in many parts the first reissue—that of August 3, 1864 (1 Rec., 462).

(1.) Unlike the other important papers in the file, it has no mark upon it to show that it was ever received or filed at the Patent Office.

(2.) There is an indorsement upon it, signed by the Commissioner of Patents, to the effect that it does not form a valid portion of the caveat (2 Rec., 1346). Reference is made to the order dated September 18, 1871, of the Commissioner of Patents, approved by the Secretary of the Interior, in the case of the trial of M. P. Norton for gross misconduct. A certified copy of the record of that trial is printed as Defendant's Exs. 161 and 162 (2 Rec., 1348–1359). Mr. Norton was charged with surreptitiously introducing said paper, Ex. B, into the file of the caveat of October 20, 1853, with intention to deceive and practice fraud upon the Patent Office. (See charges 1 and 2, 2 Rec., 1349.) Of these charges he was found guilty (p. 1351). In this matter the Commissioner acted under authority conferred by § 17 of the patent act of 1870 (16 Stats. at L., p. 200; Rev. Stats., § 487.)

(3.) Norton testified on cross examination (1 Rec., 254) that in the spring of 1878, he examined this caveat file in the Patent Office; that the file then contained the "additional description" of August 7, 1854; that it was in his handwriting as he wrote in 1864; that it was made by him in 1864; that it did not belong to the caveat file, but to the file of the reissue of 1864. He says also, that

this paper in the file *is a copy* and *suggests* that some enemy of his had extracted the original and put the copy in its place.

On these facts it is clear that the certified copy of the additional description introduced by complainant is of no value whatever *as an independent piece of evidence.* The Commissioner's indorsement alone is conclusive on that point. (See Judge Blatchford's decision in Robertson *v.* Secombe Manufacturing Company, 10 Blatchford, 489, in respect to a similar additional description found in another of Norton's caveats.) But Norton's confession that the paper found in the file was not made till 1864, clinches the matter. That paper undoubtedly does not belong to the caveat file. The existence of the alleged original cannot be proved by the record; it must be proved, if at all, by the verbal testimony of Norton. Hence the additional description cannot independently prove the date of invention; nor does it corroborate Norton's testimony, for without Norton's testimony there is no evidence whatever of the existence of such additional description.

See p. 137 of this brief

f. As to Norton's testimony (1 Rec., 142–3; 163–4). Norton testifies that the letter to the Commissioner of Patents, dated August 7, 1854, found in the caveat file (2 Rec., 1343) was written on the day of its date. It states that, "an additional description of my machine for mailing and folding letters" has been sent.

There seems to be no foundation for disputing the genuineness of this letter. It tends to show that *some* additional description was actually sent to the Patent Office in August, 1854. What was this additional description?

Norton swears (1 Rec., 142) that it is the paper "con-

tained in the caveat filed as an exhibit by complainant" (Ex. C., 1 Rec., 453). This testimony was given at Troy on May 18, 1878. It was not till June 27, 1878, on further cross examination in New York, that he made the confession already referred to, that the paper in the caveat file was not made till 1864 (1 Rec., 254). The evidence which shows that his testimony is not to be relied upon will be collated by itself in another part of this brief. Here it will suffice to point out a single circumstance. In the file of this caveat there are several exhibits which bear stamped impressions (2 Rec., diagrams between pages 1347 and 1349). The date in one of these impressions is October 13, 1853 (2 Rec., diagram marked 2640), from which it is inferable that this exhibit accompanied the original caveat. The date in other impressions is July 12, 1854. That date being subsequent to the original caveat would not naturally have been made in 1853, and therefore it is inferable that the exhibits bearing this date were a part of the additional description referred to in the letter of August 7, 1854. The fact that these impressions are quite different from what would be made by the patented instrument indicates that the patented instrument was not described in that additional description.

Norton also testified that he exhibited the instrument described by Sherwood in the Post-Office Department in the fall of 1854; that shortly after the caveat of October 20, 1853, was filed, he had made a combined postmarking and stamp-canceling instrument, "substantially like the one now in use"; that two or three more were made prior to the time of the preparation of the "additional description," in that caveat file (1 Rec., 143–4). On cross-examination he describes the con-

struction of the instruments, which he says were made and used "experimentally" in the shop of Richardson, the manufacturer, who is dead. The first went by crank and foot power; the second was a hand instrument, "*like* that described in the additional description dated August 7, 1854," and was made at Poultney, Vt., in the winter or spring of 1854 (1 Rec., 164).

In the progress of this cause Norton took the stand on four or five occasions as a witness for complainant. We do not think any of his testimony is trustworthy, and have accordingly discussed his credibility by itself in a separate part of this brief. At this point we will only call attention to his letter of February 6, 1864, to the postmaster at New York (Defendant's Ex. 180, 2 Rec., 1367), where such inconsistent statements as to his invention are made as to unsettle (we submit) all his testimony on that point.

In this letter he says:

"The double canceling stamp now used by you in your post-office is my invention as far back as the year A. D. 1856, as I can most fully and satisfactorily prove. It was patented by me in the early part of the year 1863, upon an application made a long time before then. I had several such stamps made in 1858, as I can prove by the person who made them. * * *

In the year 1856 I first submitted the double canceling stamp to the department for consideration. * * During each year from 1856 to the year 1863, inclusive, I have urged upon the Post-Office Department the improvements covered by the patent of 1859–1862, and after having tested them all in the manner and the time (as well as place) selected and desired by the Post-Office Department, the *improvements of* 1856, *patented in* 1863, were selected and adopted as the best and which at first I thought of the least value. * * * * *

I first began with the Post-Office Department for a

change in the then existing unwieldy plan of *postmarking and mailing of letters* in the year 1854, and have letters, etc., to show that fact."

Note, that this letter which is dated in the early part of the year 1864, and before the time when Norton says that the additional description now in the caveat file was made by him (1 Rec., 254), makes no reference to the caveat as containing the invention.

Judge Wheeler seems to have thought that this letter was put in evidence as the admission of a part owner of the patent, and, on the well-settled rule as to admissions, that they are legitimate evidence according to their just weight, as well to those parts in favor of as to those against the parties making them, holds that this letter tends to show that Norton had made the patented stamps in 1858.

This letter was not offered in evidence as the admission of a part owner, and could not have been received as such, for prior to February 6, 1864, Norton had assigned the title absolutely to Shavor and Corse (1 Rec., 463.) He had a right arising from contract merely to a share of such proceeds as should accrue (1 Rec., 751-2). He was completely divested of the title.

The letter was offered and is admissible as the prior inconsistent statement of a witness. No objection was taken to it when it was offered (2 Rec. 1110), nor at all in the court below. Objection to it is therefore deemed to have been waived (Rule 13 of this court).

As an inconsistent declaration the letter is certainly not legitimate evidence of any fact therein stated. Its only function is to impeach the testimony with which it conflicts.

But, for argument's sake, concede that this is not so;

what do the statements in the letter amount to? Norton's construction of his patent is, that it covers any and every instrument which at one blow will cancel the postage-stamp by blotting and postmarking the envelope apart from the postage stamp (1 Rec., 143). This being so, it is not absolutely necessary to charge Norton with untruth when he says in this letter that he had several "*such*" stamps made in 1858. He may have believed that the stamps referred to were substantially the same as the patented instrument, when in fact, according to the construction which the court shall put on the patent, they were not. The evidence, if evidence it be, is defective because it gives his judgment instead of the facts on which it is based.

Norton also testified that the invention referred to in the bill in this suit was used in the New York office in the fall of 1860, and that he consented to such use *as a test* (1 Rec., 143).

This testimony amounts to nothing, because his answers show that he construes the patent to cover every form of combined postmarker and canceler. Norton says he had correspondence with the postmaster about the matter (*idem*). This identifies the construction of the instrument about which he was speaking, for Dix was then postmaster, and we have his testimony in regard to the arrangement with Norton, and as to what stamp that arrangement related. It was an unbalanced stamp. (See 2 Rec., 849, *et seq.*, Defendant's Ex's 6 and 7 (Dix); 2 Rec., 1142; and the model of the Dix stamp, Defendant's Ex. 5; see also what is said hereinafter on the defense of public use for more than two years prior to the application for the patent.)

This is all the evidence of complainant bearing upon

the question of when Norton made his invention. The circuit court construed that invention to be a combined postmarker and canceler, *well balanced on a brad-awl handle*, and held that this evidence showed such invention to have been made as early as May 4, 1859, the date of King's letter to the Troy postmaster. In reaching this conclusion it ignored Norton's *testimony* completely; it relied chiefly on Norton's letter of February 6, 1864, and on King's testimony and correspondence. How little they justified the conclusion has been pointed out.

Norton's letter is not legitimate evidence of anything therein stated; and, if it were, only conclusions and judgments, not facts, are stated. King's testimony and correspondence seem to relate to an instrument constructed on Norton's 1859 patent; there is certainly nothing in it to show that he had the distinction between balanced and unbalanced instruments in mind; how could he have had that distinction or the distinction between the different Norton patents in mind when (so far as appears) *he never saw or heard an accurate description of the stamp or stamps to which his letters relate?*

Here let particular attention be given to Norton's patent of August 9, 1859 (2 Rec., 1270). The instrument there described is a combined instrument; but the handle is wholly over the postmarker, and there is no balance. Now, balancing clearly being an advantage, is it not very remarkable that this patent does not show a balanced instrument, if the idea of one had then entered Norton's mind? It was not till more that three years later that the balanced construction appeared in Norton's patents (see patent of December 16, 1872, 2 Rec., 1276).

The canceler in the 1859 patent is so constructed as to both blot and cut. As the idea of cutting seems to

be an advance upon mere blotting, it is almost certain that Norton had then invented an *unbalanced* combined postmarker and canceler, in which the canceler was a mere blotter. Probably King's letter of May 4, 1859, related to such an instrument, if not to the identical instrument described in the 1859 patent.

We submit the following as the fair conclusions from the evidence on this point:

(1). The balanced instrument is not proved to have been invented by Norton so early as January 1, 1861.

(2). The unbalanced instrument is not proved satisfactorily to have been invented by Norton at any date prior to May 4, 1859.

B. The patent relied on as proving that Norton's supposed invention had been patented before he made it, is the English patent of D. G. Berri, dated April 24, 1860, No. 1020, for "An improved date stamp." This patent was sealed Sept. 27, 1860; but the complete specification was filed on April 24, 1860, the day the patent is dated (2 Rec., 1362–'4). The drawings show with the greatest clearness a combined postmarker and canceler, well balanced upon a brad-awl handle.

The specification says:

In conclusion to the foregoing description, it may here be necessary to note that my improved date stamp may be employed *either in connection with the double or obliterating mark, as represented, or separately*, &c.

Defendant's Exhibit 168 is a model constructed according to the drawings and specifications of this patent. (See testimony to the point, which is not contradicted, of defendant's expert, Robertson, 2 Rec., 884.)

In all material respects this stamp is clearly the

same as that described (according to the construction of the circuit court) in the patent in suit. It differs chiefly in the method of securing the postmarking type; but the method described in Norton's patent is no part of the essence of his construction.

Judge Wheeler says in his opinion (2 Rec., 1453), "That (Berri's invention) seems to embody all the material parts of this one (Norton's), but was subsequent to it." That he was wrong as to the date, so far as balancing goes, has, we respectfully submit, been already shown.

The patent in suit is therefore anticipated and destroyed if balancing is the essential feature of the Norton patent.

That balancing is very material appears from an inspection of the instrument, the effect being to bring both acting faces to the surface to be stamped, although the instrument is not so aimed as to strike precisely perpendicularly; also from Ryer's testimony to the point that when the unbalanced instrument was used in the New York post-office in 1860, about ten per cent. of the letters had to be gone over a second time, while ninety-seven or eight per cent. of the work was well done the first time after the introduction of balanced instruments (1 Rec., 848); also from Bogia's testimony as to the use in the Philadelphia office, that the unbalanced instruments were apt to twist in the hand, were heavy and required more skill for their use (2 Rec., 1439). What is said hereinafter on the question whether patentable invention is shown, also supports Judge Wheeler's construction. The point briefly stated is, that while it may have required invention (though even this is doubtful) to construct the balanced instrument, only ordinary intelligence and common sense was displayed in fixing a

canceler to the side of a postmarker, and that, therefore, on the well-settled principle of construing patents so as (if possible) to sustain rather than destroy them, this patent must be deemed to be for a balanced instrument.

If the first claim of the patent be, as we think it is, for a separate canceler, it is destroyed by Chambers's patent of 1851 (2 Rec., 1284, diagram opposite p. 1283). The instrument there described is mortised (that is, tubed) for the reception of type, and at that time wood and other type of soft material were a well-known substitute for metal type (2 Rec., 884-886; 1 Rec., 244-5).

Chambers's stamp, to be sure, is a postmarker, but of course the use for which it was designed is immaterial. The patent in suit says that the canceler may have *any* configuration desired. Moreover, the evidence of complainant's own witnesses is that in 1851 separate cancelers as well as separate postmarkers were in existence, and were used, but that generally postmarking and canceling were done at one operation by striking the postmarker upon the postage-stamp (1 Rec., 218, 222, 801, 803; 2 Rec., 861).

C. The evidence as to prior knowledge and use by others, now relied on, relates to balanced instruments used in the post-offices at New York and Janesville, Wis., and to unbalanced instruments used in the Philadelphia and Cleveland post-offices.

1. As to the New York office.

On the 23d of July, 1860, General Dix (postmaster from the early part of January, 1860, to the early part of January, 1861), was peremptorily forbidden to use the postmarker as a canceler, and directed to use a separate instrument for that purpose. He found that his force of clerks was not adequate to allow of the exe-

cution of this order without delaying the mails. In this extremity he hit upon the plan of removing the handle from the canceler, and having the metal part soldered to the side of the postmarker. This combined instrument answered "the purpose perfectly" (see his letter of August 8, 1860, Defendant's Ex. 6, Dix, and the envelope showing impression of the stamp (Defendant's Ex. 7, Dix, 2 Rec., 1142). In his deposition (2 Rec., 849), Dix says that defendant's model, Ex. 5, is an accurate illustration of how his combination was made, except that the canceler and postmarker were a little farther apart. There is some slight discrepancy among the witnesses as to how long this combination continued in use. Dix says "for some time" (2 Rec., 851-'2). Yeoman, one of his stamping clerks, says "three or four days—perhaps a week" (1 Rec., 838). Ryer, another stamping clerk, says "one month; very shortly after they (the soldered instruments) were adopted" (1 Rec., 844"). Corbett, the manufacturer of the stamps, says that at first the soldered cancelers were knocked off in use pretty frequently, and that "perhaps two or three months" afterwards he attached them more securely by a steel pin running through the canceler and partly through the postmarker (2 Rec., 857). Ryer and Yeoman agree that when these unbalanced instruments were discarded their place was taken immediately by cross-bar instruments, of which Defendant's Ex. No. 3 is a model. These were balanced instruments. They also agree that these cross-bar instruments were introduced while Dix was postmaster, and in the year 1860, and were thereafter in continuous uninterrupted use for many years. Corbett corroborates them in respect to the date of introduction. Holbrook, one of the clerks,

is entitled to the credit of first suggesting the cross-bar. Post, another clerk, was the first to use it (1 Rec. 840, 847; 2 Rec., 857–'8).

This testimony is unimpeached and uncontradicted. It proves that the cross-bar or balanced instrument was introduced into the New York office in 1860, the last day of which year is (as has been shown) earlier than the time when Norton made or even knew of such an instrument.

2. As to the Janesville, Wis., post-office.

The testimony upon this point is that of Ezra Miller, the inventor of well-known couplers and buffers for railroad passenger cars (2 Rec., 871 *et seq*). He became postmaster at Janesville in 1858, about a year after Buchanan's inauguration. At that time he found that postage stamps were canceled by the postmarker, which was like defendant's model Ex. 4, and that frequent attempts to remove postage-stamps were made. To prevent this he devised an instrument, the handle of which was like the handle of a carpenter's hammer. With this "hammer stamp," having its handle parallel to the acting face, a better impression less likely to be washed out, with less exertion of muscular force, was made than with the ordinary postmarker. Miller obtained a patent for this instrument on the 22d of March, 1859. It is in evidence as Defendant's Ex. 153 (2 Rec., 1288, *et seq*).

He also made a "double-headed" instrument, consisting of the hammer-postmarking stamp, and a canceler attached to the side thereof by two screws. This was shortly before he applied for his patent, "in the winter of 1858, or January, 1859." This "double-header" was used perhaps for a couple of months, when it was dis-

carded, because the handle was not in the center (2 Rec., 876). Another instrument, in which the whole postmarker and canceler were balanced on the handle was then made. Defendant's Ex. 9 (2 Rec., opposite p. 1143) is a drawing of this stamp. The "double-header" of this shape was used by Miller as long as he continued to be postmaster, and was passed over by him to his successor in 1861. He showed it to many postmasters in the vicinity of Janesville, and exhibited it in the Post-Office Department (2 Rec., 873–4, 878–9).

Miller states that in his estimation the thing of value in his invention was simply the hammer-handle, and that he did not think the union of postmarker and canceler much of an invention (2 Rec., 875).

No attempt was made to invalidate Miller's testimony. It is presumed that the existence of the facts which he testifies to will not be controverted. The debatable point is whether his combination is substantially the same as the Norton combination. We leave this matter to the court to pass upon, when it shall have decided what exactly the Norton combination is. So far as the arrangement of the handles is concerned, there appears to be no substantial difference; for, as has been shown, brad-awl handles had been used on postmarkers and cancelers long before the idea of the hammer-handle was reduced to form by Miller. Hence, so far merely as the combination of postmarker and canceler is concerned, the brad-awl handle is to be regarded as the mechanical substitute or equivalent of the hammer handle.

It is to be observed, also, that nowhere in the specification or claims of the patent in suit is stress laid upon the position of the handle with reference to the acting face of the postmarker and canceler.

3. As to the Philadelphia office, by stipulation, the testimony was taken orally before the court at the hearing in June, 1879. [Note.—One clause of this stipulation was that nothing therein should be construed "to prejudice or impair *in any respect* the right of appeal" of any of the parties (2 Rec., 1404).] It consists of the depositions of William M. Ireland, John P. Rees, Matthew C. Bogia, and Dudley W. Burchard for defendant and of M. P. Norton for complainant (2 Rec., 1406–1447).

Ireland was first employed in the Philadelphia post-office from 1849 to 1855 (2 Rec., 1422). At that time stamping was not confined to a few clerks as now, but most of the clerks took a hand at it off and on (2 Rec., 1423). Ireland had it to do every day more or less (*idem*). He was forbidden to use the postmarker as a canceler (2 Rec., 1424), and as an assistance in his work had the handle of a canceler removed and the metallic part attached to the side of a postmarker (2 Rec., 1423–4). This combined instrument was put in use (idem). Subsequently it was improved by the insertion of a piece of metal between the postmarker and canceler (2 Rec., 1424–5, and drawings figs. 1 and 2 opposite p. 1424).

Ireland fixes the date of the making of the first combination as near the winter of 1849–'50 (2 Rec., 1423, 1425). He is sure that it was before three-cent postage-stamps were introduced (2 Rec., 1427). The statute fixes this date as March 3, 1851.

These instruments were used openly, successfully, and during a number of years (2 Rec., 1423, 1425). Ireland does not remember seeing them since 1853, at which time he went into the registered letter department and had no occasion to observe stamping (2 Rec., 1425).

In 1861 Ireland was again employed in the Philadelphia office, this time as assistant chief clerk (2 Rec., 1425–6). He found that during his absence the combined instrument had not continued in use; instead, postmarkers were used as cancelers and separate instruments were also used to some extent (2 Rec., 1426, 1430). It is not surprising that in the interval between 1853 and 1861 Ireland's stamp should have dropped out of use, considering that the postal regulations allowed the use of the postmarker with good printer's ink for canceling. Ireland's duties on the occasion of his second employment did not lead him to observe the stamping very frequently at first (2 Rec., 1430). But when the office was moved into a new building, the stamping table was placed near his desk. This naturally led him to observe the work more carefully; and one day he described to Bogia, a stamping clerk, the stamp that had been used years before, and gave him a sketch of it, from which with some slight changes a number of combined stamps were made that went into general use in the office and were used until the department furnished combined stamps (2 Rec., 1426). At the time of this description to Bogia Ireland had never seen or heard of any combined postmarker and canceler except the two that had been made prior to 1851 (2 Rec., 1426–7).

Rees, another witness, went into the Philadelphia office as a clerk in his boyhood, during Jackson's administration (2 Rec., 1407), and staid there till a short time before the birth of his third son. At the time of the examination (June, 1879) this son was in his twenty-eighth year. This is a thing about which there could not well be a mistake, and fixes the date of Rees's leaving the office approximately at 1851 (2 Rec., 1411, 1417–'8).

He then went to Camden, N. J., to live, and was not in the Philadelphia office after that time (2 Rec., 1414, middle). He testi fies to the use of a combined rater and postmarker prior to 1849 (2 Rec., 1408–1410), and also to the use of a combined postmarker and canceler after that date. The principal parts of his testimony relating to the latter instrument are as follows (2 Rec., 1411–'12, 1414):

Q. State whether previous to 1851, at the time you left the post-office, there was any instrument in use which would postmark a letter apart from the postage-stamp, to one side of it, and cancel the postage-stamp at the same blow.—A. Yes; there was an attachment screwed on, similar to this.

Q. You remember seeing that in use?—A. Yes, sir.

Q. You used it yourself?—A. Yes, sir.

Q. Was there any concealment about the use of that instrument?—A. No.

Q. Was it publicly used in the office?—A. Yes. It laid on the marking-table, a table as long as *this*, and at that end was a place where the letters were dropped in by the citizens, and on that side were boxes, and after they were marked they were thrown in, separated.

Q. Do you know Mr. William M. Ireland?—A. Yes, sir; he was appointed to a clerkship under White.

Q. Do you know whether he used that combined instrument or not?—A. Yes; he was the junior clerk, and I guess had more to do with rating letters than any other clerk.

Q. In regard to this attachment of the figure "5," was that attachment secure and strong?—A. Yes.

Q. Mr. Binney did his work well?—A. Yes.

Q. And the attachment of the canceler, was that secure?—A. Yes, sir.

Q. Can't you fix the date when you left the post-office; where did you go when you left?—A. I moved to Camden, N. J. Soon after I moved there my wife gave birth to a boy, who is now in his 28th year.

Q. When was he born?—A. I don't remember. It was in 1851. I had left the office before that time.

Q. Had 3-cent postage-stamps been introduced before you left the Philadelphia office?—A. I think they had; I am not sure.

Q. You are sure it was before 1851, or at least not later than 1851, that you left?—A. Yes. My second son was born January 2d, 1849, while this trial was going on, and my third son was born after we moved to Camden.

Q. You are perfectly clear about the recollection of these facts about the birth of your children and about the Van Ness case?—A. Yes.

Cross-examination by Mr. WILLIAMS:

Q. You left the office when Mr. White became postmaster?—A. Not immediately. I was there sometime after that. He was appointed the latter part of 1849, and I left in 1851.

Q. Can you state when White was appointed postmaster?—A. The latter part of 1849.

Q. Is that as definite as you can fix it?—A. Yes.

Q. When did Mr. Ireland come into the office?—A. He was one of his first appointments, I think, in 1849.

Q. When was this instrument, with the canceler attached, introduced into that office?—A. That was after Mr. White's appointment.

Q. Specify the date?—A. I can't give the month. I know it was soon after White's appointment.

Q. Can you give the year?—A. It was the latter part of 1849, I think.

Q. Who made it?—A. I don't know. My impression is, Mr. Binney did it, from the fact that he had been doing all that work.

Q. Do you know who had it made?—A. No.

Q. How many of them were there in the post-office?—A. I don't recollect but one at that time.

Q. How was it made?—A. The attachment was screwed on similar to that Fig. 2, except the *stamp was round.*

Q. Was there any impression on the face of the canceler?—A. Yes, sir.

Q. What was it?—A. I think they were crosses.

Q. What was it made of?—A. Iron or steel.

Q. Was that in the office when you left?—A. Yes.

Q. Was it generally used?—A. Yes.

Q. Were all the letters stamped with the instrument in the office?—A. I can't say whether they were all stamped or not. I presume they were; the most of them.

Q. Were there other stamps in the office?—A. Yes.

Q. Were there separate cancelers in the office?—A. I think there was.

* * * * * * *

Q. How do you fix the date of the attachment of the canceler—in what way do you fix it in your memory?—A. It was just previous to my leaving the office. It was in use then, or rather in 1849, after White had come in—between 1849 and 1850.

Q. How do you fix the date in your mind as to the time it was introduced?—A. There were postage-stamps used at that time.

Q. Postage-stamps used when?—A. I think they were first used in 1847.

Q. How do you fix the date in your mind when this canceler was attached to the postmark—is there any way that you fix the date?—A. Nothing further than this, that it was not used until after White came in the office. It was not used before.

Q. You are sure it was used after he came in, before you left?—A. Yes, because I recollect distinctly of using it myself.

Q. I understood you to say you did not use it?—A. Oh, yes, I did. When I was on night duty, stamping these packages of money. I remember that I used it then—money packages sent in by brokers.

Bogia and Burchard, the next witnesses for defendant, corroborate Ireland as to the use of Ireland's form of

the instrument, in 1863, before the department provided combined stamps (2 Rec., 1438–1440). Burchard produced model, Exs. 204 and 205; they are the postmarkers of two of the Ireland stamps; they show three holes arranged triangularly where the cancelers were attached. Burchard removed the cancelers and used the postmarkers as chucks for a small lathe he had, and so they were preserved.

Ireland on cross examination stated that while in Washington, between 1864 and 1871, acting as chief clerk of the Third Assistant Postmaster-General, he occasionally met Norton; that he frequently had conversations with him in regard to the combined stamp; that he told him he himself was one of the first to make such combination, and that he exhibited to him one of the 1863 stamps which he had taken to Washington (2 Rec., 1431). Norton being called by complainant denied this (2 Rec., 1441–44). Ireland being re-examined reiterated his statement (2 Rec. 1445). A clear issue of veracity between him and Norton was thus raised. Whether Norton was right, let the rest of the testimony given by and about him in this cause decide.

The testimony of defendants' witnesses was given positively, without hesitation or evasion.

The court below does not intimate that it considered them untruthful, but it seems to have thought that they made a mistake in dates. All there is in the opinion on this subject is as follows (2 Rec., 1452–3):

"Ireland was a boy *fifteen years* old, in the Philadelphia office, in 1851. He was also there *in the same employment* in 1861. He doubtless did do in 1861 what he says he did in 1851. At this distance of time he may have carried back in his mind what he did, with the associations of 1861, to the same associations existing in 1851.

When he made it in 1861 *he remarked to others that it was his, without stating that he had made it previously.* It is manifestly difficult to distinguish occasions in memory after so great a lapse of time."

As to this:

The statement that Ireland was fifteen years old in 1851 is manifestly incorrect. The testimony is that he was fifteen in March, 1849, shortly before he went into the post-office (2 Rec., 1427).

The statement that Ireland was in the same employment in 1861 as in 1851 is also incorrect, so far as it relates to the details of the work. It is only true in general that he was a clerk in the office at both those dates. From 1849 to 1853 he had stamping to do every day, and at first did more stamping than anything else (2 Rec., 1423). In 1861 he had nothing to do with stamping. He was assistant chief clerk and his desk was not near the marking table (2 Rec., 1426, 1430). It was the circumstance that the marking table was placed directly in front of his desk in the new arrangement of the office, *on the removal from one building to another*, which led to the description to Bogia of the 1850 stamps and to the making of others after the 1850 pattern (2 Rec., 1426, 1430.)

The statement in the opinion that when Ireland made the stamp in 1861 he remarked to others that it was his, without stating that he had made it previously, is also in conflict with the evidence. Ireland says (2 Rec., 1426), referring to the instructions to Bogia, "*I then told him that I had made a thing years before, and told him just what it was, and suggested certain changes.*"

It did not occur to either complainants' or defendants' counsel to question *Bogia* particularly as to whether Ireland stated that he had made the combination years before. In answer to a general question by defendants'

counsel, Bogia volunteered the statement that Ireland remarked, "I want you to understand that this is mine" (2 Rec., 1438–9.) This does not go so far as Ireland's testimony, but so far as it goes it corroborates Ireland, and in nowise contradicts him.

But even the possibility of mistake, on which the circuit court relies, fades away when Rees' testimony is considered. Rees left the office in 1851, and was not there afterwards. What he saw and did while in the office could not therefore have been subsequent to that date.

Perjury is the only other suggestion which can be made to break the force of this testimony. There is no basis in the record for such a suggestion. It can come, if at all, only from the imagination of counsel, and, no matter with what vehemence of declamation it may be urged, it ought to be indignantly discarded.

The effect of this testimony is to destroy the patent, if the patent is broad enough to cover unbalanced instruments. This is the effect not only of the combined postmarker and canceler of which both Ireland and Rees speak, but also of the combined postmarker and rater (defendants' drawing, Ex. 202, 2 Rec. 1408), about which Rees alone testifies. The fact that this instrument was not used for canceling, it being plainly well adapted to it, is immaterial.

4. As to the Cleveland post-office:

See testimony of defendant's witnesses: Charles E. Wheeler, 1 Rec., 662; Henry S. Bishop, *id.*, 704; Wel. come L. Cottrell, *id.*, 713; John Coon, *id.*, 721; W. J. Warner, 2 Rec., 999; John Albinger, *id.*, 1003; C. Clifford Nott, *id.*, 1012; Ery S. Beardsley, *id.*, 1023; Models,

Defendant's Exs. 137, 138; Drawings, Defendant's Ex. 175, 2 Rec., 1004.

See testimony of complainant's witnesses: Asem L. Bassett, 1 Rec., 171, 207; James McGough, *id.*, 187; Henry C. Cook, *id.*, 195; Henry A. Mastick, *id.*, 199, 210; James R. Haskell, *id.*, 214; David L. Wood, *id.*, 225. And Drawing Complainant's Ex. No. 1 (Haskell), 1 Rec., 624; Letter Complainant's Ex. (Wheeler D, E, F), 1 Rec., 595; Letter Complainant's Ex. (AA, C. E. Wheeler), 1 Rec., 566.

Defendant contends on the basis of this testimony that a combined instrument contrived by Charles E. Wheeler was used under several modifications in the Cleveland post-office, whenever there was an unusual accumulation of mail matter, for several years, commencing at a date earlier than July 4, 1853, and that from a date at least as early as the summer of 1860 till the time the department furnished combined stamps (1863 or '64) it was in constant every-day use.

The witnesses fix dates by circumstances within their individual recollection and in common by referring to the situation of the post-office and to the term of office of different postmasters.

Situation of the post-office:

1. In the Herald Building on Bank street, from 1850 to July 4, 1853.

2. In Gray's building on Water street, from July 4, 1853, to December 29, 1858.

3. In government building on public square, from December 29, 1858, to the present time.

The removal on July 3 and 4, 1853, from the Herald building to Gray's building on Water street, is proved by John Coon's deposition (1 Rec., 721), and with him

agree defendant's witness, Wheeler (1 Rec. 664), and complainant's witnesses, Mastick (1 Rec., 203), and Wood (1 Rec., 226).

The removal on December 28 and 29, 1858, from Gray's building to government building on public square is proved by the books of the builder of the new building, W. J. Warner (2 Rec., 999), and with him agree Wheeler (1 Rec., 664), and Beardsley (2 Rec., 1023).

Postmasters:

1. D. M. Haskell, under Taylor and Fillmore's administration, about four years, down to April, 1853.

2. J. W. Gray, under Pierce's administration and part of Buchanan's.

3. B. Harrington, under Buchanan's administration, about four years.

4. Edwin Cowles, under Lincoln's first administration (1 Rec., 663).

Testimony of defendant's witnesses: Charles E. Wheeler (1 Rec., 662—703).

Mr. Wheeler entered the Cleveland post office as stamping and box delivery clerk, May 4, 1849. He held that position for about four years, and then went into the distribution department, where he continued about ten years.

He then became a special agent of the Post-Office Department, which position he held until October 1, 1866. Soon after the introduction of three-cent postage-stamps (March 3, 1851), while the post-office was in the Herald building, on Bank street, he made a combined instrument which is represented by the wood model, Defendant's Ex. 137. This he did by removing the handle of a separate canceler, filing flat faces to match on the cylindrical surfaces of the iron portions

of the canceler and of a postmarker, and then binding the two iron portions together with cord and wire. This instrument was not used continuously, because it was rather heavy and blistered the operator's hand; but it was used as often or oftener than once a week, whenever there was an unusual accumulation of mail matter—*e. g.*, just before closing mails—and it lay on the stamping table and was handy for use. When the combined instrument was not used, a separate canceler and a separate postmarker were sometimes used, and sometimes the postmarker was used for both canceling and postmarking. The latter proceeding was contrary to the rule of the department, to the violation of which the attention of the Cleveland office was called on several occasions. Wheeler himself only made this one instrument, but he removed the binding on one or more occasions, and tightened it by a wedge whenever it became loose. Several changes (the date of which Wheeler cannot fix with precision) were made in succession in the method of attaching the canceler within five or six years after 1853. The first change consisted in brazing the canceler to the side of the postmarker. The second in cutting off about one-half from the height of the canceler; the third in still further reducing the size and weight of the canceler. Defendant's Ex. 138 is a wood model illustrating the second change. The stamp like Ex. 138 was in every day use till the third change took place. The instrument in its third form was used till the department furnished combined stamps, in Lincoln's administration. Mr. Wheeler consulted lawyers (Brainard and Burridge) in 1853, with reference to obtaining a patent for his invention, but on account of sickness of himself and family he was unable to spare

the necessary money till 1863, when he made an application which was unsuccessful, owing, as he was informed, to an existing patent. He asked for an interference, which was at first allowed him, but the grant was subsequently withdrawn, for some reason he knows not what. Mr. Wheeler exhibited his invention to special agents of the Post Office Department and to A. N. Zevely, Third Assistant Postmaster-General, some time between 1859 and 1861.

WELCOME L. COTTREL'S testimony (1 Rec. 713–721): Mr. Cottrell is a model-maker. He was born in 1830. When twenty-two or three years old he used to go frequently to the Cleveland post-office in the Herald building on Bank street, for love-letters. While waiting for his letters he on several occasions saw Wheeler, whom he knew personally, at work at the stamping table, through the delivery window. The rapidity with which the stamping was done arrested his attention, and he observed that with one blow on the ink pad and one blow on each letter two marks were made, one on the postage-stamp and one on the envelope to the left of the postage-stamp. He cannot describe how the instrument which Wheeler used was constructed, further than by saying it was a hand-stamp with a wooden handle and some kind of metal bottom. He made the models, Defendants' Exhibits 137, 138, and cannot say that he ever saw before any devices of the kind or character represented by them. In this testimony he doubtless referred to the exact construction of Exhibits 137, 138. He had never had an opportunity of witnessing the operations of postmarking or canceling in any post-office since 1852 or 1853. What he saw, however, in 1852 or 1853 was recalled to his memory in 1864 or 1865,

when a Mr. Wilbur, who claimed to have invented a machine in which he thought postmarking and canceling at one operation was a patentable feature, employed him to make a model. He then told Mr. Wilbur that he thought an instrument for canceling and postmarking at one operation was not patentable, as he had seen a device in use accomplishing that purpose ten or twelve years before. What Cottrell saw must have been (as he says) in the Herald building on Bank street, because in the Water street office the stamping table was not visible from the delivery windows. (See Bishop's testimony, 1 Rec., 712, bottom, and Bassett's testimony, 1 Rec., 175.) Cottrell's description of the internal arrangements of the Bank street office, so far as visible from the hall, is fully corroborated by the testimony of complainant's witness, Haskell, and by the drawing of the ground plan of the Bank street post-office, which that witness furnished. (See 1 Rec., 214–'5, and Complainant's Ex., No. 1, Haskell, 1 Rec., 624.)

C. Clifford Nott's testimony. (2 Rec., 1012–1023.)

Mr. Nott was a clerk in the Cleveland post-office, then in the Herald building on Bank street, from October, 1852, to March, 1853, and since the latter date has never been employed in any post-office. He states that Wheeler did most of the stamping at that time; that at first postmarking and canceling was accomplished by two instruments; that afterwards the canceler was bound by cord to the side of the postmarker, and this combined instrument was used by Wheeler and by myself. Wheeler told Nott at the time that he, Wheeler, put the two instruments together. Complainant's witness, Haskell, swears that no person by the name of Nott was employed in the Bank street post-office. (1 Rec., 219.)

But in this Mr. Haskell is contradicted, not only by Nott himself, but by complainant's witness, Mastick (1 Rec., 200), and by the certified copy of Mr. Nott's receipt for salary for the month of February, 1853. (Defendant's Ex. 182; 2 Rec., 1369.)

Henry S. Bishop's testimony. (1 Rec., 704.)

Mr. Bishop was a clerk in the Cleveland post-office for about six months in 1853, and nine months in 1854. The office was then on Water street, and J. W. Gray was postmaster. A postmarker with an attachment was used for postmarking and canceling. He does not remember the precise construction of this instrument, but as to the results attained by it his memory is clear. The combined instrument was Wheeler's contrivance, and witness knows of Wheeler's using it. The witness also recollects the use of a separate wooden canceler, but is not sure that the combined instrument was not used at least part of the time when he first went into the office. From the time he left the post-office to the time of his examination, twenty-four years, he never saw any combined postmarker and canceler.

Ery S. Beardsley's testimony. (2 Rec., 1023.)

Mr. Beardsley was employed in the Cleveland post-office from 1854 to 1867. For about three weeks in 1854 or 1855, he is not certain which, he did the stamping while another man was sick, and used a combined instrument, consisting of a postmarker with a canceler soldered to the side thereof.

John Albinger's testimony. (2 Rec., 1003.)

Mr. Albinger became a clerk in the Cleveland post-office in October, 1854, and was employed there for over twenty years.

He remembers seeing in the Water street office a com-

bined instrument used for postmarking and canceling. This instrument he describes, and Defendant's Ex. 175 (2 Rec., 1004) is a drawing of it.

Testimony of complainant's witnesses:

James R. Haskell. (1 Rec., 214.)

Mr. Haskell was employed in the Cleveland post-office from the spring of 1849, to April, 1853. He was the brother of the postmaster, D. M. Haskell, and was assistant postmaster. He says that separate "date stamps" and "canceling stamps" were furnished and used; that when the business increased the "date stamp" or postmarker was used for canceling; that he had no knowledge of the use of a combined stamp, and that he never saw one until the time of his examination. The untrustworthiness of his memory on this point may be inferred from the fact that he denies positively that defendant's witness, Nott, was a clerk in the post-office while it was on Bank street. (1 Rec., 219). That he was in error on this point, see discussion above of Nott's testimony. He describes the separate cancelers and the rating stamps for printing the numbers 3, 5, 10, 15, 20, 24 and 48, and the word "Paid," as of the shape of Defendant's model Ex. 4, but smaller and having a suitably engraved face, and as generally made of wood, though sometimes they had metal at the lower end. These rating stamps and cancelers were used when his brother first became postmaster. He is not aware that any rule prevailed while he was assistant postmaster against the use of the postmarker as a canceler, but says there may have been "when the stamps were first sent out."

Henry A. Mastick's testimony. (1 Rec., 199, 210.)

Mr. Mastick was employed in the Cleveland post-office on several different occasions: first, from 1849 or '50 to

1851; second, from the fall of 1852 to July, 1854; third, from 1861 to the spring of 1863. In 1852–'54, while the office was on Bank street, he and Nott were delivery clerks. It was the regular duty of Wheeler to attend to stamping. Mastick says that cancellation was performed with the postmarker; that he did not see a combined instrument or know of its use. During the year he was in the Water street office, July, '53, to July, '54, he does not think that Wheeler was in the office. In this he is contradicted by Wheeler himself and by complainant's witness, Wood. (1 Rec., 226.) When he returned to the office in 1861 he found the combined stamp in use.

David L. Wood's testimony. (1 Rec., 225.)

Mr. Wood was never regularly employed in the Cleveland post-office, but from the early part of 1853 to the latter part of 1854 he was local mail agent, and a large portion of his time was spent in the post-office, and sometimes he used to assist in stamping and in delivering letters, and for about two months just after the office was removed to Water street he alone attended to stamping. He used the postmarker as a canceler, and never knew of the use of a combined instrument.

James McGough's testimony. (1 Rec., 187.)

This witness was employed in the Cleveland post-office about sixteen years, a year and a half in the Bank street office, five years in the Water street office, and the remainder of the time in the government building on the public square. He never knew of the use of a combined instrument in the Bank street or Water street offices. He states that in the Herald building, on Bank street, the stamping was done in the D. P. O. (distributing post-office) room up stairs, but he had no means of

knowing this, because he had access to only one room—a room next the alley where the mails were taken in and out. Defendant's witnesses, Wheeler, Cottrell, and Nott, and complainant's witnesses, Haskell and Mastick, agree in stating that the stamping was done in the room on the ground floor, from which letters were delivered to the public. McGough says he *never was in that room.* (1 Rec., 194). His mind was plainly shattered by sickness (see his cross-examination), and his testimony is untrustworthy.

Asem L. Bassett's testimony. (1 Rec., 171, 207.)

Mr. Bassett was employed twice in the Cleveland post-office: first, from April, 1855, to April, 1856; second, from January, 1859, to February, 1863. In 1855–'56 his duties were to distribute letters and do what was called "entering on the sheets." He states that he also sometimes assisted the stamping clerk, and that postage-stamps were canceled by the postmarker. In 1859–'63 he was the regular stamping clerk. He states that he used the postmarker for canceling till an order was received from the Postmaster-General forbidding this; that he then conceived the idea of tying a postmarker and a canceler together by their handles; that he used an instrument so constructed for a day or two, and then the handle of the canceler was removed and the iron portion brazed or soldered to the postmarker by a locksmith, and that he used the instrument so constructed till he left the office. He further says (except as above indicated) no combined instrument was used in the Cleveland post-office to his knowledge, and if there had been he would have known and remembered it. He further states that in 1855–'56 Mr. Wheeler was not a clerk in the office. (1 Rec., 171, 177.) In

this he is contradicted by Wheeler himself (1 Rec., 662), by Beardsley (2 Rec., 1023–'4), and by Albinger (2 Rec., 1004).

Henry C. Cook's testimony. (1 Rec., 195.)

Mr. Cook is Mr. Bassett's partner in the hat business. He recollects seeing Bassett use a clumsy contrivance consisting of a postmarker and canceler bound together with twine. He gives August, 1860, as the date of this. He was employed in the Cleveland post-office for two or three months at a time on several occasions, the dates of which he does not fix. He says that in the winter of 1859 he did stamping, using the postmarker for canceling for a few days, but gave it up because he mashed his hand so in the work.

As to these witnesses *of complainant* it should be noticed that the memory of nearly every one of them is shown by the cross-examination and by the concurring testimony of two or more other witnesses to have failed in respect to one or another important matter, and that their testimony is merely negative, while that of defendant's witnesses is direct and positive. Defendant's witnesses must have either told the truth or perjured themselves. (See Stitt *v.* Huidekopers, 17 Wall., 384.)

To impeach Wheeler complainant put two letters in evidence—one from Wheeler to Zevely, the Third Assistant Postmaster-General, dated November 28, 1863 (Complainant's Ex., Wheeler, D. E. F., 1 Rec., 595;) the other (Complainant's Ex., Wheeler, A. A., 1 Rec., 566), probably written at Wheeler's request, from Postmaster Cowles to the Postmaster-General, dated May 7, 1864. Wheeler does not appear to have been acquainted with the contents of the Cowles letter at the time it was written. All he says is that if it be the genuine letter of Cowles it was written at his suggestion or request. (1

Rec., 692.) As impeaching evidence, therefore, this letter has little weight. With Wheeler's own letter, however, the case is different. He seems in that letter to claim having made the combination in 1861. The statements, to be sure, are not unequivocal, and the pendency of the interference case referred to in the letter may have prevented him from showing his hand fully in a document that might become a public record, and he does say that he could prove priority beyond a doubt. Still, if we had only Wheeler's testimony to rely on, this letter would go far to undermine it; the evidence, as a whole, might fairly be described as unsatisfactory. But Wheeler does not stand alone. His letters have no effect upon the independent testimony of Nott, Cottrell, Bishop, Beardsley, and Albinger. These witnesses swear with such positiveness and detail that mistake is impossible. They must have told the truth or committed perjury, and there is not a place in the record on which the court can put its finger and say this shows that what they say is willfully false.

The Cowles and Wheeler letters were offered in evidence to impeach Wheeler's sworn testimony. That certainly was their only function. Judge Wheeler, in his opinion (2 Rec., 1452), seems to have thought that they were substantive evidence of the facts stated in them, for he says, apparently not solely with regard to Wheeler's testimony, but to that of all the witnesses:

"There is in the case important written evidence upon this point, and the whole is to be weighed together. * * * These deliberate statements made by two persons (Wheeler and Cowles in letters above referred to) separately and at so near the time of the transaction in question * * * and made in writings now produced, far outweigh in reliability statements made wholly from

memory fifteen years later and further from the transaction."

But prior inconsistent declarations are admissible only to impeach the witness who made them, and are not legitimate evidence of the facts stated in them. Furthermore, as to Cowles, he did not become postmaster till after Lincoln became President (1 Rec., 663, 208); therefore he could not have known what had happened in the post-office prior to 1861. Wheeler's letter is also equally unreliable as substantive evidence of the facts stated therein, for it is as certain as the sworn testimony of all the Cleveland witnesses can make it (complainant's witnesses as well as those of defendant), that this combination was in use in that office *at least* as early as the year 1860.

If the course pursued by Campbell's counsel in the court below is followed here they will argue that the instruments used in the Cleveland, Philadelphia, Janesville, and New York offices were "abandoned experiments." That this is not correct, see Railway Co. *v.* Sayles (97 U. S., 554); Coffin *v.* Ogden (18 Wall, 120); Parker *v.* Ferguson (1 Blatchf., 407); and Evans *v.* Hettick (3 Wash., 408).

D. The defense that the patented invention had been in public use in this country for more than two years before Norton's application for his patent is next to be considered.

The application was made on the 5th day of January, 1863. (See the file wrapper and contents, Defendant's Ex., 156, 2 Rec., 1299, and at page 1303, near top.)

That the use of the unbalanced instruments in the New York office, as already described, was with Norton's knowledge and consent there is no dispute.

Dix was warned by the reply (2 Rec., 1361) of the Post-Office Department, to his letter of August 8, that his device had then been patented. He wrote to Norton about the matter, and had an interview either with him or his agent (2 Rec., 851–5). The result was an arrangement with Norton for the use of the stamps made by Dix, or of stamps made according to Norton's patent of 1859, Dix cannot recollect which, though his impression is that his own stamp was continued in use. Dix's letter of August 28, 1860 (1 Rec., 543, introduced by complainant, and already cited under A, above), corroborates his statements as to Norton's knowledge and consent.

No attempt has been made by complainant to traverse this testimony. Norton himself testifies that his invention was used in the New York office in the latter part of 1860, and that he consented to such use (1 Rec., 143). Remember in weighing his testimony that he does not distinguish between the balanced and unbalanced constructions, but supposes the patent in suit broad enough to cover both (1 Rec. 143), and that his reference to correspondence with the New York postmaster fixes it that the stamp referred to was his unbalanced stamp. He seeks to avoid the effect of the testimony by saying that he consented " simply and only for trial tests or experiments." Dix's letter of August 28 (1 Rec., 543) seems inconsistent with this, as it indicates that there were negotiations with Norton and Ransford for a sale which could hardly have been if the device had not been adequately tested. But without relying entirely upon that, we insist that under the circumstances of this case the avoidance is inadequate in law.

The circuit court felt itself bound by the case of Eliza-

beth *v.* Pavement Company (97 U. S., 126) to hold that the use in the New York office was not "a public use" within the meaning of the statute, but a private use for testing the invention and informing the inventor as to its perfection and usefulness, with the design on his part, all the time, to procure a patent for it when it should prove to be ripe for that purpose. But Elizabeth *v.* Pavement Company was a very different case from this. There the invention was a new style of pavement From the very nature of the thing, no one can tell whether a new and useful pavement has been invented without a trial. But in this case there was no need of a trial. From a mere inspection of even the unbalanced instrument the court can tell *a priori*, from its own knowledge, without evidence, that it would work well, and the evidence of all the witnesses as to all the post-offices is that, in fact, it did work well from the very start. (See particularly Dix's letter of August 8, 1860, 2 Rec., 1142.) That the use in the New York post-office in 1860 was, in fact, a public use, there is no disputing. It was as public as the nature of the thing admitted of, the instruments being useless for any other purpose than post-office work. In this connection the attention of the court is called to the case of Consolidated Fruit Jar Co. *v.* Wright (94 U. S., 94), where the patent was held invalid because the patentee had sold a few of his jars more than two years before his application for the purpose of testing salability in the market. (See also Shaw *v.* Cooper, 7 Pet., 292; Hide Co. *v.* Tool Co., 4 Fish., 284; McMillin *v.* Barclay, 5 Fish., 189; Winans *v.* R. R., 2 Blatch., 291; Egert *v.* Leippmann, 14 Pat. Of. Gaz., 822.) The law is that there must be no unnecessary delay in applying for a patent after the perfection of the invention is

ascertained, and that there is a wide difference between a perfect invention and a machine embodying the invention which is so mechanically perfect that it will make the invention produce the best possible results.

Campbell's counsel asked Norton to explain his delay in applying for a patent. The gist of his answer, covering about a page of the record, is that he was waiting for a report from the New York postmaster as to the satisfactoriness of the tests to which his invention had been subjected. He says that this report was made on January 3, 1863, and that two days afterwards he filed his application; and he further states that had the report been made at an earlier date he should have filed the application sooner. (1 Rec., 143.) The report referred to is Postmaster Wakeman's letter of January 3, 1863. (Complainant's Ex. II, 1 Rec., 542.) Norton is contradicted in respect to this testimony by his letter of March 23, 1863 (Defendant's Ex. 27, 2 Rec., 1165), written more than two months after his application, in which he says: "The New York office has given it the highest kind of a recommend. I shall have a copy of the letter to show you when I get home; it is a big thing. *I never saw the letter till yesterday.* It is now on file in the Post-Office Department." This letter also shows that at that time the improvements covered by other patents (doubtless those of 1859 and 1862) were thought to be required by the Post-Office Department. This makes it highly improbable that there could have been any delay in applying for the 1863 patent for the reason now given. Further, the file-wrapper contains a letter to the Commissioner (quoted in full hereinafter), in which Norton states his understanding of the invention covered by the application to be that it is a combination in which the

Rec 844
Rec 838

conceler is a metal tube holding a blotter of elastic material like wood, cork, or rubber. (2 Rec., 1303.) Now, *that* combination was never used or tested in the New York office, and it is impossible, therefore, that Norton could have been actuated, in delaying his application, by a desire to get a report about it.

To return to the use at the New York office in 1860, it does not appear that Norton had, at this time, devised the balanced instrument; still less that he knew of the use thereof testified to by Yeoman, Ryer and Corbett. Consequently this defense fails, if balancing be an essential part of the patented combination, and if the patentees consent and allowance be an essential element of the defense.

This case therefore presents the question whether, under the patent act of 1839, which was in force when this patent issued, the consent and allowance of the patentee is essential to the defense now under consideration.

[This question is presented not only by the New York evidence, but by much other evidence that appears uncontradicted in the record.

Powers shows that an unbalanced instrument was used for several years in the Buffalo office, commencing with the summer of 1860. (1 Rec., 800.) Ex. 135 is the identical instrument so used.

Rupp and Geilfus show that another unbalanced instrument began to be used in the Cincinnati office in the summer of 1860. (See 1 Rec. 819, 830, and Drawing Ex. 1422; Rec., 1270.)

Edmund S. Zevely and John H. Zevely, manufacturers of stamps, show that both balanced and unbalanced instruments of a cheap construction were sold to different

appellant, the said Campbell, as assignee in trust, and the said Eddy individually and as trustee for said Caswell and said Clexton have execution against James, this appellant, for the sum of $64,471.40, with interest thereon from the date of entry of said final decree.

OUTLINE OF THE ARGUMENT.

The errors which we have assigned in some instances overlap in a measure one upon another. We think, therefore, it will be more convenient to present topically the principal questions raised, rather than to attempt to discuss the errors assigned *seriatim*. We ask that the argument may be considered to apply to the respective errors assigned wherever in fact it is applicable.

The heads of the argument are as follows: #

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I.—Of the title. 17

And herein of—

A. The alleged transfer from Secombe to Ingalls. 17

B. The alleged assignment from Ingalls to Campbell. 35-

II.—Of the validity of the patent.

And herein of—

A. The construction of the patent and the date of Norton's supposed discovery, with some account of the state of the art. 55-

B. Prior patents. 55

C. Whether Norton is the first inventor. 57

D. Two years' prior use in public. 80

E. Abandonment. 86

F. Whether patentable invention is shown. 89

G. Whether reissue is for same invention.

H. Whether the reissue is void by reason of an 11

References to the pages of the brief where these several points are discussed are given in the manuscript.

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ambiguous and misleading specification, and by reason of vague and indistinct claims.

113 I. Whether the Commissioner was authorized by law to issue the reissue patent in suit.

113 III.—Of Norton's credibility as a witness.

And herein of—

115 A. Contradictions of his testimony.

117 B. His reputation for truth.

120 C. His testimony respecting the alleged Shavor and Corse reassignment.

138 IV.—Of infringement.

140 V.—Of the form of the interlocutory decree in respect to the account for profits and damages therein directed.

148 VI.—Of the exceptions to the report of the master.

And herein of—

150 A. Whether the salaries of the clerks whose services would have been required to postmark and cancel in the same way and in the same time, had non-infringing instruments been used, are a proper measure of gains, profits, and advantages under the circumstances of this case.

155 B. Whether, if it was proper in this case to make a comparison as to advantages in use between the infringing machines and other instruments, the infringing machines ought not to have been compared with unbalanced combined instruments rather than with separate postmarkers and cancelers.

6 161 C. Whether James has personally received or made any gains, profits, or advantages.

165 D. Whether, if James is not liable for the profits as such, he can be held liable for an equal or any amount as damages.

postmasters so early as 1859. (See 2 Rec., 927, 952, and Model Exs. 139, 140.)

The Cleveland witnesses already referred to, those of complainant as well as those of defendant, show that unbalanced instruments began to be used there *at least* as early as the summer of 1860.]

We concede that the reports contain many dicta, by eminent judges, to the effect that the patentee's consent and allowance is necessary. But in none of these cases, so far as we have been able to discover, was the point necessarily presented for adjudication. In Egbert *v.* Lippman (14. O. G., 822) the pleadings raised the point squarely, the defense, as stated in the answer, being merely that more than two years before the application the invention was known and in use in the United States, without saying that this was with the patentee's consent and allowance. Judge Blatchford held the patent invalid by reason of the two years' prior use. Speaking of the act of 1839, he said:

S. C. 15 Bla 295

"Consent and allowance by the patentee are not necessary to such invalidity.

* * * * * * *

The policy introduced by the act of 1839, and thus continued, is that the inventor must apply for his patent within two years after his invention is in such condition that he can apply for a patent for it, and that if he does not apply within such time, but applies after the expiration of such time and obtains a patent, and it appears that his invention was in public use at a time more than two years earlier than the date of his application, his patent will be void, even though such public use was without his knowledge, consent, or allowance, and even though he was in fact the original and first inventor of the thing patented, and so in public use. Such public use for such a length of time is made equivalent to absolute abandonment."

In reaching this conclusion he relies solely upon the wording of the act of 1839 in connection with the act of 1836, which it amended, except that he finds corroboration in the acts of 1870 and in the Revised Statues, which are *in pari materia.*

We commend his reasoning to the consideration of the court.

E. The defense of abandonment now to be considered assumes for argument's sake that Norton was in fact the original and first inventor of the machines described in the patent.

It applies if the court construes the patent to be broad enough to cover unbalanced instruments.

It also applies if the the court limits the patent to balanced instruments.

It does not apply to the second claim if the court restricts that to a combination in which the canceler consists of a tube containing a cork or other elastic die.

The evidence is to be found in the patent of August 9, 1859 (2 Rec., 1270); in that of December 16, 1862 (2 Rec., 1276); in the duplicate models of those patents, Defendants Exhibits 146 and 148; and in the depositions of the experts Chambers and Robertson. (2 Rec., 990; 2 Rec., 877, 889–'90, 908–'10.)

The point made is that the balanced and unbalanced instruments which are now claimed to be covered by the reissue patent in suit were described *and not claimed* in Norton's prior patent, and that therefore if he was in fact the inventor of them he must be deemed to have intended to dedicate them to the public so far as any subsequent patent is concerned.

No decided case sustaining this conclusion has been found.

But it seems clear that if the omission to claim the described matter be intentional, then there is an abandonment in fact; and if, on the other hand, the omission is inadvertent, the statute gives a remedy, not by allowing a new patent to issue, but by permitting the Commissioner to reissue the patent on amended specifications and claims.

Whether or not the law conclusively presumes an abandonment, there can be no doubt that describing a thing in a patent without claiming it is, while unexplained, strong *prima facie* evidence of abandonment. It is as if an inventor, instead of applying for a patent, should write and publish a full description of his invention in a book. Curtis in his work on patents, at § 117, says, "It is a strong, perhaps a conclusive presumption, that what is described in a patent and not claimed is given up to public use."

The 1859 patent was issued to Ransford and Low as Norton's assignees, and is for an unbalanced combined postmarker and canceler.

The claim is for "the blotter (J) connected or attached to the main part of any 'post-office postmarking stamp' for the purpose of cutting and inking, blotting and effacing, so as to successfully cancel the frank or postage-stamp of any letter or any package, at the same time and operation of marking or printing upon such letter or package the name of any post-office, the year, the month and day of the month, substantially as and for the purpose herein set forth."

The specification (p. 1271–6) shows the construction of the "blotter J." It is fastened to the immediate side of the postmarker by a screw and shaft. It is "for the purpose of cutting, inking, blotting, effacing and

effectually canceling the frank or postage-stamp," while at the same operation the postmark is put on the envelope apart from the postage-stamp. It "may be made of any size or shape and of any material to answer the end or purpose sought to be attained" (p. 1274).

"*The face which receives the ink and which comes directly upon the frank or postage-stamp* is grooved or cut, thereby leaving various projections which have a sharp or knife edge sufficient for each to cut entirely through the frank or postage-stamp, but not through the envelope immediately under the same, while at the same time the places thus cut are inked by the same sharp edge projections or cutters on the face of the said blotter as aforesaid" (p. 1274). The projections may be kept sharp and in cutting order by filing and sharpening them when dull (p. 1274).

Defendant's Ex. 146 is a certified duplicate of the model filed with the specifications of this patent.

The stamp of the 1862 patent is a balanced instrument.

The first claim is for the canceling device (C), having on its lower surface knives or cutters and guards to prevent the knives from cutting too deep.

The second claim is for a combination consisting of 3 elements—1, the canceling device (C); 2, the postmarker (D); 3, and the cross-piece (B), substantially as and for the purposes set forth.

The nature of the improvement is described at p. 1277–8: "The nature of my improvement consists in so constructing canceling stamps that the same shall cut the postage-stamps or any stamp similar thereto without injury to the contents of the envelope or packet enclosed therein, *and at the same time cause a heavy circular mark upon the inside and one upon the outside of that part of the stamp or letter frank canceled by the cutting device,*

so that said postage-stamp or letter frank shall readily show cancelation in ink, &c. * * *

"It also consists in the employment and combination of a canceling stamp with a cutting and inking device thereon with a postmarking or rating stamp," &c.

The construction of the stamp is shown in the drawings and in Defendant's Ex. 148, which is a certified duplicate of the model filed with the specifications of this patent. The ink marks are made by broad bands (see *ee* and *oo*, figs. 2, 3, drawing between pp. 1276 and 1277), which are a trifle below the level of the edge of the cutters and which are the guards referred to in the claims.

No person of ordinary intelligence can read these patents without obtaining knowledge of a construction in which the canceler does not cut. All that is necessary to change the 1862 stamp into that claimed in the reissue of 1870 (according to the construction of the court below) is to file away the cutters or even rub them against a stone (2 Rec., 887, 889–90, 908–10).

Chambers's testimony that in 1862 or 1863 his father contrived a combined instrument consisting of handle, base-piece (cross-bar), postmarker and metal canceler, which he, the witness, took to the Patent Office for comparison with models on file there; that he found a model which he describes, and which must have been the model of the 1859 patent, and that he thereupon abandoned further search, having come to the conclusion that his father's device was not patentable, is especially significant, since it indicates the judgment of a practical expert not made up with reference to the pending case. He is and has been for many years a manufacturer of stamps. (2 Rec., 990–6).

F. Does the patent show invention?

We submit that only ordinary intelligence and com-

mon sense was required to remove the handle of a separate canceler and solder, braze or rivet the metal part to the side of a postmarker, and so make both impressions simultanteously instead of one after the other. The combination is a mere convenient aggregation of devices. The postmarker does not postmark any better or more rapidly, and the canceler does not cancel any better or more rapidly because of the union. Nothing inventive would be shown if the operator, instead of going over the letters twice, first with canceler and then with postmarker, and supposing his hand large enough, should take the separate instruments in his hand and so strike both blows at once, nor if he should tie a separate postmarker and a separate canceler together by the handles with twine, and by that means strike both blows at the same time. The difference between tying instruments together by the handles and removing the handle of one and fastening its metal part by well known means to the metal part of the other, is purely mechanical.

To put the matter in another light, the postmarkers that were in use years before Norton made his combination, and probably before he was born, had their acting faces so embossed that at one blow they made a dozen or more distinct and separate impressions—one for each letter in the name of the city, and one for each dating type, besides the inclosing circle. What invention was there in merely enlarging the postmarker and embossing an additional device thereon so that one more impression might be made?

The evidence in this case shows that prior to 1860 or 1861 there was no imperative postal regulation against using the postmarker as a canceler. It is, therefore, not

strange that prior to that time but few instances of combining postmarker and canceler have been found, and those only where, as at Philadelphia or Cleveland, there was a local office rule against using the postmarker for canceling. There was no need of a combination. But just so soon as it was stringently forbidden to use the postmarker as a canceler, the evidence shows that the idea of the unbalanced instrument came into the minds of the postal employés in different places, and was by them reduced to practical form without knowledge or hint of what had been done elsewhere.

The evidence shows that this unbalanced combination has been independently contrived and made by no less than eleven men besides Norton, to each of whom the dignified name inventor is as applicable as it is to him, viz:

Anthony in Geneva in 1861 (1 Rec., 816). Powers in Buffalo in 1860 (1 Rec., 800). Dix in New York in 1860 (2 Rec., 849). Riley in New York in 1853, perhaps (2 Rec., 861). Hunt in Cincinnati in 1860 (1 Rec., 819–830). Bassett in Cleveland in 1860 (1 Rec., 171, 207). Wheeler in Cleveland in 1853 (1 Rec., 662). Miller in Janesville, Wis., prior to March, 1859 (2 Rec., 871); Rees in Philadelphia prior to 1849 (2 Rec., 1406). Ireland in Philadelphia prior to March 3, 1851 (2 Rec., 1422). E. S. Zevely in Pleasant Grove in 1850 or thereabouts (2 Rec., 952).

The remarks of Judge Woodruff in Rechendorfer *v.* Faber (12 Blatch., 78) are in point:

"What, then, did Lipman invent? * * * There was the pencil and here was the eraser; each had its own holder or sheath. If he had spliced the two together for convenience in use, tying them with cord or fastening them with glue, would that have been a pat-

entable invention? Would the man who first put blades of a knife into one handle, instead of one only, be an inventor? and would he be any more so if one of the blades wes a file, such file-blades having been in common use in a like separate handle? If to obtain the utilty and convenience which the union of two implements produces, something new in the construction of the implements, or some new device requiring thought or study more or less, is necessary to unite them, such union may be patentable. But here each implement is constructed precisely as it was before, and the means of union was not in itself novel. It was like inserting two awls of different sizes or uses in one handle, or like the recent case before the Commissioner of Patents, in which the alleged invention consisted in uniting a putty-knife and a glass-cutter in one handle. When the function and uses of each are unaffected by the union, and the means of uniting has no novelty, it is not obvious certainly that anything of invention can be alleged of the combined instruments. That the aggregate result may be very convenient, may for that reason be popular, and may meet a ready sale; that such sales are very large and show a great demand, does not determine the question." (See also Reckendorfer *v.* Faber, 92 U. S., 347; Dunbar *v.* Myers, 94 U. S., 187; and cases cited by Judge Blatchford in Alcott *v.* Young (decided March 31, 1879), reported in The Reporter, p. 552, for April 30, 1879.)

We submit, in concluding the discussion of unbalanced instruments, that the patent is certainly void, if it must be construed as claiming them.

There remains to be considered the questions whether the cross-bar (balanced) instruments were patentable, and whether the instruments covered by the second claim (in which, as we understand it, the canceler consists of a metalic tube, with an elastic die or type therein) are patentable. In view of the state of the art, as already developed, we submit that neither of these classes of instruments shows any invention.

Miller's "double-header," if it does not anticipate the patent, makes a part of the art. It shows a balanced construction. Balancing appears also in the clothes-stamps, of which defendant's Ex. 169 is a model, that was purchased in Broadway prior to March 10, 1856 (2 Rec., 884). Stamps like Ex. 169 are said by Kittle, Campbell's expert, to have been, to his knowledge, on sale in 1850 (1 Rec., 243–4). At this point we beg leave to make a somewhat liberal quotation from the testimony of our expert Robertson, who purchased the clothes-stamp (Ex. 169), and who has been a practical printer. We cite 2 Record, pages 885–6:

"10 Q. At the time you purchased that stamp (defendant's Ex. 169) on Broadway, in 1856, were there any common and well-known means by which that stamp could have been altered in size and other respects, so as to be adapted at one end of the tube for making a postmark on letters, and at the other end of the tube for making a postage-stamp cancellation mark, at one operation?

(Objected to under the allegations in the answer, because the witness is not a proper person to give such an opinion.)

A. Defendant's Ex. 169 could, without any alteration in said tube or handle, have been made to date or postmark a letter and cancel the stamp thereon by simply taking out the types and using in lieu thereof proper letters and figures to produce the date at one end of the tube, and putting in the other end of the tube one or more letters with their faces downward, so that the "feet" of the type would produce an impression upon the stamp, or even if types were used in the ordinary manner the effect produced would be sufficient to cancel the stamp. At the time referred to the year was seldom given on the postmark, so that there was plenty of room in the tube for the date as then given and a canceling device besides.

11 Q. Using only common means, and means well known to persons familiar with the art of printing in the year 1856, describe how nearly the stamp (Defendant's Ex. 169) that you bought in Broadway could then have been made to approximate to the thing patented in Mr. Norton's original patent of April 14, 1863, a duplicate of the model of which has been offered in evidence, marked Defendant's Ex. 149.

(Objected to as above.)

A. So far as relates to the first claim, it was only necessary to have inserted in the tube or box any of the type made of soft material referred to in my answer to Q. 9, or ordinary wooden type commonly used in all printing offices, to have made the hand-stamp (Ex. 169) essentially the same as the canceling device referred to in the first claim of the patent. So far as relates to the second claim, a device similar to the combination covered therein may be made by placing in one end of the box in Defendant's Ex. 169 one of the wooden type or type made of soft material referred to in my previous answers. Next, placing an ordinary "space" against the side of said soft type, then inserting type of about the size shown in Defendant's Ex. 149 sufficient to form the name of the town and date, Defendant's Ex. 169 would accomplish all that Defendant's Ex. 149 would, and would substantially meet the combination claimed in the second clause of the claim of the patent granted to Marcus P. Norton April 14, 1863, No. 38175. At the end of the box the space before referred to in conjunction with the sides of the box would form the equivalent of the canceling device; and the type at the other end of the box would give the date or postmark—that is, without any other change in the tube or box of Defendant's Ex. 169. By taking other means well known to the art of printing, and changing the form of Defendant's Ex. 169, two small boxes, one of which would contain a soft type and the other giving the date or postmark (such boxes as are referred to in my answer to Q. No. 9), and attaching them by any means then well known, or by the means by which the boxes referred to

were attached to the frame to the opposite ends of the tube or box of Defendant's Ex. 169, the same combination would be produced as in claim 2 of the patent referred to. Such boxes and means of attaching to the frames carrying the boxes were seen by me certainly as early as 1854, and then been in use for several years in the Sun office. It was a common device well known to printers to attach two or more different "chases" to one press, each of which contained different type and were secured so as to move simultaneously. Another class of type-holders called "turtles" were frequently used in clusters of four upon the same frame, each one of which would occupy the same position with reference to the adjoining one that the Norton canceler described in Plaintiff's Ex. D (the patent of April 14, 1863) does to the postmarking device therein shown; the two turtles being connected by a cross-bar in substantially the same manner as the canceling and postmarking devices before referred to are connected by the cross-bar in claim 2 of Complainant's Ex. D. So far as the use of the soft type is concerned in canceling postage-stamps, it would make no difference whether the type were used with either faces or feet up, as cancellation would be produced in either manner.

12 Q. Would the changes which you have referred to have been in 1856 essential modifications of Defendant's Ex. 169 or only formal and immaterial changes?

(The same objection, and also that it is not admissible for the witness to give his opinion on that subject.)

A. They were such that were within the knowledge of every one well versed in the printing business, and would therefore be mere formal changes."

Judge Wheeler held that the patented invention was the *balanced* combination.

On the subject of patentable invention he said (2 Rec., 1453, bottom):

"That its production did involve the exercise of inventive faculties and skill is apparent from the various

steps, trials, and tests by which it was reached, from the fact that so many have been granted upon attempts approaching the same object without accomplishing it, and from the fact that the patent has sustained a suit for infringement of it against a party using the invention in fulfillment of a government contract."

What "various steps, trials, and tests" the learned judge referred to is not clear. According to his finding the patented invention (balanced stamp) was produced by Norton so early as May 4, 1859. There is no valid evidence of any "trials and tests" by Norton in directly the same line prior to that date. Since that date there have undoubtedly been "trials and tests" with a view to *advance upon* and *improve* the combination. Thus cancelers that would cut as well as blot have been tried unsuccessfully. And Yeoman (once stamping clerk and now superintendent in the New York office) says that there had not been a year since 1860 up to the time he testified but what some invention was tested in that office. Perhaps it may fairly be said that invention has attempted to improve upon what common sense has done, and has so far failed in the attempt.

A similar criticism may be made with regard to the patents that Judge Wheeler refers to.

Pearson Hill's English patent of September 27, 1857 (2 Rec., 1291–7), shows most elaborate and complicated machinery designed apparently for the transaction of all the business of a post-office. The last plate shows the stamping device and its mode of operation by treadle and foot power distinctly; with reference to the die E it is said in the specification (at the middle of page 1295), "I also made the die *with the whole design in duplicate*, so that the design with the date may be legibly impressed upon the letter or envelope, as well as upon the

postage-stamp, which is obliterated or canceled by it." Now, it may well be that this intricate and ingenious machine, designed to do the work of a post-office *automatically*, failed in practical operation, though there is no evidence of it. But how can that possibly affect the question whether another instrument which does not pretend to work automatically shows invention.

Miller's hammer stamp patent (2 Rec., 1288–91) shows an instrument which undoubtedly is adapted to successful work, and which is proved by Miller's testimony to have, in fact, worked well. Judge Wheeler cannot have had this patent in mind when he said, "So many other patents have been granted approaching the same object without accomplishing it." The fact that Miller's stamp has not been generally adopted does not prove that it would not accomplish the object.

The remaining patents which Judge Wheeler may have referred to are patents issued on Norton's applications, one on August 9, 1859 (2 Rec., 1270), the other on December 16, 1862 (2 Rec., 1276). They are for combinations in which the canceler will *both blot and cut* and are therefore to be considered as intended for improvements or advances upon the simple combinations of postmarker and blotting canceler. They do not *precede*, they succeed, the so-called patented invention.

The action in which this patent was sustained, referred to by Judge Wheeler, is Shaver & Corse *vs.* Hoole, commenced in 1864 in the northern district of New York. An exemplified copy of the record of this case is in the transcript (1 Rec., 514–537). It shows that the defendant *made default at the trial* (1 Rec., 535, near middle), *and that only nominal damages were asked or given* (1 Rec., 535, bottom). This looks like collusion, and it cer-

tainly takes away all weight from the judgment. See also, the testimony therein of Hoole's expert, Stetson (2 Rec., 921–5): He says that he had prepared Hoole's defense; that he believed it to be a good one; that he attended the trial, but could do nothing because Hoole and his lawyers did not appear, and that "there was a good deal of fog about the case."

G. We claim next that the reissue patent in suit is void, because it is not for the same invention as the original patent.

The power of the court to declare a reissue void for the reason stated does not admit of dispute (Gill v. Wells, 22 Wall., 1; Cornplanter Patent, 23 Wall., 181; Wood Paper Patent, 23 Wall., 567; Russell v. Dodge, 93 U. S., 460).

In this case the patent has been three times reissued; first in 1864, to Shaver & Corse, as assignees of Norton (1 Rec., 462); second in 1869, to Norton himself (1 Rec., 471); third in 1870, to Ingalls, as Norton's assignee (1 Rec., 479). The last reissue is the one on which suit is based. It appears to be literally the same as that of 1869; and that of 1869 differs from that of 1864 only in unimportant particulars. We may therefore compare the reissue in suit directly with the original patent. They are printed respectively at page 459 and page 479 of the record. Defendant's Ex. 149 is a certified duplicate of the model originally filed. Fig. 4 of the drawing annexed to the original patent may be laid out of account, as it represents a device the full description of which was stricken from the original application while it was pending in the Patent Office. (See file-wrapper and contents, Defendant's Ex. 156, 2 Rec., 1299 *et seq.*).

In the original patent the nature of the improvements is stated very plainly and unambiguously as consisting "in the employment and combination of a device for canceling postage or other stamps by means of wood, cork, or *similar* material inserted in a tube or recess therein," and in the combination of this canceler with any postmarker. By reference to the drawings it will be found that the wording of the description of the improvement is in some immaterial respects inaccurate. Thus D, which is the dating type-holder *part* of the postmarker, is called "the postmarking stamp"; C, which is the tube *part* of the canceler, is called "the canceling device"; G, which is "wood, cork, rubber, or *similar* material" contained in the tube, is also called "the canceling device"; and the recess in C, which in the drawings is marked F, is in one sentence of the specification called F, and in another G. The context of the specification, when these letters are used, however, makes what is referred to clear; and a reference to the drawings shows distinctly what part each reference letter belongs to. Thus A is the handle; B is the cross-bar; C is the canceling type-holder *part* of the canceler; D is the dating type-holder *part* of the postmarker; E is the recess in D which receives the dating type; F is the recess in C which receives the canceling type; G is the canceling type; *a* is the hole through cross-bar B by means of which the canceling type may be detruded. The drawings show the recess F in C, extending only partly through C. The specification, however, indicates that if it is desired this recess may extend entirely through C, for it says (at page 461, top), "the said tube or recess G" [F is meant] "may be any size in diameter required, or any depth desired"; and

(at p. 461, near middle) "the said cork, rubber, or other elastic material may extend upward to the said cross-bar (B), and then be connected to the same by a screw or pin-bolt, if desired, which will be the same in effect and operation." The "inventions" described in this patent are two: 1st, a canceler, consisting of a tube (C) made "of any suitable material" (1 Rec., 460, last paragraph), which contains a cork, wood, rubber, or other *elastic* die or type (G); and, 2d, the combination of such a canceler with a cross-bar (B) and a post-marker (D). The specification points out with much clearness the supposed advantages in use of this canceler, and contrasts it with, and differentiates it from, a metallic canceler (1 Rec., 461, top). The claims are aptly drawn to cover exactly the specific "inventions" described.

The interpretation of these "inventions," made by the patentee himself at the time his application was pending in the Patent Office, is entitled to consideration. The file-wrapper and contents are in evidence as Defendant's Ex. 156 (2 Rec., 1299–1306). Therefrom it appears that the application was in the first instance rejected (2 Rec., 1303). Thereupon Norton wrote the following letter to the Commissioner:

NATIONAL HOTEL,
Washington, D. C., March 21, 1863.

Hon. COMMISSIONER OF PATENTS:

SIR: In the matter of my application for a patent upon "improvements in post-marking and canceling stamps," filed in the Patent Office January 5, 1863, and rejected February 21, 1863, I have to request a second or re-examination of the same.

I do not understand that the device referred to in your letter of the 21st of February last is "a common

ink-canceling stamp, such as has been used for years in our post-offices for blotting, and thus canceling, postage-stamps." The devices to which you undoubtedly refer have always been made of metal entirely or of wood entirely. Wood was found to answer no purpose, because not at all durable, so metal ones were used. Now this device consists of a barrel or tube, into which wood, cork, rubber, or some such material, is inserted for the purpose of holding an indelible ink in quantities sufficient to blot the postage-stamp so thoroughly as to prevent the same being washed or cleansed by a chemical mixture and again being used in payment of postage. This tube or barrel holds firmly the elastic substance therein, and prevents the same from undue wear and exposure. The elastic substance therein being worn out, can again be replaced at the office where used, thus saving the trouble and expense of returning the same to the government contractors for such repairs. This, therefore, constitutes a new device, composed of two distinct parts in combination, producing new results, besides blotting the postage-stamp.

This device being new, its combination with the postmarking device for the purposes set forth in the specification is, of course, new; upon these two claims I therefore most respectfully ask a patent.

As to the claim for the cutters in combination with the postmarking device, I am inclined to the opinion, after reflection upon the same, that the office is right in the intimation that this device should be embraced in a new and separate application, and will therefore amend the same.

Your obedient servant,

MARCUS P. NORTON,

Attorney per (sic) se.

(Indorsd:) From applicant. Filed March 21, '63. D. S. S.)

We believe that after the court shall have examined the original patent it will have no hesitation in conclud-

ing that Norton was right in the construction of his "inventions" contained in this letter.

Now, is the reissue for the same "inventions"? It fills six solid pages of the record (1 Rec., 481–7), while the original occupies less than three (1 Rec., 459–61); certainly, therefore, it contains many new words, if not much new matter.

We here give the specification in full, italicising the parts which we claim alter the invention:

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern :

Be it known that I, Marcus P. Norton, of the city of Troy, in the county of Rensselaer and State of New York, haven invented new and useful improvements in "postmarking letters," "packets," &c., and in the "canceling" of the "postage-stamps" thereon, in the manner and by the means substantially as hereinafter described and set forth; that letters patent of the United States were duly issued thereon, under and bearing date April 14, 1863, which were assigned and transferred under a certain agreement and by virtue of a certain instrument in writing bearing date the 20th day of April, 1863, and recorded in the United States Patent-Office on the 8th day of March, 1864, in liber C^7, page 458, of transfers of patents, to Jacob Shavor and Albert C. Corse, of said city of Troy, county, and State, and who, on or about the 23d day of February, A. D. 1864, duly reassigned and retransferred the said invention, improvements, and letters patent to the said Marcus P. Norton, inventor and assignee aforesaid, by a certain instrument in writing, duly executed and bearing date on the said 23d day of February, 1864, and which assignment and transfer from Jacob Shavor and Albert C. Corse was duly recorded in the said United States Patent-Office on the 24th day of July, 1869, in liber U^{11},

page 319, of transfers of patents. On or about the 23d day of October, A. D. 1869, I, the said Marcus P. Norton, by deed of assignment in writing, did lawfully assign and transfer unto Helen M. Ingalls, of the city of Troy, State of New York, the said invention and letters patent, dated and reissued as hereinbefore stated and set forth; which deed of assignment was duly recorded in the United States Patent-Office on the 1st day of August, 1870, in liber B^{13}, page 351, of transfers of patents, and who is now the lawful owner thereof under and by virtue of the said sale, assignment, and transfer so made, executed, and delivered, and recorded, as before stated. Now, therefore, I, the said Marcus P. Norton, do hereby declare the following to be a full, clear, and exact description of the construction and operation thereof, reference being had hereinafter to the accompanying drawings and to the letters of reference marked thereon, which drawings so marked and lettered hereby make a part of these my specifications of and concerning my said invention and improvements herein contained and set forth.

Like letters refer to and represent like and corresponding parts of my said invention.

Figure 1 represents a side elevation of the postage-stamp cancelling and postmarking device hereinafter described and set forth, for canceling postage-stamps with any suitable ink contained upon such instrument at the same time, blow, and operation of the making of the postmark on the letter, envelope, or packet, one side of and from such postage-stamp or frank so canceled.

Figure 2 represents a vertical section taken on a line through the center of the various parts of the postmarking and postage-canceling device or instrument herein contained, described, and set forth.

Figure 3 represents a face-view of the device, showing the postmarking stamp ready for use, and the postage-canceling die or device, made of wood, used endwise, or of cork, rubber, or other suitable material therein

inserted in the manner substantially as shown, and more at large described hereinafter.

Figure 4 shows a device for the purpose of canceling postage-stamps or letter-franks used to represent value, by the use and power of any suitable ink by the means of wood, cork, or any elastic material for the type or die, which may be used for that purpose separate and alone, or in combination with any suitably-constructed postmarking stamp or device, substantially as shown at Fig. 3 of the said drawings.

Figure 5 represents a vertical section of a postmarking and postage-stamp canceling device or die combined, and constructed entirely of iron, steel, or other metal, and more fully described hereinafter.

Figure 6 is a plan or face-view of Fig. 5, showing the postage-stamp canceling device or die, made of iron, steel, or other suitable metal or material.

Figure 7 represents the wrench used for securing the dating-type in a proper place within the postmarking device, having the name of the town or post-office where used engraved thereon in relief letters.

Figure 8 represents the tool or instrument used for removing the cork, wood, or rubber die or type used for canceling postage-stamps, from the tube or surrounding case where held or contained, so as to repair or replace the same with a new one when worn out or unfit for use.

The nature of my said invention and improvements herein contained and described consists in the employment and combination of a device or die used for the more complete and perfect cancellation of postage-stamps and letter-franks, by means of soft wood, used endwise, or of cork, rubber, *or other suitable material*, whereby such stamp or frank is effaced and canceled, in and by indelible or other ink, in the manner substantially as herein described and set forth.

It also consists in the combination of a postage-stamp-canceling device or die, constructed of wood, cork, rubber, *or any suitable material*, with any suitably arranged and constructed postmarking stamp or device, so as to cancel, efface, or destroy the postage-stamp or letter-

frank with indelible or any suitable ink at the same time, blow, or operation of the stamp or instrument by which the postmark is given or made upon the letter, envelope, or packet, substantially as herein described and set forth.

It also consists of the postmarking of letters, envelopes, or packets, and in the cancellation of the postage-stamp or stamps thereon, with, in, or by any suitable ink, or similar material, by means of some soft wood, used endwise against the postage-stamp, or by the means of cork, rubber, iron, or steel, or by means of any other suitable material, so combined with the postmarking stamp or instrument as to cancel, efface, or destroy the postage-stamp or stamps at one and the same blow or operation of the entire instrument thus constructed for that purpose, whereby to prevent a second or re use of such postage-stamp or stamps.

To enable others skilled in the art to which my said invention and improvements relate, to make and use the same, I will here proceed to describe the construction and operation thereof, which are substantially as follows; that is to say:

I construct the postmarking device or stamp D of any suitable material, and of any size in diameter required, while in length it must correspond to the canceling device and die or type.

E, Fig. 3, is the mortise or recess, of suitable dimensions to receive the type for the month, day of the month, and for the year, and called or known as the dating-type, around which is the name of the town or post-office where used, in relief-letters, and upon the lower face of such postmarking stamp or device.

I construct the postage-canceling stamp or device G (for the purpose of canceling, in a more perfect and thorough manner, the postage-stamps on letters, envelopes, or packets) of wood, used endwise upon the postage-stamp, or of cork, rubber, or of any *suitable or* elastic material, and insert the same in the tube or recess F, which is that part of the canceling device marked C of the accompanying drawings, and which is connected to,

and combined with, the said cross-piece B, as herein described.

I prefer to have the diameter of the canceling device and die or type F, Figs. 2, 3, and 4, about the same as the width of the postage-stamp to be canceled or destroyed by means of the same.

The said canceling die or type G *may* be of any length required, and so made as to correspond with the tube or recess F, and closely to fit the same, and it *may* be made of wood, cork, rubber, or of any elastic material, as aforesaid.

The face of this device may contain a plan or form for canceling the postage-stamp in, with, or by ink, like unto that shown at Fig. 3, or it may have any configuration deemed proper to use for the purpose aforesaid.

The said device, die, or type G will project somewhat below the face of the postmarking device D, if deemed best so to do, and it may be removed out of the said tube or recess F by means of a pin or bolt, substantially like that shown at Fig. 8, the lower end of which operates in and through the aperture *a*, Figs. 2 and 4, for the purpose of repairs, or to replace it by a new one, when desired.

A is the operating handle, firmly secured to the cross-bar B by any suitable mechanical means, and it will be made of wood, &c.

The said postage-stamp-canceling device, die, or type G, being thus constructed of cork, wood, or rubber, or other elastic material, and combined with the said device C, with recess or tube F therein as aforesaid, will receive and contain, on the face or configuration thereof, the ink aforesaid, in quantities sufficient to permanently cancel, efface, or destroy the postage-stamp whereon the same is used while postmarking letters, packets, &c., in such manner as to prevent the said postage-stamp being cleansed of the said canceling-ink by any chemical or other process; for the said canceling-ink, so put upon the postage-stamp by means of said cork, die, or type, would be so effectual that any attempt or effort to remove it therefrom would entirely destroy, or nearly so,

the aforesaid postage-stamp, and thus and thereby render the same incapable for, or of, a second or other use, without immediate detection.

The said cork, rubber, or other suitable elastic material, used as aforesaid, will render the said postmarking and postage-stamp-canceling die or type of a more easy, and consequently rapid, use, because of there being a yielding of the said canceling die or type G when the blow is given upon the letter, envelope, or packet and postage-stamp as aforesaid; the operator will not tire as much by means of a constant, continuous, and rapid use of the same; and it will also somewhat aid the operator in raising the entire instrument or apparatus from the paper or packet and postage-stamp, when the impression thereon and the cancellation of such postage-stamp shall have been given by the operator, in the manner substantially as aforesaid.

The said canceling type or die can be easily repaired, or replaced by a new one, whenever desired, and at very little expense; and such canceling die or type G may extend upward to the said cross-bar B, and there be connected to the same by means of a screw, pin, or small bolt. *In such case there would not be any tube or pipe surrounding said canceling die or type G.* The operation and effect produced would, in such case of construction, be the same.

The said postage-stamp-canceling device, die, or type G may be of any desired distance from the aforesaid postmarking or dating device or stamp D, *or it may be securely fastened to the immediate side of the said postmarking and dating part or stamp or device D, by any convenient and suitable mechanical means.*

The said canceling die, type, or device G. I prefer to use made of cork, as it will hold a much greater quantity of canceling-ink upon and in the lower face thereof, and when it comes in contact with the printed surface of the postage-stamp, such surface will become somewhat and sufficiently broken by means thereof, and thus and thereby inject into or impregnate such broken surface with the said canceling-ink, whereby such post-

age-stamp so operated upon and filled with such ink, cannot be sufficiently cleansed by any means as to enable it to be reused or used a second time in fraud upon the postal revenue without immediate detection of the same.

Soft wood, used endwise, will answer nearly the same purpose. Still, long and continued use, after the granting of my said patent, April 14, 1863, has fully proven the superiority of the cork for the canceling die or type used upon postage-stamps as aforesaid.

The said tube or cylinder C, Figs. 2, 3, and 4, may be constructed in any suitable manner, or by any convenient means, and thereafter fastened to the under side of the cross-bar B, in or by any mechanical means which will answer the required purpose. It may also be of any form or shape deemed best.

I also construct my said postage-stamp-canceling device, die, or type, of cast-iron, steel, or other suitable metal, substantially as shown at G′, Figs. 5 and 6, and which may be secured to the said cross-bar or piece B in like manner as the said tube or cylinder C, Figs. 2 and 4, and which is done either by screw and nut, where the same unites with the said cross-bar, or it may there be firmly fastened by means of suitably constructed and arranged pins or rivets, or the same may be soldered to the under side of said cross-bar or piece B, or otherwise attached thereto.

The said postmarking and dating device D is also secured to the under side of said cross-bar or piece B, and at or near the end thereof, opposite that where said tube or cylinder C or canceling die, type, or device G, is securely fastened, as aforesaid, in like manner and by substantially the same means as used for such fastening of said canceling device to said cross-bar upon the under side of the same as aforesaid.

The aforesaid metal canceling device, die, or type G′, Figs. 5 and 6, may also be fastened or secured to the immediate side of the said postmarking device by any good and sufficient means, substantially as hereinbefore described and set forth in reference to the said device C, or tube, or cylinder, constructed to receive and contain the said type or die G, Figs. 2, 3, and 4.

Such metallic device, die, or type may also have upon its lower face or lower surface any suitable configuration deemed best to use for the purpose of canceling the postage-stamp in, with, or by any suitable ink at the same time, blow, and operation of the instrument or apparatus, as hereinbefore stated and set forth.

In any and every case the postmarking of the letter, envelope, or packet, and the effacing or cancellation of the postage-stamp or letter-frank thereon representing value, are done at the same time, and by the same blow or operation of the said several devices and parts, constructed and combined in the manner and by the means substantially as herein described and set forth.

Both the postmarking and cancellation of the said postage-stamp are done with indelible or other and suitable ink used for such cancellation or effacing of the postage-stamp, and that, too, without any injury to the letter, envelope, or packet, or to the contents thereof, as would be the case were the said postage-stamp canceled by being cut in several parts and places by means of cutters or knives constructed for that express use and purpose, as is the case by the cutters or knives contained and set forth in letters-patent granted to me on the 9th day of August, A. D. 1859, also on the 16th day of December, A. D. 1862, the first of which contains no guard or guards to said knives or cutters, while the second contains such guard or guards for the purpose of preventing such cutters or knives from cutting too much or too deep in and upon said postage-stamps.

The said instrument and devices herein set forth and described will not, under any circumstances, cut either the letter, envelope, or postage-stamp thereon in any way or manner, but perform the cancellation required to be done in, with, and by ink only, as aforesaid, no cutting device whatever being used. But the said cork device, die, or type will, when it comes in contact with the printed or enameled-like surface of the postage-stamp, somewhat mar, bruise, or break the same, by means of the blow given by the instrument, whereby to prepare the same to be filled by or impregnated with any suita-

ble ink used for such cancellation, substantially as aforesaid.

In no case could a fraud be committed by a second or reuse of the government postage-stamp or letter-frank, representing value, without being discovered.

This arrangement and combination of devices will greatly hasten or facilitate the making up of the mails for transportation. It will also economize in labor, and reduce the labor in postmarking letters, and in the canceling of the postage-stamps thereon, to about, if not entirely, one-half of the number of workmen, laborers, or clerks absolutely necessary when and where this combined instrument is not used in the manner aforesaid.

It therefore saves at least one-half of the labor required in the postmarking of letters, envelopes, or packets, and in the cancellation of the postage-stamps thereon. It also makes the cancellation of the postage-stamps more effectual or permanent, so as to prevent a second or reuse of such postage-stamps by any means whatever, which is very important in the successful management of the post-offices in this country, whereby and by means of which large sums of money are annually saved this government; and frauds upon the postal revenue, by the second or reuse of postage stamps, are also prevented by the use of my invention and improvements herein contained, described, and set forth.

By the use of said invention the letters to be mailed and prepared for transportation, by means of postmarking the same, and in canceling the postage-stamps thereon, as aforesaid, need not be handled over but once, thus and thereby economizing in time and in labor.

The cross-bar or piece B, Figs. 1, 2, 3, and 5, may be of any suitable width or thickness, or of any metal which will answer the required purpose. It may also be of any length deemed best to use, in order to get the said postmarking device and the said postage-canceling device, die, or type suitably arranged upon the lower surface of the same, and thereto firmly and securely fastened or attached, in the manner substantially as aforesaid.

The type whereby to give the date are arranged in the said mortise E, as shown at Figs. 3 and 6, and are there held in their proper place by means of a set-screw, substantially as shown in Figs. 2, 3, and 6.

The cork or other material used for the canceling device, die, or type, will be pressed into the said tube or pipe at recess F, cylinder C, Fig. 2, and the same is there firmly held, substantially as shown at G, Fig. 4.

The device or configuration for the cancellation of the postage-stamp, in the manner substantially as aforesaid, may be seen at C and G, Fig. 3, where cork is used; *but when iron, steel, or other suitable metal is used, the device or configuration may be at G′, Fig.* 6.

The invention and improvements contained in and covered by the several claims hereto annexed or below given is and are not contained in the letters-patent granted on my application, in due form, on "the 9th day of August, 1859," nor is nor are the same to be found in my said letters-patent granted to me "December 16, 1862," but the said invention and improvements are contained in my caveat duly filed in the United States Patent Office, in the year 1853, containing, also, other improvements.

Having thus described my original invention and improvements in "postmarking" and "postage-canceling" devices, combined and arranged, for the purpose aforesaid:

What I claim, and desire to secure by letters patent of the United States of America, is—

1. The postage-stamp canceling device, cylinder, or tube C, containing a die or type, G, made of cork, wood, *or other suitable material*, or any equivalent for said cylinder or tube C, or for the said canceling die or type G, whereby to efface, cancel, or destroy the postage-stamp with indelible or other ink, in the manner and for the purposes substantially as herein described and set forth.

2. The canceling device, cylinder or tube C, with cork, or wood, or any substantial equivalent thereof, forming the die or type G therein, in combination with the cross-bar or piece B, and with the postmarking device D, sub-

stantially as and for the purposes herein described and set forth.

3. *The postmarking of letters, envelopes, and packets and the cancellation of the postage-stamps thereon with ink, at one and the same blow or operation of the instrument, in the manner and by the means substantially as herein described and set forth.*

4. *The employment and combination of a postmarking device with a postage-stamp canceling device, both being operated by one and the same handle, for the postmarking of letters, envelopes, or packets, and for the cancellation of the postage stamps thereon with indelible or other ink, in the manner substantially as herein described and set forth.*

In testimony whereof I have, on this 14th day of September, 1870, hereunto set my hand, in the presence of two witnesses, to wit:

MARCUS P. NORTON.

Witnesses:
FREDK. KOONES,
EDW. W. DONN.

Figures 5 and 6 of the drawings, showing the solid metal canceler G′ (1 Rec., opposite page 480), are also material additions to the original patent.

The certain effect of these additions is to extend the scope of the original patent in the following respects: 1st, by making the tube E no longer an essential part of the canceler, and, 2d, by making the patent cover a metallic canceler as well as one made of elastic material.

a metal tube

We submit that there is nothing whatever in the model, the drawings, or the specifications of the original patent which justifies the additions and changes in the reissue which have been pointed out.

It will be said that the original patent has these words (1 Rec., 460, last par.): "I construct the canceling stamp or device (C) *of any suitable material*," and that metal is suitable material for the whole canceler. But an

examination of the drawings and specifications will show that the phrase "canceling stamp or device C" does not mean the *whole* canceler, but only the tube *part* thereof having a recess, F, adapted to receive the canceling-type G. In the same way it is said (1 Rec., 460, below middle), "I construct the postmarking stamp (D) of any suitable material." The drawings show that D is only the dating type-holder *part* of the postmarker, and, as in the case of the canceler, the specification shows that it is recessed or mortised so as to receive the dating type.

It will also be said that metal is mentioned in the original patent as a possible material for the canceler. The only mention of metal is where the advantages of the elastic canceling type or die are pointed out (1 Rec. 461, middle). It is said "the operator will not tire as soon by a constant or continued use of the same *as though it were of solid metal*"; and "the said blotter or type can be more easily repaired or replaced by a new one at less expense *than if made of solid metal.*" This is an express differentiation of the "invention" claimed in that patent from a combination in which the canceler consists of solid metal. It is tantamount to a disclaimer. Suppose Norton had said in words, "My invention does not extend to a solid metal canceler, and I do not claim such a canceler"; would a reissue describing and claiming such a canceler have been valid? According to the reasoning of Judge Wheeler (2 Rec., 1454), it would. We submit that such is not the law. (See Leggett *v.* Avery, 101 U. S., 256.)

The abuse of the privilege of reissuing patents, illustrated in this case, has received the severe censure of this court. (Burr *v.* Duryea, 1 Wall., 521.)

H. The reissue is void, because the specification and claims do not distinctly point out the actual invention of the patentee, but are vague, ambiguous, and apt to mislead and deceive the public.

The law of this defense is stated in Carlton *v.* Bokee, 17 Wall., 463. See, also, Seymour *v.* Osborne, 11 Wall., 516; Barrett *v.* Hall, 1 Mas., 447, 476; Lowell *v.* Lewis, ib., 182; Langdon *v.* De Groot, 1 Paine, 203; Parker *v.* Stiles, 5 McLean, 44; Whittemore *v.* Cutter, 1 Gall., 478.

The actual "inventions," as has already been pointed out, were, first, a metallic tube holding an elastic canceling-type; second, the combination by cross-bar and brad-awl handle of such a canceler with a postmarker.

The wording of the reissue is well calculated to lead the public to believe that the process of postmarking and canceling at one operation, and any and every conceivable combination of postmarker and canceler, are covered by the patent and their use interdicted to all the world except the patentee and those who please to purchase privileges from him.

That the public has in fact been completely and most outrageously deceived appears from the reports of postmasters, Postmasters-General, and committees of Congress, which complainant's counsel have thrust into the record. They are favorable to the Norton invention (so called) because they all proceed upon the idea that there is no choice except to use it or to use separate postmarkers and cancelers.

All of those reports, except that of Postmaster Wakeman, dated January 3, 1863 (1 Rec., 542), were made subsequent to 1864, in which year the patent was first reissued (1 Rec., 462), in substantially the form which it now presents. Wakeman's report (or, to speak more

accurately, the report of his secretary) does not relate to the "invention" for the protection of which this patent was granted, and was made before this patent had issued or been applied for, and at a time when, as Norton's letter of March 23, 1863 (2 Rec., 1165-6), shows, the whole ground was supposed to be covered, not by any one patent, but by a series of patents which Norton had obtained.

I. Had the Commissioner of Patents power to grant the reissue on which suit is based?

See the discussion in relation to the alleged Shavor and Corse reassignment, III, C., *infra*. p. 120 p. 120

III.—*Of Norton's credibility as a witness.*

Norton was put upon the stand by complainant so many times, and testified upon such a diversity of topics, that it has seemed best to collect the evidence bearing upon his credibility under a separate head. The whole may be looked at in determining what credence is due to his statements on any particular point. This evidence is divisible into three classes, viz: Contradictions, as to his reputation for truthfulness, and as to the Shavor and Corse reassignment.

A.—Contradictions:

We have picked out, and here present, a few of the contradictions of Norton's testimony which the record discloses. There are many more, as will be found on careful reading.

a. With reference to the alleged Secombe reassignment, Norton swore point-blank that subsequent to the date thereof (July 10, 1873) Secombe never made any claim in or under the patent in suit to him, or to his knowledge (1 Rec., 144).

In this he is contradicted by his letters. (Defendant's Exhibits 190–201. See particularly Exhibits 198, 199, 200, 201, 1 Rec., 441–451.)

b. On cross-examination, being asked whether, subsequent to the date of that assignment, he had not requested Secombe to reassign, he said, first, "I have no recollection of any such thing." Being asked if he was sure, he repeated, "I am sure I have no recollection of any such thing." He then continued his answer by delivering a long, irrelevant speech as a cloak for the concluding admission, that he *may* have asked Secombe to reassign; and less than a page further on, he says, "I think likely I did. I don't know as I have any doubt about it"; and a little way further on he fixes the date when he made this request of Secombe as "within 8 or 10 months after the commencement of this suit, and perhaps less time than that." (1 Rec., 165–'7.)

c. His letter to Shavor of Nov. 27, 1876, (Defendant's Ex. Marcus P. Norton A, 2 Rec., 1394), in which he tells Shavor that he had asked Secombe to reassign, having been put in evidence, the following questions were asked by the complainant's counsel (1 Rec., 168)

"When you wrote to Mr. Secombe for a reassignment, * * * did you propose any consideration for the reassignment, or did you expect him to make it on your request?"

The answer was:

"I expected him to make good the one that I supposed had been lost or destroyed, and without any further consideration."

In this also, he is contradicted by Ex's 198, 199, 200, 201 (1 Rec., 447–451).

d. The inconsistency between his explanation of his delay in applying for the patent in suit (1 Rec., 143), and

his letter of March 23, 1863 (2 Rec. 1165, Defendant's Ex. 27), has been hereinbefore pointed out. p. 83

e. With reference to the date of his invention he swore that he had made several instruments "substantially like the one now in use," prior to August 7, 1854 (1 Rec., 143–'4) p. 83

This conflicts with his letter of February 6, 1864 (2 Rec. 1367), to Postmaster Wakeman, when he says:

"The double canceling stamp now used by you in your post office, is my invention as far back as the year A. D. 1856, as I can most fully and satisfactorily prove * * *. I had several such stamps made in 1858, as I can prove by the person who made them."

f. With reference to the unbalanced instruments used in the Philadelphia office, Norton swore that Ireland never told him of his having made a stamp with a canceler attached, and that Ireland never exhibited a stamp to him in the world of any kind, of any form or shape, in the Post-Office Department, or anywhere else. (2 Rec., 1441–'4).

Ireland swears positively that neither of these statements is true; that he did talk with Norton about making the stamp, and that he did show him one of the combined stamps that had been used at Philadelphia, (2 Rec., 1444–'5.)

B. As to his reputation for truth and veracity.

Defendant called thirteen witnesses on this point. Their testimony is printed at pages 1038 to 1140, of the record.

Ransford, Pramer, Bishop, Smith, Henderson, Hermance, and Giles, swear that they know his reputation in Troy for truth, from the speech of people concerning him; that it is bad, and that they would not believe him on oath, at least when his interests are involved.

Burden testifies to the same effect, but his cross-examination shows that he did not distinguish between reputation for truth and general reputation.

Ball says that he has known but little of Norton lately; ten or fifteen years ago his reputation for truth was bad, and upon any matter in respect to which his feelings or interests were involved, Ball would not then have believed him on oath.

Merritt says that he knows nothing of Norton's reputation in Troy for four or five years past; prior to that time it was bad.

Chamberlin says Norton's reputation "isn't very good, I must say; rather bad, if anything, for truth and veracity." He could not swear that he would not believe Norton on oath, but would believe another who stands fair in the community in preference, if their testimony conflicted.

Colby has heard people of equal credit and standing speak for and against Norton's reputation for truth, and has no opinion of his own.

F. J. Parmenter says he never heard Norton's reputation for truth and veracity called in question. This would be favorable to Norton, if Parmenter had not shown total ignorance by stating that he did not think he knew even Norton's general reputation.

To sustain Norton a pamphlet, purporting to contain letters to President Grant, recommending that Norton be appointed governor of Wyoming, was offered in evidence. It was duly objected to (1 Rec., 418), and of course is not evidence.

Norton himself was also examined (1 Rec., 396–419), and in his own testimony the following facts (important as tests of the extent of knowledge possessed by other

witnesses called in his favor) appear, viz, that in 1869 he was a candidate for the governorship of Wyoming; that in 1871 he filed a petition in bankouptcy; that evidence against his reputation for truth was given in the Groom-Hagan interference case, and in one of the trials that sprang from the murder of Lincoln; that in 1871 he was debarred from practicing as a patent agent in the Patent-Office, and that in 1872 he was indicted for forgery.

Between forty and fifty other witnesses were also examined to sustain his reputation (1 Rec., 265–396). A careful analysis of their testimony, given on direct and cross-examination, will show—

1st. That most of them knew very little about Norton; they had never heard of his bankruptcy, or of the impeachments in prior cases, or of his candidacy for the governorship of Wyoming, or of his losing his right to practice as a patent agent, or of his being indicted. They had met him a few times, perhaps had business dealings with him to a small amount without suffering loss, and had little or no acquaintance with people who knew him.

2d. As to others, the questions asked related entirely to the witnesses' personal dealings with Norton, and to their knowledge of his character (not reputation) derived from their personal dealings. These questions were improper, and the depositions amount to nothing.

3d. Several of these witnesses (notably Lawson, Sill, Daniels, Knowlson, Phillips, Alden, and Tupper), admit that they have heard remarks unfavorable to Norton, but say that they do not allow rumor or gossip (which is plainly a factor of reputation) to influence them at all in determining a man's reputation for truth; Norton hav-

ing never lied to them, they care not a straw what other people say about him.

No one can carefully read the evidence of both parties on this point and fail to be satisfied that Norton's reputation for truth is tainted.

C. As to the Shavor and Corse reassignment.

The bill, to show title in Ingalls in 1870, when the reissue patent in suit was granted to her, alleges that on April 20, 1863, Norton assigned the original patent to Jacob Shavor and Albert C. Corse; that on February 27, 1864, Shavor and Corse reassigned to Norton, and that this reassignment was recorded on July 24, 1869.

The answer denied the making of the reassignment. (1 Rec. 58.)

This raised an issue as to title upon which a great mass of testimony was taken.

It appeared, however, when all the evidence was in, that on the 23d of October, 1869, Charles Eddy, being authorized to act as agent of Shavor and Corse, came to a settlement with Norton, the substance of which was that Shavor and Corse should recognize the 1864 reassignment as valid, and that Norton should assign one-third of the patent absolutely to Eddy, as trustee for himself, Shavor, and Corse. (1 Rec., 759, *et seq.*; 2 Rec., 1251, *et seq.*; 2 Rec., 1147, *et seq.*) The circuit court held that this settlement disposed of the question as to title. And, though we think it may be doubted whether a sound public policy will allow of the ratification of a forgery (Brook *v.* Hook, L. R., 6 Ex., 89)—for forgery we claim the alleged reassignment was—and, though a further question is presented whether the law authorized the Commissioner of Patents to reissue the patent in 1869 to Norton as an assignee by virtue of

this document, nevertheless we have concluded not to press the point strenuously, because after the evidence was closed Eddy, as trustee, for himself, Shavor, and Corse, came voluntarily into the suit under a claim of owning one-third only of the patent. This action on the part of those who would be chiefly benefited by having the alleged reassignment declared void would probably estop them from making a larger claim against Postmaster James in any other suit, and it is not perceived, therefore, that substantial justice, as between the parties at least, would in anywise be subserved by dismissing the bill for this defect in the title.

In deciding upon Norton's trustworthiness, however, it is proper for the court to examine all of the testimony pertinent to the issues made by the pleadings which he gave; and we beg of the court not to rely upon any of his statements without first studying the evidence upon this alleged reassignment.

Complainant, on his *prima-facie* case put in a certified copy of the reassignment in lieu of the original. This is printed at page 467 of the record. Defendant, not being able at first to get hold of the original, used another certified copy in examining his witnesses. This is printed at page 1143 of the record. Subsequently Campbell himself was put on the stand and forced to produce the original. It is Defendant's Ex. 126, and is printed at page 1254 of the record.

This original cannot be found among the original exhibits sent to this court by the clerk of the circuit court. We are compelled, therefore, to rely upon the copies in the record and upon such description of the way the original was put together as the testimony of the witnesses affords.

The document in form purports to be both an affidavit and an assignment. The signature of Commissioner Lamport to the jurat is genuine, as is also that of Corse. About Shavor's signature there is some doubt (1 Rec., 756, 797), but no particular stress is placed upon that. The important fact is that the jurat and the signatures of Shavor and Corse appear at the very top of the eleventh page. No part of the pretended affidavit and assignment is on the sheet of paper which contains the jurat and signatures.

[If complainant's counsel avail themselves of the disappearance of the paper to dispute this fact, the court can satisfy itself about it as follows:

Defendant's Ex. 134 (2 Rec., 1270) is a table prepared by the witness Bolton (1 Rec., 794), showing the number of lines and words on each page of Ex. 126. By counting the words (commencing at the point where the expert, Ward, says the yellowish paper begins, 1 Rec., 798, top), according to the plan that Bolton points out in his testimony, it will be seen that the signatures are at the top of the eleventh page. It also appears from Bolton's testimony that page 10 is the one *preceding the signatures*, and that the 11th, 12th, and 13th pages contain the certificate and affidavit of Lamport.

The instrument is in Norton's handwriting, (1 Rec., 752), and he admits that the sheets are not folded at the top. (1 Rec., 151.)]

Our theory with regard to this document is that the jurat and the signature of Corse, and perhaps that of Shavor, belonged to some genuine affidavit; the last sheet of which, containing said jurat and signatures, was taken off and appended to this pretended "affidavit and assign-

ment." There is nothing in the make-up of the document inconsistent with this theory.

So much by way of necessary explanation. Let us now turn to Norton's testimony. He was cross-examined as to his interest in the suit, and referred to the assignments that had been put in evidence (of which this was one) to show that he had no interest (1 Rec., 146, 148). The door was thus opened for questions about this reassignment, he was asked whether Jacob Shavor and Albert C. Corse executed any instrument about the month of February, 1864, purporting to reassign to him the patent granted in April, 1863. His answer was as follows (1 Rec., 148):

"On the evening of the 23d day of February, 1864, in my office in this city, before John T. Lamport, a United States commissioner, Jacob Shavor and Albert C. Corse signed and sealed an instrument in writing of the character contemplated in the question, a certified copy of which has been filed in evidence by complainant's counsel; that instrument was in my handwriting, read by me to them, and they stated to the commissioner that it had been read to them, and that they understood it, and thereupon Mr. Lamport subscribed his name as a United States commissioner, having previously sworn those persons to that part of the instrument that was in the nature of an affidavit; and that instrument was left by them with me on that evening."

Is this testimony true?

The evidence against it consists of—

1. Norton's declarations made between the date of the instrument (Feb. 23, 1864) and the date of record (July 24, 1869).

2. Some collateral circumstances.

3. Corse's testimony.

1. Norton's declarations:

They are to be found in his letters, more than a hundred of which are in evidence (Def'ts' Exs. 16 to 123, inclusive; 2 Rec., 1160–1249), addressed chiefly to Shavor or to Corse; in his testimony in the Court of Claims case, Shavor & Corse vs. The United States (2 Rec., 1334); in oral statements to defendants' witnesses Weed (2 Rec., 986), Merriman (2 Rec., 996) and Baldwin (1 Rec., 781), and in representations by acts.

(*a*) As to the letters:

There is hardly a month between March, 1864, and July, 1869, in which there is not one or more letters that contain admissions of Shavor's and Corse's interest in and rights over the patent, and of Mr. Norton's subordination and responsibility to them. In most of the letters the admissions are, of course, only incidental, but, cumulated, they allow but of one inference.

In some of the letters Mr. Norton calls on Shavor to pay expenses relating to the stamp (2 Rec., 1168,1171, 1206). In others he, a lawyer, speaks of Shavor & Corse having the power to obtain an injunction against the manufacture and use of the stamp (2 Rec., 1187, 1235).

In the letter of December 26, 1866, to Postmaster-General Randall (Defendant's Ex. 112, 2 Rec., 1235), he states that Shavor & Corse have authorized him, *as their attorney*, to say that they will accept of $100,000 as compensation, and that "on these conditions they will duly assign and transfer the said patent or invention to the department or U. S. Government," and he subscribes himself "attorney for Shavor & Corse."

Particular attention is requested to the following letters, which contain direct, unequivocal admissions of Shavor & Corse's ownership of the patent:

Ex. 181, 2 Rec., 1368, March 14, 1866, (to P. M. General):

In order to successfully defend my right to this invention as the *original* and *first* inventor, it became necessary to part with the title by deed of assignment to *Shavor & Corse*, as at that time parties to suits in the United States courts could not be witnesses in their own behalf. Since then Congress has changed the law in that respect. But for this I would to-day have been owner of the *entire* invention.

Ex. No. 129, 2 Rec., 1261, June 22, 1866 (to Dr. Baldwin):

I am overruled, and can do no more than submit to the directions of Shavor & Corse, which of course I shall do, as you have requested, and as they through you *have directed*. I can do no more, no less, if I would. Those gentlemen have been more than kind to me, and Mr. Shavor has always done by me as no other live man would do, and I am therefore the very last man on this earth who would oppose their wishes, or refuse to counsel them, or take their advice. They are missing it in this course, as in the end it would *certainly* prove, for I know whereof I speak; but they are the masters, and have the full right and liberty to say *what* shall be done, and I am willing to trust it all to them. I know that they will not do a dishonorable thing by me. Why, my dear sir, we have never for these long years had a scrap of writing between us in our contracts and various agreements.

Ex. 130, 2 Rec., 1262, January 2, 1867 (to Shavor):

I have just had an interview with the P. M. G., as well as a long conversation on our—*your* matters, and one thing is certain, the stamp not only looks well, but is well. * * * Your objections to that part of my letter where I say *my* patent, is all wrong and entirely immaterial to you or Corse, but very material in statement of the case, because the patent *was issued*

to me on the invention made by me, but assigned to you. It would have injured our case to have stated it otherwise. It was my patent, but assigned to you. Whenever *the title* is mentioned, *that* is another thing. The patent had not at that time been assigned. I was speaking of *then*, now (not ?) now.

Ex. No. 114, January 9, 1867, 2 Rec., 1238 (to Shavor):

Now as to King. He told me he had written you, and expected "a paper" in reply, which would give him the one-fourth part, deducting all expenses. "Well," said to him, "if you get that you will get what I could not, for my rightful interest. Why," said I, "I asked them for an absolute assignment, but I did not get it, because they promised me, when I made the assignment to them, that *the title* should remain in them unincumbered, and of course I had no right to press it. And now," said I, "if they give it to you, they will violate that contract, and very likely lose all their rights, and of course they won't be trapped like that."

Ex. 131, 2 Rec., 1264, April 21, 1867 (to Shavor):

It is quite evident that I shall never be able to fully satisfy you about the stamp case, although I did arrange with Mr. Van Winkle the case in such a way as to get the Senate committee to report and pass a bill for $100,000, backed by Senator friends of mine, and of my family. Now, what I propose is this: that you produce an account of all moneys paid out by you up to now in and about *your* stamp, and then add to that the amount I owe you, and then fix a price or sum which you will take for your and Corse's interests, cash down, and then let my own invention come back into my hands again, so that I can manage it, as I am advised is the better way. This will relieve you of a great deal of trouble and anxiety, as well as care on account of this stamp matter, and then you will get your expenses paid out, and the interest thereon paid back to you and to Mr. Corse, as well as what I personally owe you, and I will make efforts to get the money at once for

you; you then can assign the patent back to me. This will let you out from much unpleasantness, and put you upon sailing ground, while I will have to wait until some one who has the right and the power to pay for the use of the invention. I hope you will now evince that same hope and confidence in me as I did in you and Corse when I assigned to you *the whole* things without the payment of a dollar for the purchase of the patent, save a certain agreement that you and Corse would be at the expense of putting the matter in *that* condition when the government would recognize the right and pay up, but which agreement you repudiated last year, by reason of the heavy expenses, and which you refuse and repudiate this year for the same reason, and find much fault with me, that I do not make the P. M. G. do to suit me at once, or compel Congress to pay on a moment's notice. Now I propose to go at this whole matter in an entirely friendly manner, and settle it up, so that I can have my invention and my patent back again, and you get your money and interest thereon, and thus lose nothing, because it is now apparent that we do not, and will not hereafter agree, in the management of this case, and in the expenses attending it. We can do so, and have no unkindness towards either, but be just as friendly as ever we have been. We must do something, as I can never endure these feelings which your letters have brought over and upon me. I am now full of suffering to think that I have been the cause of so much trouble to you. I know that you have always been very kind to me, but you seem to think that I have forgotten it, as you take care to call my attention to it in every letter; I shall never forget your many acts of kindness to me.

Ex. No. 119, April 25, 1867 (to Shavor) 2 Rec., 1244:

You have an assignment of the whole patent, and I have simply nothing. * * * Inasmuch as I made the invention, and labored to get the government to adopt it, before you ever had to do with it, and as I have stood by the thing "through good report and evil report," and got it where you can manage it yourself, and

inasmuch as you and Corse have obtained two-thirds of the invention and patent by an agreement, and three-thirds by assignment, it would seem but fair that you should now release me from debt, and take the whole thing as you now have it. (Read this whole letter.)

Ex. No. 132, 2 Rec., 1266, June 27, 1868 (to Shavor):

Here is another thing. You charge me with bleeding you. Here is your language. Read it, to wit: "I have never had such a bleeding from any person before, and by whom I thought would be the last person in this world." Now, to cut *this* matter short, I have this to say: Most all of those notes were in an arrangement with you to go on in certain inventions, and to share alike in them; and now, without waiting to get through with that part of the business, you turn around, back out, and charge me "*with bleeding you.*" Now, let me ask you one or two questions, and then lay down the rule, and then I will close up this letter. Well, here is the first one: You and Mr. Corse claim to own my patent upon an invention in "post-ffice post-marking and postage canceling device," now in the Court of Claims. Now, how came you by it, and what did you pay for it? *Not one cent;* and yet you go about calling it *your* patent, and treating me as though I were an entire stranger in the matter, and not one thing to do with it. You tell me there is nothing for me to do here in the stamp case, when I know that there is. Now, in this matter, I have only to say that it is my purpose to go to the Postmaster-General and then spread out the whole case just as it is, as to *how* you came by the title of the patent. Then I propose to go to the Court of Claims and there tell the same story. Then I shall, by petition to Congress, set out all these facts and ask compensation as an inventor, and then we can see where the *bleeding is.*

* * * Now, Mr. Shavor, you will find that I have warm personal friends in Troy—men of means and of standing, too. Had you reassigned my patent, as I proposed, when you were finding so much fault with me, I could before now have paid you every dollar back. I now ask you to do so at once, and I will bring you men who will

give you *all* the expenses you have been at, and pay you back all the money you put in other inventions to share with me, and will pay you interest at 14 per cent. at that, and who will also pay up any balance found due Chas. Eddy & Co. on settlement, with same rate of interest. This business must be settled up. The stamp must come back into my hands, and if not done on my return I will commence a suit in equity, compelling you to return to me the title which you took from me without paying me a single dollar or anything else. I am forced to do this because you call me a leech, a sucker, a thief, and many other like names. If you have come to the conclusion that you can thus deal with me, because I have been examined in the Court of Claims, you have made a mistake, for it is in my power to explain that deposition, and to withdraw it from the case.

Ex. 133, 2 Rec., 1266, March 15, 1869 (to Corse):

What do you propose to do about the stamp matter here? I can't act, as I have no authority from you or Shavor, that having long ago been taken from me. I think that you and Shavor ought to assign to me my full one-third part—it would be justice towards me, at least; now I have nothing to show, and you know how Shavor is.

From the letter to Corse, of May 13, 1869, Defendant's Ex. 121, 2 Rec., 1247, it appears that on May 3, 1869, Shavor revoked all powers of attorney that had been given to Norton to do business for Shavor & Corse.

So much for the self-disserving declarations contained in Mr. Norton's business letters.

(*b*) We pass now to the considerations of his deposition in the case of *Shavor & Corse* v. *United States* in the Court of Claims.

The record of that case showing the questions involved in Defendant's Ex. 158 (2 Rec., 1320–1333). Norton's deposition is Defendant's Ex. 159 (2 Rec., 1334).

The suit was begun in Feb'y, 1867. The claim in the original petition was for $400,000, for *four* years' past use of the invention patented April 14, 1863 (p. 1328). It may be noted that Mr. Norton's name is appended to the original petition as attorney and counsel (p. 1329), and that in the body of the petition, near the end (p. 1329), it is alleged that "the entire title to said invention and patent now is fully vested in the said Shavor & Corse as hereinbefore set forth." Shavor, in the verification (p. 1329), swears to the truth of this, and that "no assignment or transfer of said claim, or any part thereof, or any interest therein has been made, except as in said petition set forth."

Mr. Norton was examined as a witness for claimants. To make him competent, under the rules of the Court of Claims, it was necessary for him to answer the interrogatory whether he had any interest in the claim which was the subject-matter of inquiry. His sworn answer (p. 1334) was: "*I have no interest in the claim which is the subject-matter of inquiry.*"

In 1 Rec., 151–3, Norton attempted to explain this testimony in the Court of Claims. The substance of the explanation is that as a *lawyer* he believed that the title was in Shavor and Corse, so long as their reassignment remained unrecorded. This explanation is absurd in itself. It is inconsistent with the letters to Shavor and Corse already cited; and it conflicts with another explanation stated in a pamphlet prepared and submitted by him to the Postmaster-General in 1869, and which is in evidence as Defendant's Ex. 183 (2 Rec., 1369). It is identified by Norton's description (1 Rec., 151–160). The explanation there given (2 Rec., 1380) is that the claim of Shavor and Corse against the United States covered

only the interval between the date of transfer to them (April 2, 1863) and the date of retransfer (February 27, 1864). This last explanation in its turn is falsified by the record of the Court of Claims case (Norton appearing as attorney), which shows that the claim covered four years.

(*c*) With reference to Mr. Norton's statements made to defendant's witnesses between 1864 and 1869, which next claim our attention, it will be sufficient to make a few references to the proofs.

See testimony of Dr. Baldwin, a clergyman and friend of Shavor and Corse, who on their behalf went to Washington on several occasions to use his influence with certain members of Congress (1 Rec., 782); of Weed, who was solicitor of the United States in the case of Shavor and Corse *v.* U. S. (2 Rec., 988–9); of Merriman, who was counsel for Shavor and Corse in that suit (2 Rec., 996–7).

(*d*) Consider next some of Mr. Norton's acts, between 1864 and 1869. They tell the same fatal story which has been clearly revealed already in his spoken and written statements, and in his deposition.

During that time he acted in various capacities for Shavor and Corse, knowing that they claimed title to the patent, and advocating the justice of their claim. In the action of Shavor and Corse *v.* Hoole (see the record, Complainant's Ex. Y, 1 Rec., 514), Mr. Norton was not attorney of record, but he was examined as a witness for plaintiff, and he read the assignment of April 20, 1863, to Shavor and Corse in evidence (1 Rec., 152). His testimony with some documents was the only evidence offered (see 1 Rec., 537, and 2 Rec., 1262–3). The jury brought in a special verdict which contained an ex-

press finding, that by virtue of the assignment from Norton, of April 20, 1863, the patent was then the sole and exclusive property of plaintiffs (1 Rec., 535). Though Mr. Norton was not the attorney of record in this case, it may be inferred from his letters (Defendant's Ex's 36 and 37, 2 Rec., 1171) that he was the real manager of it.

The patent was reissued to Shavor and Corse on August 23, 1864 (1 Rec., 462), and Mr. Norton prepared the papers (1 Rec., 733).

In the applications for relief that were made to the Postmaster-General and to Congress, Norton professed to be acting for and as the attorney of Shavor and Corse. (See Defendant's Ex. 55, 2 Rec., 1183; Defendant's Ex. 112, 2 Rec., 1235; Defendant's Ex. 113, 2 Rec., 1237; Defendant's Ex. 122, 2 Rec., 1249, 1 Rec., 750; Defendant's Ex. 165, 2 Rec., 1361; and see the letters generally.)

In the suit of Shavor and Corse *v.* U. S., Norton subscribed his name as attorney and counsel to the original petition (2 Rec., 1329). He was also a witness, and in his testimony he details what had been done by him on behalf of claimants (2 Rec., 1334, et seq.).

2. Some collateral circumstances:

(*a*) The assignment by Norton to Shavor and Corse (Defendant's Ex. 15 A, 2 Rec., 1143) on its face purports to have been made on April 20, 1863. It was not really made till January 21, 1864, hardly a month before the date of the pretended reassignment. (See Defendant's Ex. 108, 2 Rec., 1230; Defendant's Ex. 18, 2 Rec., 1161; Norton's testimony, 1 Rec., 162.)

It was not recorded till March 8, 1864, fourteen days after the pretended reassignment (2 Rec., 1143). So that, on his own showing (if his statement that as a lawyer

he did not consider an unrecorded assignment as conveying title deserves any consideration), there was no necessity for a reassignment in February, 1864, to give him the title.

(*b*) From the letter of May 17, 1864, Defendant's Ex. 127, 2 Rec., 1259, it may be inferred that the assignment from Norton to Shavor and Corse was not then known by their mutual friends.

(*c*) It is stated in the body of the reassignment that a Congressional committee had objected to giving Shavor and Corse compensation, on the ground that they were not the inventors, but were speculative assignees. (Defendant's Ex. 126, 2 Rec., 1256.)

Now, was that objection made as early as February, 1864?

The first hint of it in the Norton letters appears in that of January 2, 1867. (Defendant's Ex. 130, 2 Rec., 1262.) On the other hand, so far was it from being necessary in 1864 to show that Norton owned the patent, it appears that an important difficulty that had to be surmounted was to convince the Postmaster-General and the committee that Shavor and Corse really held the title.

Thus on March 14, 1864, Mr. Norton sent a certified search of the Patent Office records in relation to the title to the patent to the Postmaster-General. (Defendant's Ex. 165, 2 Rec., 1361.) This was a representation that Shavor and Corse held title, because it was not till July, 1869, that the reassignment was recorded, and the only assignment then on record was that from Norton to Shavor and Corse, recorded six days before the date of this letter, on the 8th of March, 1864. (See Defendant's Ex. 15 A, 2 Rec., 1143.)

In the letter to Shavor of March 11, 1864 (Defendant's Ex. 30, 2 Rec., 1167–8), it is stated:

Your original assignments in the stamp matter I had to leave with the House committee, as well as the original patents, which we can get again, if we have use for them.

And in the letter of May 17, 1864 (Defendant's Ex. 127, 2 Rec., 1259):

The com. are unanimous in the opinion that *your* and Corse's title and right to the improvement in P. O. S. is clear, and beyond a doubt.

3. Corse's testimony (1 Rec., 728, et seq.).

The only persons who can be presumed to have had any knowledge as to whether this testimony of Norton is correct are Lamport, the commissioner, Shavor, and Corse.

Lamport was examined (1 Rec., 789 et seq.). He stated that he had no recollection of the facts; he was sure of nothing except that *some* affidavit had been taken before him. He explained the two appended affidavits signed by himself as containing, according to his understanding of them, only the implied meaning of the jurat written out in words.

Shavor died before there was any opportunity to take his testimony. Before referring to Corse's testimony on the point under consideration, some statement of his and Shavor's relations with Norton, taken from his deposition, may not be out of place.

Shavor and Corse were for many years manufacturers and dealers in stoves in Troy, and with Charles Eddy were the principal partners in the firm of Charles Eddy & Co. They first became acquainted with Mr. Norton in 1859 or 1860, and soon entered into business relations with him, which subsisted for ten years or more. Being

capitalists, they were able to, and did, furnish funds which Mr. Norton lacked for obtaining patents and introducing patented devices. Mr. Corse thus describes the oral agreement that was made in regard to the 1863 patent (1 Rec., 751, 2):

A. Shavor and Corse were to have the title; they were to pay all necessary expenses and were to have one-half of the net proceeds, the balance was to go to Mr. Norton or his heirs.

Q. 252. "Net proceeds," what do you mean by that, exactly?

A. After the expenses we had been to were taken out, the balance was to be divided.

The patent issued on April 14, 1873, to Mr. Norton.

An absolute assignment bearing date April 20, 1863 (not the true date as has been shown), was soon made.

In August, 1864, Shavor & Corse surrendered the original patent and obtained a reissue.

In June, 1864, they began an action at law for infringement of the patent in the northern district of New York against Edmund Hoole, a manufacturer of stamps. The record of this action is set out at length in Complainant's Proofs, Ex. Y (1 Rec., 514). It appears that defendant defaulted and a judgment for nominal damages (all that was asked at the trial) was entered for plaintiffs.

In nearly every year between 1864 and 1869 Shavor & Corse had a petition before one or the other House of Congress for compensation. See the bill and Corse's testimony *passim*.

In February, 1867, they began a suit in the Court of Claims against the United States for compensation for the use by the government's officers of the patented instrument. The record of the case is Defendant's Ex.

158, 2 Rec., 1320. In December, 1869, the court dismissed the petition on the ground that no contract was proved.

So much by way of general statement.

During the first part of Mr. Corse's statement he was examined with reference to a certified copy of the reassignment (Defendant's Ex. No. 15), the complainant having declined to produce the original (1 Rec., 730).

He swore that he did not reassign the patent in 1864, or ever, and that Mr. Shavor did not do so to his knowledge, and that a large number of the absurdly incredible historical statements in the pretended reassignment were false, and that the first he ever heard of a reassignment was in 1869. Read the testimony, pages 730–2.

Subsequently the pretended original reassignment (Defendant's Ex. 126) was produced by complainant Campbell, on his examination. (1 Rec., 774.) It was laid before Mr. Corse, and after examining it he swore that he had no correction to make in the above testimony, and that he never delivered the instrument to Mr. Norton with intent to pass title to the patent of 1863. Read pp. 752–3.

And he gave the following reasons (p. 753) for believing that the document was never made by him:

In the first place, if we parted from the title, we would not have reissued the patent of 1864, thereby putting ourselves in a false position before the government; we shouldn't have sued Hoole, claiming to be the owners of the patent; we shouldn't have went to the Court of Claims, claiming to be the owners of the patent, if we hadn't supposed we owned it; we shouldn't have applied to Congress for relief, if we hadn't supposed that we had the title; nor we wouldn't have spent the amount of money that we spent in the matter, if we didn't suppose that we had the title; nor Mr. Norton never intimated

to me, either verbally or in any other manner, but what the title was in us, and I never heard to the contrary until some time about the first of August, 1869.

The cross-examination was devoted chiefly to the signatures, about which Mr. Corse felt some doubts, and it entirely failed to shake his testimony in chief.

Such is the evidence on this point. Is it possible for any one who has read it carefully to believe that Norton's testimony was true? To us it seems that he must have been out of his mind when he gave it.

Norton is an officer of this court and of the circuit court. We submit in conclusion, that the judgment concerning him given by Judge Blatchford, in his opinion in the case of Robertson *v.* The Secombe Manufacturing Company (10 Blatch., 489), is the proper judgment to be rendered here. Judge Blatchford said:

"The principal defense set up in this case is that the improvements claimed by the plaintiff, in his reissued patent, were previously invented by one Marcus P. Norton, of Troy, New York. So far as regards the contents of a caveat filed in the Patent Office by said Norton on the 21st of June, 1855, it is sufficient to say that the improvements claimed by the plaintiff are not found in that caveat. So far as regards the paper called "an additional caveat," and purporting to be dated August 21st, 1855, and set up in the answer as having been filed in the Patent Office on the 25th of August, 1855, in and with and as part of the said caveat filed June 21st, 1855, it is sufficient to say that after due notice to said Norton, and a trial had before a commission appointed by the Commissioner of Patents, the said paper was, in September, 1871, adjudged by the said commission to be fraudulent, and to have been surreptitiously introduced into the caveat file of said Norton, filed June 21st, 1855, and that thereupon the Commissioner of Patents indorsed on said paper a memorandum, signed by him, that said paper does not

form a valid portion of said caveat. There remains the evidence as to the prior existence in fact as completed inventions, made by Norton, of the plaintiff's improvements. As to this, the burden of proof is on the defendants, and they do not establish the fact satisfactorily. Norton's own evidence is, manifestly, not to be relied upon. The circumstances attending the taking of his deposition in this suit, the contradictions in sworn statements he has made at different times regarding the alleged caveat, and the manner in which, as shown by this record, he caused witnesses to testify in *ex parte* depositions to matters of which they had no recollection make it impossible to rely on his testimony. But the evidence of Norton, and that of the other witnesses for the defendants, shows nothing done by Norton prior to the plaintiff's invention which amounted to more than an unsuccessful experiment."

If ever a witness was, or can be, thoroughly impeached and discredited, Norton is that witness.

IV.—*Of infringement.*

The denial in the answer of the allegations in the bill respecting infringement is certainly inartistic (1 Rec., 64). Nevertheless, the complainant did not except to the answer as insufficient. He treated it as denying infringement, and put in evidence accordingly. In this he clearly acted rightly, for the law is that there are no constructive admissions in an answer in equity. What is not expressly admitted or denied must be proved by the complainant. (Wigram on Disc., §§ 48, ~~115;~~ Langdell's Summary of Eq. Pleading, §§ 79, 84; Young *v.* Grundy, 6 Cranch, 51, by Marshall, C. J.; Brown *v.* Pierce, 7 Wall, 211; Brockway *v.* Coff, 3 Paige, 539; Cropper *v.* Burton, 5 Leigh, 432; Coleman *v.* Lyne's Ex'r, 4 Randolph, 456; Smith *v.* Ins. Co., 2 Tenn. Ch., C, 602; and see Jones *v.* Morehead, 1 Wall., 155.)

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To prove infringement, Campbell's counsel put James, the defendant, on the stand, and obtained from him the stamps Exs. A and B, which represent the classes of combined instruments that have been used successively for postmarking and canceling since James became postmaster. (1 Rec., 69, 70, 71, 72.)

Whether these instruments are substantially the same as the patented improvement depends, of course, very largely upon the construction of the patent. The testimony of experts in respect to such simple mechanisms is of little or no weight. We presume that the court will determine by inspection whether the exhibits come within the patent.

Ex. B (which took the place of Ex. A in 1874 or 1875, 1 Rec., 69, 70) shows a peculiar method of fastening the dating type in place, and in that respect is quite unlike, and substantially better than, the patent. (1 Rec., 71.) Moreover, though it will postmark and cancel at one blow, and, though it is well balanced on the handle, the construction is essentially different from the patent. There is no cross-bar, no canceling cylinder, no postmarking cylinder. If you take one of the postmarkers (*e. g.*, defendant's model, Ex. 4) that have been in use more than thirty years (Chambers' Patent, 2 Rec., 1284; complainant's witnesses, Mastick and Haskell, 1 Rec., 201, 217); if you lessen the height of the metal cylinder and increase the diameter thereof; if then, in place of a circular acting face, you cut two tangent ovals, with suitable designs on each; if you do these things, you have Ex. B, barring (what the patent cannot be construed to claim) the means of fastening the dating type. What is it you have done? You have changed the size and shape of the postmarking cylinder.

Had you not a right to do that? You have changed the design on the acting face of the postmarking cylinder. Had you not a right to do that, too? Where, then, is the infringement?

Further, it is manifest that both Ex. B and Ex. A are substantially unlike the invention described and claimed in the original patent (1 Rec., 460), for in neither of them is the canceler a tube containing an elastic die or type. Consequently there is no infringement of the reissue patent in suit, as that patent, if valid, is for the same invention as the original. That this is proper reasoning was held in Railway Company *v.* Sayles (97 U. S., 554, where this court directed the bill to be dismissed because the alleged infringing machines were not the same as those described in the patentee's *application*, and therefore could not be the same as those described in the patent, it being essential to the validity of the patent that it should be for the invention described in the application. At the bottom of page 563 the court intimates that the same principle is applicable to reissues.

VI.—*Of the directions in the interlocutory decree in respect to the accounting.*

Paragraphs 5 and 7 of the decree are as follows (2 Rec., 1458–9):

"Fifth. That an account be taken of the gains, profits, and advantages *which have in anywise been received or made, or which have arisen or accrued*, on account of the infringements aforesaid, and also of the damages in addition thereto, if any, which the said complainant has sustained by reason of the infringements aforesaid.

Seventh. That it be referred, and the same is hereby referred to Kenneth G. White, esq., of the city of New

York, to ascertain and take and state and report to the court an account of the gains, profits, and advantages *which the said defendant, Thomas L. James, has in anywise received or made, or which have arisen or accrued*, on account of the infringements aforesaid, and also of the damages in addition thereto which the said complainant has sustained by reason of said infringements."

As to the account of profits, we object that the direction is prejudicially broad, and as to the account of *damages in addition*, that it is founded upon an unconstitutional statute.

A. As to the account of profits.

The decree makes it the master's duty to report not only the profits which James has made, or which have arisen or accrued *to him*, but also the profits which have arisen or accrued to the government—for it speaks broadly of profits "*which have in anywise been received or made, or which have arisen or accrued*," or which James "*has in anywise received or made or which have arisen or accrued*."

The master understood this decree as making James accountable for the profits which the government has received, for he says in his report (2 Rec., 1548):

"It (this suit) is for the infringement of a patent, and although against the defendant, James, personally, any recovery which may be had against him will be for "gains, profits, and advantages" which have "arisen or accrued," not to him individually, but by his use of it in his official capacity as postmaster of the city of New York."

And in conclusion he says (2 Rec., 1555): "It results from the testimony, and the master hereby finds, and reports, that the gains and profits which have arisen or accrued to the defendant James *under the decree*, in the

saving of salaries alone," are the items set out at the end of the report.

The final decree (2 Rec., 1664) directs "that the report of the master on this cause be, and the same is hereby, in all respects ratified and confirmed and accepted"; that the gains, profits, &c., which "have been made, or which have arisen or accrued" (without saying, *made by James or accrued to him*), are the sum of $63,000, and that there be a recovery from James of this amount. This shows that the circuit court approved and adopted the master's interpretation of the interlocutory decree.

The question is therefore presented, whether a defendant is liable not only for the profits which he has made *to himself*, but also for the profits which, as agent, he has been the means of making for his principal. The interlocutory decree is erroneous unless this question can be answered in the affirmative. (See Littlefield *v.* Perry, 21 Wall., 206.)

Sec. 4921 Rev. Stats., taken from the patent act of 1870, and providing only in general terms that the complainant shall be entitled to recover, "in addition *to the profits to be accounted for by the defendant*, the damages," &c., leaves it undetermined what *the* profits to be accounted for are. The matter must therefore be decided on the general principles of equity.

Courts of equity decree an account of profits against the infringer of a patent on the theory that he is an *involuntary trustee.* The rule as to patents in its general feature does not differ from other cases of tort. Thus, in Lee *v.* Alston (1 Ves., 82), Lord Eldon says that when one enters wrongfully upon the land of another, and

makes money thereby, he shall be considered to be a *bailiff* and held to account for what he has made.

This involuntary trust extends only to the profits which the infringer has "*actually made*"; by which is understood profits "made," not for a principal or master, but to the defendant himself, so that he has control of them without being under obligation to answer for them to any person unless it be the owner of the patent.

In Livingston *v.* Woodworth (15 How., 546), the court said:

> In a suit in equity for an injunction and an account of profits of a patented machine the defendant is accountable only for what profits he actually made, not for what, by diligence and skill, he might have received.

And this is said to be the true rule in Dean *v.* Mason (20 How., 203).

In Packet Co. *v.* Sickles (19 Wall., 611) the court again said:

> The rule in suits in equity of ascertaining by a reference to a master the profits which the defendant has made by the use of the plaintiff's invention stands on a different principle. It is that of converting the infringer into a trustee for the patentee of the profits thus made.

In Conover *v.* Mers (6 Fish. P. C., 508), Judge Woodruff lays it down that when, for any reason, the defendant has made no profits the complainant can recover none. (See, also, Cawood Patent, 94 U. S., 710; Birdsall *v.* Coolidge, 93 U. S., 68; Carew *v.* Fabric Co., 5 Fish. P. C., 108; Wooster *v.* Taylor, 14 Blatch., 404.)

The question of the liability of a workman to account for profits made by his employer came up in Sargent *v.* Learned (2 Curt., 349), and Mr. Justice Curtis there said:

> As against Seagrave I think the complainant entitled

to a decree for an injunction and an account. But he, Learned, the other defendant, in the employment of Seagrave, no decree for an account can be had against him, for he has nothing to do with any profits.

In Elizabeth *v.* Pavement Company (97 U. S., 137), the infringement consisted in the laying of the patented pavement in the streets of Elizabeth. The defendants were the City of Elizabeth, the New Jersey Wood-Paving Company, and Geo. W. Tubbs, who, in his own name, made the contracts with the city in behalf of the New New Jersey Wood-Paving Company, receiving a salary for his superintendence.

The circuit court rendered a decree for profits against all the defendants. On appeal this decree was reversed by the Supreme Court so far as it affected the city of Elizabeth and the agent, Tubbs, because neither of them had made any profits.

The court, after remarking that the subject of profits recoverable in equity is surrounded with many difficulties, says:

But one thing may be affirmed with reasonable confidence, that *if an infringer of a patent has realized no profits from the use of the invention, he cannot be called upon to respond for profits;* the patentee in such cases is left to his remedy for damages.

The bill in Elizabeth *v.* Pavement Company was filed before the statute of 1870 was enacted. But that is not material to the present discussion. The act of 1870 did not change the law in respect to what profits are recoverable in equity. It merely enabled a complainant in equity in certain cases to recover "*the damages in addition,*" or "*the damages beyond,*" which he had sustained by reason of the infringement. (Marsh *v.* Seymour, 97 U. S., 360; Birdsall *v.* Coolidge, *supra;* Packet Co. *v.*

Sickles, *supra;* Buerk *v.* Imhaeuser, 14 Blatch., 19; Wooster *v.* Taylor, *supra;* Carew *v.* Fabric Co., *supra.*)

Again, in Elizabeth *v.* Pavement Company, the New Jersey Wood-Paving Company, which alone had made profits, was a party to the record, and as to it the circuit court's decree was not disturbed, while in the present case the United States, which alone has made profits (if any have been made), is not a party to the record and cannot be sued. This, also, is immaterial, for the reason given for the decision in Elizabeth *v.* Pavement Company was that neither Tubbs nor the City of Elizabeth had made any profits. Further, the rule which forbids the bringing of a suit against the sovereign in its own courts is founded on great principles of public policy, and the court will not be astute to invent evasions of it. (Carr *v.* U. S., 98 U. S., 433; Siren, 7 Wall., 152; Heaton *v.* Quintard, 7 Blatch., 73.)

In every essential particular Elizabeth *v.* Pavement Company is on all fours with Campbell v. James, and it seems to be a controlling decision.

B. As to the damages:

Prior to the patent act of 1870 courts of equity could not give damages to a patentee suing for infringement. (Livingston *v.* Woodworth, 15 How., 546; Elizabeth *v.* Pavement Company, 97 U. S., 126.)

The remedy of the patentee for damages was by action on the case at common law. (Curt. Pat., § 344; Addison on Torts, 3d Engl. ed., p. 49.)

Article VII of the amendments to the Constitution provides that, "In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

We claim, therefore, that infringers of patents are absolutely entitled to a trial by jury when damages are sought, and that the act of Congress (Rev. Stats., § 4921), which ostensibly gives courts of equity power to assess damages, is in that respect void.

With reference to the meaning of the words "suits at common law," Judge Story says, in Parsons *v.* Bedford (3 Peters, 447):

By common law, they (the framers of the amendment) meant what the Constitution denominated in the third article, "law"; not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered; or where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit.

In Shields *v.* Thomas (18 How., 253) it is said that this provision of the seventh amendment "should be understood as limited *to rights and remedies peculiarly legal in their nature*, and such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law."

In Scott *v.* Bilgerry (40 Miss., 144) it is said:

A suit to recover damages or compensation for the breach of a contract for the sale and delivery of personal property is a purely legal demand, and is properly the subject of a "suit at common law"; and the party cannot be deprived of his right of trial by jury by a legislative or executive declaration that the subject-matter shall be cognizable in a court of equity. What belonged to the jurisdiction of courts of equity at the adoption of the Constitution belongs to them still, and whatever was then cognizable in the courts of common law remains a "suit at common law," in which the parties are entitled to a jury trial—a right justly dear to the Amer-

ican people, and which it is the duty of the court to preserve, protect, and defend.

In Hudson *v.* Caryl (44 New York, 553), it was held that an action to abate a nuisance and to recover the damages occasioned thereby must be tried by jury.

In Davis *v.* Morris (36 New York, 572, 573), it was held that where the facts stated, arising out of the same transaction, entitle a party to both legal and equitable relief, the right to the legal relief must be tried by jury.

In Reubens *v.* Joel, (~~44 New York, 493~~) 13 N.Y. (3 Kernan) 493, Selden, J., says:

What are the distinctions between actions at law and suits in equity? The most marked distinction obviously consists in their different modes of relief. In the one, with a few isolated exceptions, relief is invariably administered and can only be administered in the form of a pecuniary compensation in damages for the injury received; in the other, the court has a discretionary power to adapt the relief to the circumstances of the case. * * * Another leading distinction between common law actions and suits in equity consists in their different modes of trial. The former are to be tried by a jury, the latter by the court. Can the legislature abolish this distinction? * * * It is, in my judgment, clear that the legislature has not the constitutional power to reduce all actions to one homogenous form, because it could only be done by abolishing trial by jury, with its inseparable accompaniment, compensation in damages, which would not only conflict with Art. 2, § 2, which preserves trial by jury, but would in effect subvert all jurisdiction at law, as all actions would thereby be rendered equitable, or by abolishing trial by the court, with its appropriate incident, specific relief, which would destroy all equity jurisdiction and convert every suit into an action at law.

(See also Bradley *v.* Aldrich, 40 N. Y., 504; Lewis *v.* Varnum, 12 App. Pr., 305; Wheelock *v.* Lee, 74 N. Y.,

495; Whitehurst *v.* Coleen, 53 Ill., 247; King *v.* Hopkins, 57 New Hamp., 334; Thomas *v.* Bibb, 44 Ala., 721.)

VII.—*Of the exceptions to the master's report.*

The evidence that was before the master is not complicated.

Both parties put in portions of the final hearing record, defendant taking the same objections to what complainant offered as when the alleged evidence was originally offered. (2 Rec. 1501; 1545–6.)

Complainant called several employés of the post-office to show that if separate postmarkers and cancelers had been used more clerks must have been employed, if postmarking and canceling had been done in the same way and within the same time, and what the salaries of such clerks would have been, namely, Yeoman (2 Rec. 1460) and Steele (2 Rec. 1492), with reference to the third division; Lawrence (2 Rec. 1480), with reference to the foreign department; and Gaylor (2 Rec. 1470, 1475), with reference to the fourth division and the city stations. Wareing (2 Rec. 1497, 1547) was examined as to the number of combined instruments that have been used; Norton (2 Rec. 1499, 1546) and Campbell (2 Rec. 1500) to show that no license fee or royalty for making, using, or selling the patented invention has been established; and Kittle (2 Rec. 1484, 1546) to express some opinions.

No evidence of the pecuniary value of the postmark, or of putting it on the envelope apart from the postage stamp, or of transmitting the mails with any particular decree of rapidity was offered; and there was no evidence that complainant has been deprived of anything

by the infringement, which but for the infringement he would have had.

For the defendants no evidence was offered as to the number of clerks who would have been required if separate instruments had been used, that question not seeming to be involved in the case.

Burchard (2 Rec., 1509, 1512) and Bogia (2 Rec., 1512), two of the witnesses from Philadelphia, who were examined at the final hearing, were called to testify as to the perfection of the postmark and cancellation marks made by the unbalanced instruments used at the Philadelphia post-office before the cross-bar instruments were introduced by the Post-Office Department, and as to the number of clerks employed before and after such introduction.

Waring (2 Rec., 1514), O'Connor (2 Rec., 1519), Magee (2 Rec., 1520), Beach (2 Rec., 1525), Andrews (2 Rec., 1531), and Richards (2 Rec., 1538), all employed in the New York post-office, were called with a view of defining, to a certain extent, the advantage of balancing the postmarker and canceler upon the handle. They testified as to experiments recently made in the post-office with Master's Ex. 5 (a cross-bar instrument) and with Master's Ex. 4 and 6, which we presume the court will find to be substantially like the unbalanced instruments described in the testimony for final hearing.

Mr. James (2 Rec., 1502, 1505) testified that he had not personally made any profits or derived any advantages from the use of the infringing machines. A conversation between him and complainant's solicitor, Mr. Norton, was also brought out (2 Rec., 1503) for the purpose of strengthening the inference afforded by the other

circumstances of the case, that the owner of this patent is not interested in maintaining a close monopoly of the privileges secured by it.

The master reported (2 Rec., 1548 *et seq.*) that the "gains and profits which have arisen or accrued to the defendant James under the decree" amount to the sum of $63,000. His report is based upon the theory that if the infringing machines had not been used separate postmarkers and cancelers must have been used, more clerks must have been employed, and consequently the salaries of such additional clerks have been saved. It covers the time between April 1, 1873 (at or about which date Mr. James became postmaster), and January 1, 1880 (the day prior to the date of the report).

To this report James duly filed the eighteen exceptions, which have been hereinbefore set out at large in the assignment of errors. They may also be found at 2 Record, 1559, *et seq.*

A. Exceptions 12, 14 (G and H), and 15 present the question whether the salaries of the clerks whose services would have been required to postmark and cancel, in the same way and in the same time had non-infringing instruments been used, are a proper measure of gains, profits, and advantages under the circumstances of this case.

To be perfectly clear, we admit at the outset that *savings* (in respect to salaries or anything else) are, if proved, "gains, profits, and advantages" within the meaning of the law. This is settled by abundant authority.

But does evidence that additional clerks would have been needed had the postmaster compelled to use separate postmarkers and cancelers (and this was all the

evidence before the master. See the questions put to James by Campbell's counsel at 2 Rec., 1508. These are substantially the same questions that were put to all the other witnesses called by Campbell)—does such evidence standing by itself prove that the salaries of such additional clerks have been in fact *saved?* We claim that it does not; that between the premise and the conclusion there is a gap which the master spanned, not by the exercise of legitimate inference but by pure speculation and guess-work.

The salaries have not been saved unless more clerks would have been employed, if the infringing machines had not been used. This is a question of fact to be proved by evidence. There is not in the whole case a particle of evidence to show that more clerks would have been employed. There never was a time in the history of the post-office when any more clerks were employed because separate postmarkers and cancelers were used; and there never was a time when any fewer clerks were employed because combined postmarkers and cancelers were used. Prior to 1860 the postmark and the cancellation mark were usually identical, being made by one blow of the postmarker. Then came the order to Postmaster Dix prohibiting the use of the postmarker as a canceler and directing cancellation to be performed by a separate instrument. General Dix reported that this could not be done without an increase of his clerical force. But what in point of fact was done? No more clerks were in fact employed. Instead the mails were delayed (Deft's Ex. 6, Dix, 2 Rec., 1142), and in a few days combined instruments, that have been used in one form or another down to the present time, were introduced. Now, who can say that if the combined instruments

had not come into use more clerks would actually have been employed? The circumstances show four lines of action open: 1st. Employ more clerks; 2d. Delay the mails; 3d. Do away with the postmark altogether; or, 4th. Revoke the order requiring cancellation to be performed by a separate instrument.

There is no basis in the evidence for saying that one of these lines of action would have been adopted rather than another. Neither the value of dispatching the mails with a particular degree of promptness, nor that of postmarking apart from the postage stamp, nor that of the postmark itself is shown (Master's report, 2 Rec., 1552, middle). Nor is the value of all or any of those things shown to be equal to or greater than or to stand in any certain ratio to the salaries of the additional clerks.

What advantage has been obtained by using the infringing machine? It is manifestly the securing without delaying the mails a postmark on the envelope distinct and separate from the cancellation mark on the postage-stamp. That was the end or purpose sought to be accomplished. The master in his report has lost sight of the end aimed at or has regarded it as fixed and immutable; and looking at the infringing machines only as a means of accomplishing the immutable end has found that they possess a particular advantage over certain other means of accomplishing the same end. We have not used the infringing machines *because* they saved the salaries of clerks, but because they gave us a postmark on the envelope distinct from the cancellation mark. The value of the end accomplished may be greater or less than the advantage pertaining to the infringing machines as a means. There is no evidence

showing it to be greater, and therefore we claim that the salaries of the clerks who would be required to do the same work with separate instruments are no measure of the actual advantages that have been obtained by the use of the infringing machines. The report, which finds that making postmarks on envelpces distinct and separate from the cancellation marks is worth so large a sum as $9,000 a year in a single post-office, is based on the merest conjecture and speculation.

Let us suppose a case:

Livingston *v.* Woodworth, (15 How., 546), is one of the few cases in the reports bearing upon the question of what profits are recoverable when the infringement consists merely in the *use* of a patented machine. It appeared that the defendant had planed with the patented planing-machine several million feet of boards at an average cost of $1.50 per 1,000 feet, and that he had sold them for $2 per 1,000 feet. The Supreme Court held that complainant could not recover more than fifty cents per 1,000 feet. Now suppose it had been shown that 1,000 feet of boards could not be planed by hand at a less cost than $10 per 1,000 feet, would the profits derived by the defendant have been $8.50 per 1,000 feet, viz, the difference between the cost of planing the boards by hand and that of planing them with the patented machine? Manifestly not. The defendant used the complainant's machine for the purpose of obtaining the profits on the sales of the boards, and such profit was the only advantage he derived from his unauthorized acts. His profit was the value to him of the end he had in view.

Again: Crossly *v.* The Derby Gas Light Co. (3 Mylne & Craig, 428), is another case where the infringement

consisted in the use of a patented machine, namely, a gas meter. It appeared that before the introduction of the meter the company determined the amount of gas supplied to its customers by ascertaining the capacity of the burners used and stipulating as to the time during which they should be used. Frauds were frequently practiced by exceeding the stipulated time and by altering the burners; so that it was calculated the company had to furnish 1,250 cubic feet of gas for every 1,000 feet for which it received pay. The meters prevented these frauds, and the master reported that the company had derived a benefit equivalent to profit of 25 per cent. in the saving of gas. Lord Chancellor Cottenham, holding that the grounds upon which the master proceeded did not support his conclusions, pointed out a number of elements that ought to be considered, but the consideration of which would be attended with many difficulties, and recommended a compromise.

Now, what could have been more simple in this case, where Lord Cottenham found the ascertainment of profits so nice and intricate and difficult a matter, than to have held that the result, to wit, the prevention of frauds which was attained by the use of the meter, could have been obtained by the company's employing and stationing at every house where gas was burned an inspector who would see to it that the burners were not altered, and that the stipulated time was not exceeded; and that, therefore, the saving of the salaries of such inspectors was gains and profits which defendant had derived by his wrongful acts? That is the rule followed by the master in Campbell *v.* James. It is very easy to apply, and by means of it reasonably exact results can be obtained. But its fault is that it is fundamentally unjust.

B. Exceptions 9, 10, 11, 14 (1), present this question. If it was proper in this case to make a comparison as to advantages in use between the infringing machines and other instruments, ought not the infringing machines to have been compared with unbalanced combined instruments rather than with separate postmarkers and cancelers?

a. The unbalanced instruments referred to are those having the handle directly over the post-marker and the canceler attached to one side as shown in Defendants' Exs. 135 and 136, which are the identical instruments that were used, the first in the Buffalo post-office from 1860 to 1863, and the second in the Geneva post-office from 1861 to 1863 (depositions of Powers and Anthony, 1 Rec., 800, 816).

These instruments could be constructed by any man of ordinary intelligence, from the description contained in the Ransford & Low patent of August 9, 1859. (Defendant's Ex. 145, 2 Rec., 1270.) See expert testimony of Chambers and Robertson. (2 Rec., 990, 887, 889, 890, 908–910.)

They were manufactured and sold prior to the commencement of the war by John H. Zevely and E. S. Zevely. (2 Rec., 927, 952.)

They were used in many post-offices prior to the issuance of the patent in suit (April 14, 1863), to wit:

Philadelphia. (Depositions of Ireland, Rees, Bogia, Burchard, 2 Rec., 1406–1446.)

Cleveland. (Depositions of Wheeler, Bishop, Cottrell, Coon, Warner, Albinger, Nott, Beardsley, 1 Rec., 662–721; 2 Rec., 999–1023.) See, to the same point, depositions of complainants' witnesses, Bassett and Cook. (1 Rec., 171, 195, 207.)

Cincinnati. (Depositions of Geilfus and Rupp, 1 Rec., 819, 830.)

Janesville, Wis. (Deposition of Miller, 2 Rec., 871.)

Buffalo. (Deposition of Powers, 1 Rec., 800.)

Geneva. (Deposition of Anthony, 1 Rec., 816.)

New York. (Deposition of Yeoman, Ryer, Dix, Corbett, and Riley, 1 Rec., 835, 843; 2 Rec., 849–860.)

In most of the above offices these instruments were used during a period of several years and they proved themselves adequate to the work of efficient postmarking and canceling. They were discontinued on the introduction by the department of balanced instruments, which doubtless were better. But the unbalanced instruments were themselves clearly better than separate postmarkers and cancelers.

Bogia and Burchard (2 Rec., 1509–1512), in their testimony before the master, show that the impressions made by the unbalanced instruments at Philadelphia were as good as those made with the cross-bar instruments; and that no more clerks were employed than when cross-bar instruments were used.

The witnesses from the New York office who experimented with Master's Exs. 4, 5, and 6 show (if their testimony based on their experiments has any weight) that, at an ordinary rate of speed, the unbalanced instruments make as good impressions as the balanced, and that the advantage which the balanced instruments possess for rapid work, although always existing, may be diminished by reducing the weight of the instruments. See especially the testimony of Andrews, the most expert stamper in the office, and of Richards his supervisor (2 Rec., 1531, 1538).

b. The question whether these unbalanced instruments are covered by the patent in suit has been already sufficiently discussed. We claim that if they are, the patent is anticipated, and that if they are not, they were open to the public to use during all the period of infringement, and, consequently, the master should have taken them as the basis of comparison.

The rule of law on which we rely is thus stated in Mowry *v.* Whitney, 14 Wall., 620, at p. 651:

The question to be determined in this case is, What advantage did the defendant derive from using the complainant's invention over what he had in using other processes then open to the public and adequate to enable him to obtain an equally beneficial result? The fruits of that advantage are his profits. They are all the benefits he derived from the existence of the Whitney invention. It is found that there are other processes by which the inherent strain caused by unequal cooling could be and was prevented, counteracting which strain was the sole object of the complainant's invention, and a car-wheel could be prepared for similar service, valuable in the market, and salable at a price not less than was obtained for those which the defendant manufactured. The inquiry, then, is: What was the advantage in cost, in skill required, in convenience of operation, or marketability, in bringing car-wheels, by Whitney's process, from the condition in which they are when taken hot from the molds, to a perfected state, over bringing them to the same state by those other processes, and thus rendering them equally fit for the same service? That advantage is the measure of profits." (See also Littlefield *v.* Perry, 21 Wall., 228.)

A lucid exposition of the reason of this rule is given by Mr. Justice Strong, in Locomotive Safety Truck Company *v.* Pennsylvania Railroad, vol. 2 Federal Reporter, 677 (issue of June 29, 1880). He says:

The rule is that the measure of profits, as distin-

guished from damages, for which an infringer is responsible, is the aggregate of gains or savings which he has made from the use of the patented invention above what he could have made in doing the same work from the use of any other device or process existing at the time, capable of accomplishing the same purpose, or attaining the same result and *free or open to public use.*

The rule is founded upon the soundest reason. *It is only that which was previously not known, or, in other words, it is only the addition to human knowledge and convenience which a patentee has made, that he can be said to own. The patent laws give him the exclusive right to that addition and to the advantages resulting from it, and to nothing more.*

In Railway Co. *v.* Sayles, 97 U. S., 554 (see p. 556, top), the account appears to have been stated on the principle followed by the master herein. The counsel for the appellee (complainant) conceded that, in the light of the decision in Mowry *v.* Whitney, the principle adopted by the master was not correct, and consented that the decree be reduced nearly one-half.

In ruling against us on this point, Judge Wheeler said (2 Rec., 1645):

It is said that the master erred, because the defendant might have used another form of stamp which would not have been an infringement, and that the saving by using the patented invention instead of that would have been much less than the saving reported. It does not appear, however, but that such use of the other form would have been an infringement; and if that appeared, it appears that the other form was not known to the defendant, and that the saving reported was, in fact, saved by substituting the patented improvement for what was known and would probably otherwise have been used.

Let us consider this:

Of course, if the use of the unbalanced instruments would have been an infringement, nothing more is to

be said. We think it strange, however, that Judge Wheeler should have said, in his first opinion, that the patented invention was a balanced instrument, and that he should say here that it does not appear but that the use of the unbalanced instrument would have been an infringement. For if balancing is a material factor in the patented combination, the use of an instrument that does not have that factor cannot be an infringement. This is well settled. (Prouty *v.* Ruggles, 16 Peters, 336; Gould *v.* Rees, 16 Wall., 544, and cases cited.) To us there appears to be an irreconcilable conflict between Judge Wheeler's two opinions.

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Besides the doubt expressed as to infringement, the learned judge says that the unbalanced instruments were not known to James, as though that were a reason for not adopting them as the basis of comparison. But two of James's subordinates knew of them. Ryer, a stamping clerk, and Yeoman, now a superintendent, formerly a stamping clerk, both swear that unbalanced instruments (of which Defendant's Ex. 5 is the model) were used while Dix was postmaster. (1 Rec., 835 *et seq;* 843 *et seq.*) The postmaster of a great office, like that at New York, ought not to be presumed to be familiar with all the details of the business he supervises, Had the question of discarding the machines which have been held to infringe been contemplated, naturally and probably the postmaster would have consulted with these very subordinates and thus obtained knowledge of the unbalanced instruments. Moreover it makes no difference in law whether James in fact knew or did not know of the unbalanced instruments. They had been publicly used for years and were known to many persons, as we have shown; they made a part of the stock

of public knowledge. Norton improved upon them (if you please to consider it so) by making a balanced instrument. He gave the improvement to the public, and in return received the conditional guarantee of the Nation that he or his assigns should reap all the advantages of the improvement (but of nothing else) during a limited period. In no suit ought anything in addition to those advantages to be recovered. Neither in Mowry *vs.* Whitney nor in any of the cases which have followed the rule there laid down has the defendant's *knowledge in fact* of the other processes or machines that were free to be used been made a condition of the application of the rule. In Locomotive Safety Truck Co. *v.* Penn. R. R., *supra*, the master did not find that the locomotive which might have been used was known to the defendant. He found only "that this latter form of locomotive was then in common and unrestricted use."

The conclusion of the extract above given, from the opinion of the circuit court herein, is to the effect that "the saving reported was, *in fact*, saved by substituting the patented improvement" for separate postmarkers and cancelers. This is a grave error in fact, if by patented improvement is meant the balanced combination. It is not pretended that James made such substitution. He found the balanced stamps, like Complainant's Exhibit A, in use when he became postmaster in 1873; and the uncontradicted and unimpeached evidence is that they had then been in use at the New York office since the last part of the year 1860; that in 1860 they were substituted in the place of unbalanced combined instruments, like Defendant's Ex. 5; and that such unbalanced instruments, when adopted, took the place, not of separate postmarkers and cancelers (though

they were used perhaps for a day or so) but of postmarkers alone, the impressions from which had commonly been made, in whole or part, upon the postage-stamp, so that the postmark and cancellation mark were identical. (See James' depositions, 1 Rec., 69; 2 Rec., 1506; Yeoman's depositions, 1 Rec., 835, *et seq.*; 2 Rec., 1462; Ryers' deposition, 1 Rec., 843, *et seq.*; Dix's deposition, 2 Rec., 849, *et seq.*; Corbett's deposition, 2 Rec., 855, *et seq.*)

C. Exceptions 2, 3, 4, 5, and 14 (E & F) raise the question whether James has personally received or made any gains, profits, or advantages.

Mr. James testifies (2 Rec., 1502–3; 1505) that the salaries of the clerks employed in stamping are paid by the Post-Office Department; that when stamps are wanted a requisition is made on the department, which authorizes the office to procure and pay for them; that the department has paid for all of the stamps that have been used in the office; that he has never manufactured or used or caused to be manufactured or used any combined stamps except as postmaster; that personally he has neither made nor received any gains, profits, or advantages from the manufacture or use of the combined stamps; and that it is no benefit to him what stamp he uses.

This testimony is consonant with the circumstances of the case, is entirely uncontradicted, and settles the facts.

It will be observed that the master's report is in keeping with this testimony. It says (2 Rec., 1548): "Any recovery which may be had against him (James) will be

for gains, profits, and advantages which have arisen or accrued, not to him individually, but by his use of it (the patent) in his official capacity as postmaster of the city of New York." The master does not hold that James has personally made any profits, but that under the interlocutory decree he is liable for the profits which the government has made. Whether the interlocutory decree is lawful in form has already been sufficiently discussed. What was said there applies here as well.

James's position in this matter is substantially identical with that of Geo. W. Tubbs in the case we have already cited on this point (Elizabeth *v.* Pavement Company, 97 U. S., 126). Tubbs, a salaried superintendent, made contracts in his own name on behalf of the New Jersey Wood Paving Company with the city of Elizabeth; the contracts brought profits to the paving company, and the circuit court decreed that both it and its agent, Tubbs, were liable for such profits. This court reversed the decree, so far as Tubbs was concerned. *The fact that James is the agent of the government certainly ought not to put him in a worse position than if he were the agent of a private corporation.*

Nothing remains under this head except to point out a mistake of law which Judge Wheeler seems to have fallen into in his discussion of this subject (2 Rec., 1645–6). If we understand his meaning correctly, it is that the title to the money with which clerks in the New York post-office are paid, is vested in the postmaster, so that if any clerks are dispensed with, he personally saves their salaries. If that be so, it is argued, it makes no difference, so far as liability in this case is concerned, whether the postmaster keeps the savings him-

self, turns them over to the government, or throws them into the sea. This necessitates a somewhat extended investigation of the statutes for the purpose of ascertaining the character with which the money that is paid to clerks in salaries is stamped.

Rev. Stats., sec. 3860, provides that the clerks shall be paid out of the surplus revenues of the office, that is to say, the excess of box-rents and commissions over and above the salary assigned to the office.

R. S., § 4051. "All postages, box-rents, and other receipts at post-offices shall be accounted for as part of the postal revenues." §§ 3843, 3844 require postmasters to render sworn accounts of such receipts to the Postmaster-General.

§ 407. "The postal revenues and all debts due the Post-Office Department shall, when collected, be paid into the Treasury of the United States under the direction of the Postmaster-General."

[The procedure of payment into the Treasury of sums withheld from receipts by postmasters for their salaries, the hire of clerks, &c., is as follows:

1. An appropriation by Congress for the ensuing year, § 3674 and § 4054; see also § 3668, which shows that the Postmaster-General must submit estimates to Congress for appropriations under a number of heads, including "compensation of postmasters," "compensation of clerks," &c.

2. The Postmaster-General fixes the amount of the allowance of each office by order (§ 3860).

3. The Postmaster-General certifies his order to the auditor (§ 405).

4. Under the direction of the Postmaster-General,

postmasters deduct their salaries and expenses, *authorized by law* (§ 3861).

5. Vouchers for all deductions are submitted to the auditor, and no deductions shall be valid unless found in conformity with law (§ 3862).

6. If found in conformity with law (*id.* and § 4057), the auditor states and certifies an account thereof to the Postmaster-General (§ 294).

7. Thereupon, the Postmaster-General issues his warrant to the Treasurer to carry the amount to the credit of the postal revenues, and to the debit of the proper appropriations upon the books of the auditor (§ 406)].

Section 4049 provides that the accounts of the postal service shall be kept in such manner as to exhibit separately the amount of expenditure for enumerated objects, among which are "compensation of postmasters," "compensation of clerks," "postmarking and canceling stamps," &c.

Rev. Stats., Title XL (The public moneys) *passim*, (especially §§ 3639, 3641, 3642) shows that the postal revenues, which we have seen include *all* receipts at post-offices, are a part of the "public money."

§§ 3846, 3847, 3848 provide that all "public money" collected by postmasters must be safely kept: that it must be deposited in designated depositories at given intervals.

§ 4053. Willful neglect on the part of any postmaster "*having temporary custody*" of any money "which by law is a part of the postal revenues," to deposit the same as required, constitutes the crime of embezzlement.

§ 3623 shows that all money disbursed by postmasters under § 3860 is advanced out of an appropriation.

§ 4057 shows that where any money has been improp-

erly paid out of the funds of the Post-office Department the Postmaster-General must cause suit to be brought (against the payee) to recover back the money so paid, with interest.

These sections of the statutes, taken together, make it clear that the money paid to clerks in salaries is the money of the United States, never the money of the postmaster. The postmaster is the conduit pipe through which the revenues flow into the Treasury and out of it. As indicated in one of the sections above cited, he is the mere *temporary custodian of public money*. It necessarily follows that if ever the salaries of clerks are saved the United States alone makes the saving; neither in fact nor in law does the postmaster make it.

D. The final decree (fifth paragraph, 2 Rec., 1664) indicates on its face that the $63,000 for which James is held liable are profits, not damages. Nevertheless the master reported (2 Rec., 1553) as follows: "No damages, apart or separate from profits, as the master understands it, are claimed. The claim is for the profits made by the defendant, which under the decision of the courts are the same thing as damages, and are called damages," and this part of the report, like all the others, is confirmed and ratified in the final decree. (2 Rec., 1664.) On this basis counsel for the appellees will probably contend (as we infer from their exceptions 11 and 12 to the report 2 Rec., 1558) that, if James is not liable for the profits as such, he is responsible for an equal amount as damages, and that accordingly the court should send the case back with directions to enter a new decree against James for the $63,000 as damages.

Our exceptions 6, 7, and 8 raise the question.

a. There was no evidence before the master except

such as related to the question whether any profits had been made by the use of the infringing machines, and whether any license fee or royalty for the use of the patented invention had been established. On the latter point it was proved that there was no established license fee (2 Rec., 1499; 1500).

The evidence, therefore, presents the question squarely whether, there being no established license fee, the defendant is responsible for the profits that have been made *as damages*.

b. Now, what are damages and how proved?

The damages referred to in Rev. Stats., § 4921, as recoverable in equity, are, of course, the same as those which it is provided in § 4919 a jury may find in an action on the case; that is, they are the "actual damages" which the complainant has sustained by the infringement. (Bancroft *v*. Acton, 7 Blatchf., 505.)

"Damages are given as a 'compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. Compensatory damages and actual damages mean the same thing; that is, that the damages shall be the result of the injury alleged and proved, and that the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party. (2 Greenl. Ev., 10th ed., § 253.)" (Birdsall *v*. Coolidge, 93 U. S., 68.)

The burden is upon the complainant to prove his loss satisfactorily. (Birdsall *v*. Coolidge, *supra;* Blake *v*. Robertson, 94 U. S., 728.)

Actual damages must be calculated, not imagined, and arithmetical calculation cannot be made without *certain* data on which to make it. (Mayor, &c. *v*. Ransom, 23 How., 487.)

The decisions of Judge Johnson in Buerk *v.* Imhaeuser (14 Blatch., 20), and of Judge Blatchford in Ingersoll *v.* Musgrove (14 Blatch., 541), show with what exactness the *data* on which a calculation of the amount of damages is based must be proved.

c. Damages sustained by the complainant and profits made by the defendant are not the same thing.

They are clearly contrasted in the statute (Rev. Stats., § 4921). See this point taken in Holbrook *v.* ——— (17 P. O. G., 55), where Lowell, J., says that profits are never of themselves the measure of damages at law.

In many reported cases the distinction between profits and damages is clearly pointed out. (See Birdsall *v.* Coolidge, *supra;* Burdell *v.* Denig, 92 U. S., 719–20; Marsh *v.* Seymour, 97 U. S., 360; Philip *v.* Nock, 7 Wall., 460; Seymour *v.* McCormick, 16 How., 480; Buerk *v.* Imhaeuser, 14 Blatch., 19; Ingersoll *v.* Musgrove *Id.*, 541; Wooster *v.* Taylor, *Id.*, 404.)

In England the difference is so marked, that Lord Chancellor Westbury held, in the House of Lords, that going for the profits was a *condonation* of the damages. (Neilson *v.* Betts, L. R., 5; H. L. C., 1.)

It is not denied that, under certain circumstances, the profits made by the defendant may be considered in arriving at complainant's damages. Thus in Birdsall *v.* Denig, *supra*, the Supreme Court, after saying that at law established license fees and in equity profits are the true measure of recovery, state: "In the absence of satisfactory evidence of either class in the forum to which it is the most appropriate, the other may be resorted to *as one of the elements* on which the damages or the compensation may be ascertained." And in Philip *v.* Nock, *supra*, the same court says in respect to a case where

the test of established royalties cannot be applied: "In arriving at their conclusion the profit made by the defendant and that lost by the plaintiff are *among the elements* which the jury may consider." But, it should be noted, profits are only *one of the elements* to be considered. To repeat what Judge Lowell said in Holbrook *v.* ———, *supra*, profits are never *of themselves* the measure of damages. There must be evidence that the infringement has caused the complainant to suffer a *loss;* that, but for the infringement, he would have had something which the infringement has prevented him from obtaining.

It was once thought that there was a presumption of law that, if the defendant had not infringed, the plaintiff would have made an amount equal to what defendant had realized from his unlawful acts; and Judge Nelson charged the jury to that effect in two cases (Wilbur *v.* Beecher, 2 Blatch., 143; McCormick *v.* Seymour, *id.*, 256). But that doctrine was, by the decision of the Supreme Court in one of those cases, completely exploded. In Seymour *v.* McCormick (16 How., 480) the Supreme Court reversed the judgment of the circuit court for errors in Justice Nelson's charge, saying: "Actual damages must be actually proved and cannot be assumed as a legal inference from any facts which amount not to actual proof of the fact. What a patentee would have made if an infringer had not interfered with his rights *is a question of fact and not a judgment of law.* The question is not what speculatively he may have lost, but what actually he did lose." In this case the Supreme Court also says, speaking of the cases when the infringer's profits are the criterion of the actual damage of the patentee, "*and where the profit of the patentee*

consists neither in the exclusive use of the thing invented or discovered nor in the monopoly of making it for others to use, it is evident that this rule could not apply." In Cowing *v.* Rumsey (8 Blatch., 38) Judge Woodruff said: "There may be cases so peculiar that there are no means of proving the plaintiff's loss without proof of defendant's profits, and such proof becomes clearly admissible; but, even then, the recovery is what the jury shall find to be the plaintiff's loss, not because the defendant realized profits, but because under all the circumstances the jury infer as a fact that but for the interference the plaintiff would have realized those profits." In Buerk *v.* Imheauser (14 Blatch., 19) Judge Johnson cited the above extract from Seymour *v.* McCormick with approval. In McComb *v.* Brodie (5 Fish, P. C., 384) the court charged the jury as follows: "The rule is not what the defendant made by the infringement or what he might have made, but it is the loss sustained by the plaintiff by reason of the infringement."

d. The case of Mayor of New York, &c., *v.* Ransom (23 How., 487) seems to be directly in point on this matter of damages. The circuit court for the southern district of New York in that case charged the jury in words which embody with the utmost exactness the doctrine which Mr. Campbell now contends for. The charge, which is set out in full in the opinion, was as follows:

"If the invention was valuable; if by its use the power and efficiency of the fire engines belonging to the defendant are so increased that fifty engines used with this improvement are equal in practical effect to seventy-five, or any other number of engines used without the improvement, the jury are at liberty to infer, if they think the inference a just one, that the defendant

in its corporate capacity, has saved the cost of the purchase and operation of the additional number of engines which would have been required to produce the same results if this invention had not been used; and that the corporate authorities, if they had admitted the plaintiff's rights, would have paid the amount of this additional cost, or a large portion of it, as the consideration for a license to use this invention rather than to abandon its use; and that the plaintiffs have therefore lost by the infringement what the defendant would have so paid to secure such license. It is for this reason that the benefits received by the defendant in its corporate capacity, from the use of the invention in the consequent reduction of its expenditures for fire engines and their management and operation, are proper subjects for consideration in determining the plaintiffs' damages; and the jury must determine for themselves upon the consideration of this and the other facts of the case (if they find that the plaintiffs are entitled to recover) what damages have been sustained by the plaintiffs in consequence of the unauthorized and unlawful acts of the defendant, being careful only to give the actual damages proved, and not to speculate upon the possibility or even probability of damages beyond such as are proved to have been sustained by the plaintiffs."

The Supreme Court held that this charge was erroneous and ordered a *venire de novo*. They say:

"It was of little use to caution the jury from giving speculative or any other than "actual damages," after the large margin of inference and presumption which they were permitted to take in order to find data by which to calculate them.

It was said in the case to which we have referred (Seymour *v.* McCormick) "actual damages should be actually proved, and cannot be assumed as a legal inference from facts" which afford no data by which they can be calculated. In order to find out the plaintiffs' loss or damage, the jury were allowed by the court to *infer* [italicised in opinion] that the defendants have saved all the money indicated by the comparative pow-

ers of the engines with and without the improvement; and after having made this inference they may *presume* [italicised in opinion] that the defendants would have paid this amount to the plaintiffs for the use of the improvement. Thus the possible advantage or gain made by the use of plaintiffs' improvement on their machines is made the measure of his loss.

If the plaintiff, unable to furnish any other data for a calculation, had proved that the defendants had made a certain amount of money by putting out the fires in New York which the plaintiff would otherwise have made by use of their invention, he might with some reason contend that this was a proper measure. But if he fails to furnish any evidence of the proper data for a calculation of his damage, he should not expect that a jury should work out a result for him by inferences or presumptions founded on such subtle theories."

e. Applying these principles to the case in hand, what do we find?

The circumstances surrounding this case are peculiar and perhaps unprecedented. The complainant on the one hand has a monopoly of making, using, and vending the patented invention; while on the other the United states alone has any use for it. The control of the government of such market as exists is as complete and real as that of the complainant. The complainant's patent is worth nothing unless the government uses it; and in determining the market value the government, having no competitor, has as potent an influence as the complainant has. The two parties stand on an equal footing. If they were to come together for the purpose of entering into a contract it would be to the interest of both to make concessions.

This is not a case where it is the interest of the owner of the patent to maintain a close monopoly. None of the many owners have ever made a business of making,

using, or selling the invention. The patent would be practically worthless unless the invention were used in the postal service. Complainant's chance of receiving any reward from his ownership is conditioned upon such use. This appears from the very nature of the patented instrument itself, it being fit for nothing except post-office work; from the fact that complainant has waived an injunction, which shows that he does not desire to stop the use; from the petitions to Congress for *compensation*, referred to in the bill; and from the admissions of the complainant's solicitor at the time a copy of the complaint was served on the defendant (2 Rec., 1503).

There is no evidence to show that if the defendant had not infringed, either he or the government would have purchased the right to use, nor what price for the privilege would have been agreed on and paid. It cannot be assumed in the absence of evidence that if defendant had not infringed, either he or the government would have purchased a license; much less can it be assumed that a license would have been purchased at any particular price; and it would be foolishly absurd to assume that a sum equivalent to the whole saving or advantage derivable from the use of the invention would have been paid, for on such an hypothesis the government would not be benefited in any respect whatever.

In short, the evidence does not establish any certain data from which the amount of loss sustained by the complainant can be calculated; indeed it does not show that the complainant has suffered any substantial damages.

E. The first exception relates to the time which the account should cover.

The master stated the account on the theory that the term began at the date when James became postmaster, namely, April 1, 1873. We contend that he should have commenced with the date of the assignment from Miss Ingalls to the complainant, January 2, 1873.

a. The bill is based upon the *ownership* of the patent by Campbell, who is alleged to have got title on the 2d of January, 1877. There is not sufficient language to raise the point whether Campbell could, in this suit, recover on Ingalls's *choses in action* against infringers if he were an assignee thereof.

b. We urge, in the second place, that the only claims which the assignment was intended to convey were claims against the United States, and not *choses in action* against a private infringer, which Mr. James is, on the only theory that allows complainant to maintain his bill. See the assignment set out in full in the bill. (1 Rec., 31 *et seq.*) At page 34, top, it is stated: "Intending herein and hereby to sell, assign and convey in trust unto the said Christopher C. Campbell in the manner herein provided and set forth, all my right, title and interest or *claim against said United States* for the past or future use," &c. And at near the top of p. 33, the use spoken of is that "by the Post-Office Department." The bottom of p. 32 and top of p. 33 is a little broader, but that is in the recitals, and can hardly extend the meaning of the words used in the operative parts of the instrument. Page 33, bottom, relates only to such claims for *past use* as were assigned to Miss Ingalls by Mr. Norton in 1869, and of course does not cover any cause of action against Mr. James, who had not then become postmaster.

c. We say, thirdly, that the law does not authorize

Campbell to sue in his own name as the assignee of *choses in action.*

It was held in Moore *v.* Marsh (7 Wall., 515) that after the assignment of a patent the assignor could maintain a suit for infringements that occurred while he held the title. Speaking of § 14 of the patent act of 1836, which provides that actions shall be brought in the name of the person "interested," Mr. Justice Clifford, speaking for the court, said: "True meaning of the word interested, as employed in the last clause of the 14th section of the patent act, when properly understood and applied, is that the right of action is given to the person or persons owning the exclusive right at the time the infringement is committed."

The party to sue in equity is the party who can sue at law (Curt. Pat., 4th ed., § 402–403). The only parties who can sue at law are parties who at the time the infringement was committed were interested in the patent either as patentees, assignees, or ~~grantors~~ (Rev. Stats., § 4919; Curtis § 345–8; Littlefield *v.* Perry, 21 Wall., 205; Moore *v.* Marsh, *supra*).

grantees.

Or, to put the matter in another way, grants from the sovereign being construed strictly, patents for inventions would not be assignable without express statutory authority (Grier, J., in Blanchard *v.* Eldridge, 1 Wall., C.C., 337). The only statutory authority existing is confined to assignments of the whole patent, or an undivided interest in the whole patent, and to grants of exclusive privileges in a limited district. The construction of this court in Moore *v.* Marsh, *supra*, excluding from an assignment claims for part infringements, limits the authority still more. There appears, therefore, to be no statutory authority for the assignment of claims for past

infringements. That being so, nobody can, by assignment, get the *legal* title to such claims, and no trust can be created since a trustee *e vi termini* holds a legal title.

It is not necessary to deny that a court of equity would respect such an assignment, and would compel the assignor to allow to the assignee the use of his name for the purposes of a suit. That is not this case.

F. The thirteenth exception is to the finding that "more perfect and efficient work is done by the patented combined instrument" than by any other instrument known or used prior to the use of such combined instrument.

The evidence is not that more perfect and efficient work is done "*by the patented combined instrument*" than by any other instrument known or used prior to its introduction. The evidence is that the *infringing machines* cancel better than the postmarker alone did. (See Yeoman's deposition, 2 Rec., 1469, middle and bottom.) One reason for this given by Yeoman is that the stamp now being used "has a cross-bar, numbers, &c." (N. B. The *cross-bar* referred to is not the *cross-bar* connecting the postmarker and canceler, but parallel bars on the face of the canceler. See Complt's Ex. B, and the following testimony.) He says also that the improvement is not at all due to the combination. On redirect examination at p. 1470, Mr. Williams again brought out the fact that cancellation has been more effectually performed *since* the introduction of the combined stamps, and from this he will argue that the credit of the improvement belongs to the Norton invention. But the argument is unsound; it is an illustration of the com-

mon fallacy condensed by the logicians into the formula, "*post hoc, ergo propter hoc.*" The evidence is that, though before the introduction of the combined stamps, the postmarker was generally used for canceling, there were also separate cancelers which were sometimes used and could always have been used. Manifestly they would do as good work as the canceler in the combination.

Mr. Wareing (2 Rec., 1514) shows moreover that the ink used is now much better than formerly.

As to postmarking, the method of fastening the dates now in vogue shown in Complainant's Ex. B, is a great improvement upon the old set screw shown in the patent and formerly used. (2 Rec., 1509 middle; 1515 middle; 1516 middle).

G. The sixteenth, seventeenth and eighteenth exceptions relate to the *number* of clerks whose salaries, the master reports, have been saved in the foreign department, the fourth division, and the city stations. The master assumes that the number has been the same during all the time from April 1, 1873, to January 1, 1880. The evidence before him was that of Lawrence and Gayler (2 Rec., 1470–80), and relates entirely to the present time. The only testimony bearing at all upon the needs of the office in 1873 is that of Mr. James, who says (2 Rec., 1508, bottom): "Six years ago it would have been done cheaper, because the work in the office is now almost double." In respect to the Third division the master himself makes a discrimination. He reports the salaries of nine clerks saved from January 1, 1877, to January 1, 1880, and of only six from April 1, 1873, to January 1, 1877.

VIII.—*Of the rights in this suit of the adverse parties, other than Campbell, as against James.*

Courts of equity will not adjudicate the rights of defendants *inter se* when the determination of the extent of relief to which the complainant is entitled does not depend upon such adjudication (Cottingham *v.* Shrewsbury, 3 Hare, 627; Sanford *v.* Morrice, 11 Clark and Finelly, 667; Fletcher *v.* Green, 33 Beav., 513; Mitford and Tyler, Pleading and Practice in Equity, at p. 18).

IX.—*Of the disposition of the appeal.*

The decree of the circuit court should be reversed, with costs, with directions to enter a decree dismissing the bill with costs to James.

ADDENDUM.

[NOTE.—By inadvertence this point was omitted in its proper place. It should be at page 35 of the brief, before II.—*Of the validity of the patent.*]

B.—AS TO THE ASSIGNMENT FROM MISS INGALLS TO CAMPBELL.

It is set out in full in both original and amended bill, and a certified copy may be found in 2 Rec., 1157.

Our position is, that it did not transfer any such interest in the patent as enables Mr. Campbell to maintain this suit.

The last recital states that it is deemed advisable that Mr. Campbell become vested in trust with all Miss Ingalls' right and title to the patent, and to her claim for past use of the invention in the postal service of the United States (pp. 1158–9).

It is then stated that the right and ownership of the patent is, in trust, vested in Campbell, upon the conditions that he shall have the sole management of the trust, and be at the expense of the same until a fair settlement shall be made with the United States; and for these services Campbell is to have $\frac{1}{3}$ of such sum as shall be determined upon by the Court of Claims in payment for the past use of the invention in the postal service, while Miss Ingalls is to have $\frac{2}{3}$ of such sum, and the Court of Claims is authorized to enter a judgment in favor of them severally for their respective shares, so that $\frac{1}{3}$ to Campbell and $\frac{2}{3}$ to Ingalls shall be paid directly from the United States Treasury, "and in no other manner shall payment be made for such use by the United States of said invention and letters patent" (p. 1159, middle).

Then come the words of conveyance: The consideration stated is one dollar, and the consideration "hereinbefore and herein stated as the main considerations," upon which the instrument is made. All Miss Ingalls right, title, and interest to the patent, and her claim against the United States for past use, is conveyed in trust, *as aforesaid.* "The same, and each and every thereof, to be held in trust in the manner and for the benefit of each of the persons herein named, and as herein specified and set forth, *and on no other grounds, and for no other use or purpose*" (p. 1159, bottom).

Is not the gist of this that Campbell shall manage the patent and trust, and be at the expense thereof, for the purpose of obtaining a settlement with the United States through the Court of Claims, and until such settlement shall be made, "and on no other grounds, and for no other use or purpose"?

This instrument (the repugnances therein being considered) should be construed to vest in Campbell only a power to settle with the United States. He cannot sue an infringer in his own name.

We think that the point is doubtful, and raise it only that James may have the benefit of a decision thereon as a protection against further liability.

CHARLES DEVENS,
Attorney-General.
SAMUEL B. CLARKE.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

CHRISTOPHER C. CAMPBELL, APPELLANT, *vs.* THOMAS L. JAMES, CHARLES EDDY, Samuel R. Clexton, and Horace T. Caswell, appellees.	No. 1101.
SAMUEL R. CLEXTON, APPELLANT, *vs.* CHRISTOPHER C. CAMPBELL, THOMAS L. James, Charles Eddy, and Horace T. Caswell, appellees.	No. 1098.

BRIEF FOR APPELLEE, THOMAS L. JAMES.

What is said in the brief for James on his appeal (No. 945) is relevant on these appeals and leaves little to be be added.

Clexton's appeal assumes that there will be some recovery against James. It is directed only to the proper distribution of such recovery. With that matter James seems to have nothing to do, except that, of course, he ought to be protected from liability to pay whatever recovery is had more than once.

Campbell's appeal relates largely to the same subject. It complains, however, in addition, that the circuit court erred in overruling his exceptions to the master's report.

For the report see 2 Rec., 1548; Campbell's exceptions, *id.*, 1556; final decree overruling the exceptions, *id.*, 1664.

I. The first exception complains that "the master, after finding the fact to be that time was saved in the making up and in the dispatch of the mails for transportation by the use of" the patented machine, has made no allowance of "damages or profits" therefor.

The finding referred to is at p. 1552, top, and is manifestly a part of the broader finding at p. 1551, middle; "that the combined instrument has conduced to the regular and speedy transmission of matter through the mails," upon which complainant's third exception is based. What we say upon that exception is applicable here.

II. The second exception is based on, p. 1551, middle, where the master finds that more perfect and efficient work has been done by the "patented combined instrument" than by any instrument known or used prior to its introduction. The claim is that the master should have allowed some amount as the value of this advantage.

As to this:

a. No evidence of any pecuniary value of this advantage was given.

b. The master's finding is incorrect, and was duly excepted to by the defendant in his 13th exception. (See what is said on that exception, *supra.*)

III. The third exception complains that the master should have allowed some amount for the advantage "that the use of said machine or combined instrument had conduced to the regular and speedy transmission of matter through the mails" (p. 1551, middle).

As to this:

a. The master's finding is not absolute, as stated in the exception. He says that "the combined instrument has conduced to the regular and speedy transmission of matter through the mails, assuming, of course, that had not such combined instrument been used, two separate instruments * * * would have been used, *and no additional clerks had been employed.*"

He estimated the profits on the assumption that enough more clerks would have been employed to do the same work. It would be manifestly improper to allow *both* the value of time saved on the theory that no more clerks would have been employed, and the salaries of clerks who, if employed, would have prevented any loss of time.

b. No evidence of the value of the time saved was before the master. The wildest conjecture would not have enabled him to state an exact amount.

IV. The fourth exception is to the master's refusal to allow any sum as the value of the space which would be occupied by the additional clerks needed if separate instruments were used. The finding is at p. 1551, below middle.

As to this:

a. Of course all the objections urged against allowing the salaries of the additional clerks as profits would apply to an allowance for the space such clerks would occupy.

b. The only evidence of the value of such space is that of Mr. Kittle, who testified as an expert (2 Rec., 1489). It is submitted he was incompetent to testify on that point. (See p. 1490.)

c. The only evidence of the amount of such space is also that of Mr. Kittle. He is not an expert on post-office management.

d. The evidence is satisfactory that there is plenty of room in the post-office building to accommodate the additional clerks (pp. 1495, 1503, 1537).

V. Exceptions 5, 6, 7, 8, 9, 10, 11, and 12 complain that the salaries of just twice as many clerks should have been found to have been saved, viz, in the 3d division, twelve instead of six from 1873 to 1877, and eighteen instead of nine from 1877 to 1880; in the foreign department, two instead of one, and in the city stations, eight instead of four.

a. The theory that it takes double the number of clerks now employed to use separate instruments is contradicted by every post-office witness who testified before the master. Its only support is Mr. Kittle, who manifests extraordinary assurance in swearing to things that he knows nothing of.

b. Separate cancelers are now and have long been used for canceling the very cheap stamps on circulars and the very expensive stamps on foreign letters (2 Rec., 1474, 1481, and Master's Record, pp. 1460–1547, *passim.*)

Instruments substantially the same as separate postmarkers for printing the word "received" and the date on letters that come to New York have also been used. (Master's Rec., p. 1496, *et passim*). So that the evidence of the post-office employés is entitled to all the weight that belongs to large experience and observation.

c. The witnesses agree that a separate canceler can be used with more rapidity than the combined instruments. They state this as a fact and not as an opinion, though they do not lack convincing reasons for the minds of the inexperienced. (Yeoman, 2 Rec., 1464, 1465; Gayler, *id.*, p. 1472; Lawrence, *id.*, p. 1483, bottom; Steele, *id.*, p. 1493–4; Burchard, *id.*, p. 1511; Magee, *id.*, p. 1524; Andrews, *id.*, p. 1535.)

d. As to whether a separate postmarker can be used more rapidly than the combined instrument, there is some difference of view.

Andrews, the most skillful stamper in the office, who has accomplished the astonishing feat of putting the postmark and cancellation mark on 5,000 postal cards in twenty-three minutes, says, that on a long run he can use the separate postmarker about one-third faster than the combined instrument (2 Rec., 1535).

e. The master's report is based upon the estimates of the witnesses called by complainant. We submit that the number is not too small.

VI. The eleventh and twelfth exceptions raise the question as to damages which has been discussed in the brief on James's appeal, upon his exceptions 6, 7, and 8, and upon the form of the interlocutory decree.

CHARLES DEVENS,
Attorney-General.
SAMUEL B. CLARKE.

OFFICE SUPREME COURT, U.S.
FILED
JAN 5 1901
JAMES H. McKENNEY, CLERK.

In the Supreme Court of the United States.

THOMAS L. JAMES, APPELLANT,
v.
CHRISTOPHER C. CAMPBELL ET AL., APPELLEES.
} No. 945.

SUPPLEMENTAL BRIEF FOR JAMES.

On the points whether a patent excludes the government, and whether the alleged infringement herein is an act of state which relieves the government officer from personal liability.

The evidence shows that the postmarking and canceling stamps used at the New York office were purchased with the money of the United States, and were its property, and the use thereof was with the knowledge and approval of the Postmaster-General. It does not appear that the use was originally directed by him.

It also appears that Congress knew of and ratified the use.

Revised Statutes, section 4049, provides that the accounts of the postal service shall be kept in such manner as to show the amount of expenditure for (among

other things) "postmarking and canceling stamps." See also the Private Resolution of Congress approved July 14, 1870, which was offered in evidence by Campbell (1 Rec., 502).

I.

The grant of a patent for an invention does not exclude the government from using the thing patented. (Feather *v.* The Queen, 6 Best & S., 257; Dixon *v.* London Small Arms Co., 10 Law R. Q. B., 130; same case in court of appeal, 1 Law R. Q. B. D., 130; same case in House of Lords, 1 Law Rep. App., case 632.)

The English judges, in reaching their conclusion, were guided by the following principles:

1. The sovereign's grant is to be construed against the grantee.

2. The sovereign is not bound by the general words of a statute or grant, unless expressly named or included by necessary implication.

These principles have been held to apply as much to the sovereignty of the United States as they do to the crown of England. (Charles River Bridge *v.* Warren Bridge, 11 Pet., 420; Dollar Savings Bank *v.* U. S., 19 Wall., 227.)

II.

The alleged infringement, consisting in the use of government property by a government officer, was an act of state which merges the individual liability of the officer and remits the owner of the patent to such remedy against the government directly as the law affords. (Heaton *v.* Quintard, 7 Blatch., 73; Buson *v.* Denman, 2

Exchequer, 167; Wiggins *v.* U. S., 3 Ct. of Clms. R., 422; Carr *v.* U. S., 98 U. S., 433; Langford *v.* U. S., 101 U. S., 341; Doe A. Legh, 8 Mee. & W., 579; U. S. *v.* McLemore, 4 How., 286; Hill *v.* U. S., 9 How., 389.)

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SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1880.

No. 945.

JAMES, Appellant, *vs.* CAMPBELL et als.

No. 1101.

CAMPBELL, Appellant, *vs.* JAMES.

Brief in behalf of Campbell et als.

BENJ. F. BUTLER, *of Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

No. 945.

THOMAS L. JAMES, APPELLANT,

vs.

CHRISTOPHER C. CAMPBELL, ET ALS., APPELLEES.

No. 1,101.

CHRISTOPHER C. CAMPBELL, APPELLANT,

vs.

THOMAS L. JAMES, ET ALS., APPELLEES.

BRIEF ON BEHALF OF CAMPBELL.

STATEMENT OF CASE.

SUIT in Equity brought by appellee against appellant James, for infringement of his rights as assignee in trust of a patent granted to Marcus P. Norton, on the 14th of April, 1863, and re-issued to Shavor and Corse on the twenty-third day of August, 1864, and again to Marcus P. Norton on the third day of August, 1869, and again to Helen M. Ingalls on the 4th of October, 1870, in Division A, numbered 4,143.

Appellant James was, and for many years before the filing of the bill had been, postmaster of the city of New York, and by his answer admits a continuous use to a large extent of the article described in the patent, in the post-office at New York by his predecessor in office and himself, from the year 1860 until suit. His defences are:—

First, That there was no patentable invention in the machine or device used.

Second, That Norton was not the inventor, being anticipated by others.

Third, Abandonment by Norton to public use, with his consent, for more than two years before his application.

Fourth, That the re-issue to Ingalls was not for the same invention.

Fifth, Denies title in appellee Campbell.

Sixth, Alleges that all that James has done was done in his official capacity, and not for his own gain and profit, but admits in his deposition to the great gain and profit of the United States from the use of the machine by himself and predecessor.

It will be convenient to discuss these defences in the order here set down, because if either is made out it is an end to the action, and

then to make answer to several of them when grouped together considerations which will apply to the whole group.

Before proceeding to discuss in detail these first four defences, the plaintiff desires to invoke an estoppel against James as an officer of the United States claiming to act under the orders of the Government and in its behalf.

First, Because James cannot be heard to set up these defences by reason of the acts and representations of the Government through its officers and privies made and done *en pais*.

Second, Because they are *res adjudicata*.

The machine is sufficiently described for the present purpose as a combined stamp, which at one blow impresses the post-mark upon the envelope, and cancels the postage-stamp in the best manner that the state of the art has yet shown, to prevent washing and re-use of the stamp, and also to always preserve the same exact relation between the post-mark and the cancelling-mark as a means of detecting fraud about post-marking and cancellation in any other manner.

A notable instance of this element of usefulness has been brought to public attention very lately in the case of the "Morey letter," as a most potent means of detecting a forgery of an envelope.

This machine, in its combination as used, was applied to be patented Jan. 5, 1863; but it is not denied that it was known to others before that date. In 1859, April 11 (*Record*, p. 548), Norton addressed a letter to the First Assistant Postmaster-General for the second time, as stated in the same, asking the privilege of having his "post-marking stamp tested by the postmaster in this city" (Troy), and to have the postmaster authorized to receive one for that purpose.

To that the Postmaster-General gave the order as requested, March 4, 1859 (*Record*, p. 557), and the test was made, and proved satisfactory.

This correspondence establishes the fact that Norton produced a working machine before March 31, 1859, because the letter of April 11 refers to a prior application made "on the 31st ult."

Gen. Dix was appointed postmaster at New York early in the year 1860, and, realizing the difficulty of cancelling and stamping the letters by two operations, he himself invented a combination of the two stamps for the purpose of doing it by one blow, reported it to the Postmaster-General by his letter of the 8th of August, 1860 (*Record*, p. 1142), with a specimen of its work, showing the great saving that it made, and stating that it was nearly impossible to get along without it. The Postmaster-General (Holt), through his first assistant, replied to that letter on the 10th, saying, "the arrangement is an excellent one, and will save much labor in making up the mails," but fears that it was "not only thought of before, but has actually been patented, and may at some future time subject your office to a heavy charge by the patentee for its use. The Postmaster-General there-

fore desires that you will give the subject such timely attention as will be calculated to avoid such consequences." (*Record*, p. 553.) He also calls attention to the "imperfect impressions made by (Dix's) marking stamps in your office," and asks if a remedy cannot be found for that defect.

Accordingly, on the 28th of August 1860, Mr. Dix acknowledges the receipt of a letter from the Postmaster-General in which he says, "I fear Mr. Norton's letter refers to a different stamp, and not the one exhibited to me by Mr. Ransford. Still I shall consider Mr. Norton's letter as referring to the kind we want." (*Record*, p. 543.)

This correspondence enables Mr. King, then First Assistant Postmaster-General, to testify most positively as to this invention, and as to its use in the New York Post-Office: —

"It was found there in 1861, when Abram Wakeman was appointed postmaster. It had been put in the New York Post-Office at the request of Gen. Dix in 1860, and by the consent of Norton for the purpose of testing its usefulness." (*Record*, p. 132.)

It remained so, being tested without any report as to its usefulness, until the 3d of January, 1863, when a report was made to the Third Assistant Postmaster-General at Washington which contains among other things the following: "The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force we could not dispense with its use. I am satisfied the interests of the department would be subserved by securing its general use. We are now testing a stamp and canceller on Norton's plan made of box-wood." (*Record*, p. 542.)

Upon the reception of this report that the trial of his stamp was successful, Norton, on the fifth day of the same January, filed his application for a patent, which he had prepared at Troy, N.Y., on the twenty-ninth day of December, previously.

Immediately thereafterwards, with the consent of Norton, that canceller was adopted by the Post-Office Department, and has been universally and solely used by the Government by order of the Postmaster-General throughout the United States, and remains used to this day, and Norton, by himself or his assignees, made application to the Postmasters-General for compensation for its use from time to time; but the Postmasters-General were powerless to grant him any relief.

The owners of the patent, therefore, applied to Congress for relief.

Reports were made sustaining the invention and patent, its usefulness, value, and use by the Post-Office Department, as follows: —

First, In the House of Representatives, by the House Committee on Post-offices and Post-roads, July 24, 1866. (*Record*, p. 494.)

This report states: —

"This invention has been in practical and continuously exclusive use by and under the order and direction of the Postmaster-General since the 1st of April, 1863, without compensation whatever to said patentees, nor upon any other stipulation than their consent that the same might thus be used until its utility and advantage to the Government should be effectually tested, when a fair and equitable compensation for either its use or the patent should be made to them by the Government.

"The invention having been sufficiently proved, and its utility satisfactorily tested by uninterrupted use in various post-offices of the States, application was made to the thirty-eighth Congress for compensation therefor, in accordance with the informal stipulation already referred to. Another claimant to said invention appearing, the committee of that Congress who were then considering the subject of compensation decided that, since the validity of the title to the same was called in question, *that* should first be determined by the courts; and the case was accordingly thereupon remanded.

"By a transcript of the proceedings and judgment, now submitted as rendered in the United States Circuit Court of the northern district of the State of New York, it appears that the question of validity of title was tried, and decided in favor of the patentees, Shavor and Corse."

For copy of the record referred to in Shavor and Corse *vs.* Hoole, see *Record*, p. 514.

In this case the title and validity of the patent were established. The suit was brought against the government contractor who manufactured the machine for the use of the Government. Every question in regard to it, and the fact that the Government was the sole user of the device, was determined.

Second, In the Senate, by the Committee on Post-offices and Post-roads, Feb. 9, 1866. (*Record*, p. 497.)

Third, In the Senate, by the Committee on Post-offices and Post-roads, July 6, 1870. (*Record*, p. 499.)

Each of these reports recognized the fact of the priority and value of the invention, and its great use to the Post-Office Department; and that it had been adopted and used by that department, by each successive Postmaster-General, and the reports were made in pursuance of recommendatory letters from the several Postmasters-General.

In consequence of these reports, a private resolution was passed by Congress in favor of this patent, approved July 14, 1870, "authorizing the Postmaster-General *to continue to use* in the postal service a certain invention and device for the post-marking of mail-packages, and for the more perfect cancellation of postage-stamps, and to make a just and equitable compensation for the PAST and *future* use of the same by the Post-Office Department."

By this resolution the Postmaster-General was further "authorized and directed to investigate the right and title of the plaintiffs to the device and instrument for the post-marking and stamping and cancelling in the postal service, patented on the fourteenth day of April, 1863, re-issued Aug. 23, 1864, and again re-issued the third day of August, 1869, now and for many years past in use in the general postal service of the United States; and to ascertain and determine upon a fair, just, and equitable compensation for the use of said invention and device from the first of its use by the Post-Office Department, and also to ascertain and determine upon a fair and equitable compensation for its use and value to the Post-Office Department while said letters patent shall continue, and to whom it should be paid under said letters patent and re-issues thereof, and to report the amount thus ascertained and determined to Congress [illegible] 502.)

Whereupon the Postmaster-General reported to Congress "that he had given reasonable opportunity to all parties, in interest, to present their claims, that they had been fully heard in person and by counsel, and that the hearing has been postponed, on the application of claimants, to allow them every facility in procuring their testimony. He reports that the title is vested in Helen M. Ingalls (*under whom the complainant claims*); that the stamp has been in use in the department, and furnished by contractors under contracts commenced April 1, 1863, and April 1, 1867, each for four years; and that no other stamp appears to have been used in the department containing this combination for postmarking and cancelling at one and the same blow, except experimentally. He further reports, that there is a contention as to whether the patent in 1863 interferes with the one in 1859, and that therefore he did not feel authorized to decide upon that subject, and therefore he submits the matter again to Congress."

He further says: "The combined stamp has been demonstrated by our use during nearly eight years, to be valuable in the larger post-offices and the railway service. Simple as it is, no other device has been hit upon, that will do the work of this one without adding largely to the number of stamping clerks employed, and consequently increasing the expense of the department. It is impossible to ascertain with any degree of accuracy the amount of money which has been saved by its use." (*Record*, p. 503.)

In consequence of this, another favorable report was obtained July 15, 1872, from the Senate Committee, by which the whole matter was recommended to be referred to the Court of Claims. But no bill was actually passed for that purpose. Thereupon, in consequence of this suggestion of the Senate Committee in their report, the owners of the patent, Shavor and Corse, did apply by petition to the Court of Claims, in which they set up a contract between the Postmaster-General in behalf of the United States, and the petitioner's assignor, to pay for the use of the patent, the existence of such contract being the only ground of jurisdiction of said court in such case.

The Court found: —

First, That the claimants are and have been the assignees of the patent set forth in the petition.

Second, That the defendants have used said invention in the Post-Office Department since 1863, and that said invention has been of great use and value to the defendants. The Court finds that as a matter of fact the contract set up in the claimants' petition was never entered into between the complainants and the United States as alleged, but, on the contrary, it was expressly agreed between the claimants and the agents of the defendant, the Postmaster-General and his successors, that the Postmaster-General had no authority to purchase said patent-right or its use; that the claimants should allow the use of the invention so long as the claimants saw fit. (*Record*, p. 1320.)

The suit at bar is now defended by the United States for its benefit by its officers, and by its attorney-general, so far as the Postmaster, Mr. James, is concerned, the United States having assumed the burden of its defence.

ESTOPPEL BY MATTERS EN PAIS.

It is respectfully submitted, that where the agents of a private party had had for many years the use of a patent by permission of the patentee by virtue of an understanding that the patentee should have payment for that use, and had made great profit and gain out of the same, and had repeatedly, through his servants and agents agreed to its usefulness, patentability, and that the title was in the patentee, and where such private party had never been interfered with by any other person claiming the patent, that such party and his privies would be estopped in equity, by his acts *en pais*, from litigating those questions.

Such case would be the same in principle as where an assignee or licensee of a patentee had used a patent, and had never paid, or been called upon to pay by any other owner of the patent, any thing for such use, who when called upon to account for the profits sets up want of title in his assignor or licensor. In such case it has been expressly decided that such assignee or licensee would be estopped. He cannot even purchase an outstanding title as against his assignor.

Kinsman vs. *Parkhurst*, 18 Howard, p. 289.

How much stronger is this case against the United States and its privies!

Their Postmasters-General, by permission of the patentee, put the patented machine into use, continued its use solely and exclusively for the period of more than ten years; had many thousands of the machines made by their own agents and contractors for their sole and exclusive use.

The United States sanctioned that course of conduct by four several reports of committees of both houses of Congress; and after suggesting through a committee of its Congress that the validity of the title of the patent should be submitted to one of its own courts in a suit against one of its own agents, and the manufacturer of the machine for its use, for the purpose of settling all questions in regard to the patent and the party to whom the profits should be paid, which suit was brought and decided in favor of the patentee, and neither fraud nor collusion is suggested in the conduct of said suit, — thereafterwards all said reports having been made in favor of the patentee and the validity of the patent, that they were fully established; and after the passage of a resolution through Congress authorizing the Postmaster-General to "*continue*" the use of such machine, and to pay what was just and equitable for the past and future use thereof, and thereafterwards, during all the time continuing to use the same by the permission of the patentee in expectation of payment from him, by which the patentee was induced to sleep upon his rights for many years, until by death, time, and accident,

the testimony tending to establish the validity of his patent and his title thereto may well be lost; and having made great gains and profits from its use, for which the United States have not been called upon to pay, or have paid to any other person, — are not the United States estopped by these acts *en pais* from disputing the validity and ownership of the patent during this time, as would be a private party who has done the same acts, and held out the same representations and inducements to the patentee, by the well-established rules of equitable estoppel, arising from representations made and acts done *en pais?*

This doctrine of equitable estoppel, by acts, agreements, and understandings between parties, by which the action of either is controlled, applies to every transaction of life, and has been widely favored by Courts of Equity, as the best means of working out justice, and putting an end to litigation.

There can be no need of citing cases in support of equitable estoppel in its various branches.

Indeed, the whole doctrine of equitable laches stands upon the fact of non-action by a party in asserting adverse rights, or setting up defences. Do not these rules apply as well to the Government as to persons — indeed, more strongly to the Government, because it can never be presumed to acquire the property of its citizen without compensation; or to mislead him as to his rights? *Omnia rite acta* has been applied many times by this court to the doings of the officers of the Government. Will not the court translate *rite* in this case, "with due regard to equity and good conscience"? Is the language too forcible if we say that if the Government, after such things as these being done to its subjects, is not bound by their consequences, there is neither justice in the Government nor equity in its courts?

ESTOPPEL BY RES ADJUDICATA.

As we have seen by the above recital, at the suggestion of a Postmaster-General and of a committee of the Thirty-Eighth Congress, these four defences were submitted to a jury in the northern circuit of New York in Shavor *et al.* vs. Hoole, *ubi supra*, against one of the agents of the Government, and each one of them decided in favor of the plaintiff's assignees.

Again, at the suggestion of the Government, as we have seen, a suit was brought by Shavor and Corse, assignees of the patent, against the Government in the Court of Claims, and there the validity of the patent, and the title in Shavor and Corse as the assignees of the patentee, was decided in a case directly against the United States.

After these two adjudications against the Government and its officers, is not another officer of the Government estopped to set up in its behalf, years afterwards, anew the defence that there was no patentable invention in the same machine, that the same patentee was not the inventor, that he had abandoned it to a public use, that a prior re-issue to him was not for the same invention, or that the title

was not in the assignees' plaintiffs at the time of the adjudication, as decided in these cases?

Anybody else but the United States may set up these defences anew; but the United States or its privies, never again. The rule is stated in Bigelow on Estoppel, p. 45, and is as follows: —

The rule in these cases is, that a *point* once adjudicated by a court of competent jurisdiction, however erroneous the adjudication, may be relied upon as an estoppel in any subsequent collateral suit, in the same or any other court, at law or in chancery, or in admiralty, when either party, or the privies of either party, allege any thing inconsistent with it; and this, too, whether the subsequent suit is upon the same or a different cause of action."

This rule is sustained by this Court in *Thomas* vs. *Roberts*, 24 Howard, p. 233.

NOVELTY, INVENTION, AND VALIDITY OF PATENT.

If this equitable estoppel, whether in acts *en pais* and at law, should not be held sufficient, it becomes necessary to discuss the questions of priority and patentability of the invention.

We have already seen by the documentary evidence that Mr. Norton was asking to have this machine tested on March 31, 1859. The inventor claims that the invention was made in 1853 or 1854, and was described in a *caveat*, and he has given testimony to that effect. Very much of the testimony in the voluminous record is expended upon Mr. Norton the inventor's credibility as a witness, or want of it.

An examination of the whole matter, if it were not too wearisome, would show him sustained at every point.

The principal contestation, however, is directed to the question whether Norton is to be believed when he swears that he filed a *caveat* for this invention prior to 1854. If he did, that clearly establishes the priority of invention; for the record shows no reliable evidence of any like invention before that date: not because of the force of the *caveat*, because the patent was not taken out within proper time after filing the *caveat*, but simply as conclusive evidence of the fact that the *caveat* existing fixes the date of invention.

The proceedings between Mr. Leggett, then Commissioner of Patents, and Mr. Norton, for some supposed violation of the rules of the Patent Office, in regard to that *caveat*, are in the record. They are not evidence in this controversy between third parties, and, if they were, would be wholly immaterial.

There are two pieces of documentary evidence which establish the fact of such *caveat* being filed. They are two letters of Norton, the genuineness of which is not disputed by any evidence coming from the Patent Office, dated Aug. 7, 1854, which refer to that *caveat*. He says, "I send to-day an additional description of my machine for mailing and folding letters, &c. When will my *caveat* expire? The copy you sent me has no date. Please communicate the answer to Mr. Hodges."

This encloses another paper, dated the same day, addressed to the Commissioner of Patents, as follows: —

"*Sir*, — I wish the following to be added to my subjoined description for mailing and folding letters, for which I have a *caveat* in your office."

Then follows an exact description of the machine, as now patented, *in extenso*. (*Record*, p. 455.)

Can it be possible that Norton was writing the Commissioner of Patents about a *caveat* not then in the office?

On page 458 of the Record appears a paper indorsed, "Certified Copy of Caveat filed in the United-States Patent Office in 1853, for Improvements in Post-Office Stamps," which is apparently the indorsement on the envelope containing the *caveat*. It does not seem to be denied that such a *caveat* once existed, but that it had been lost out of the office; and the contention between Mr. Leggett and Norton was as to whether another one had been put in.

All those questions become unimportant, the genuineness of the letter of Aug. 7, 1854, and the inclosure, being admitted, as is done. That fixes the date of the invention before Aug. 7, 1854, and presumably the date of the filing of the *caveat* of which it speaks. But Aug. 7, 1854, the date of the letter, is early enough, because that ante-dates any reliable testimony as to priority in this case.

But we need not trouble the court further upon this question.

Sufficient that there is no testimony tending to show that he did not make the invention as early as he said.

We will examine, hereafter, the testimony as to what date others made a similar invention. But the record is barren of any evidence tending to show that he did not make it as alleged. Slight affirmative evidence, therefore, if his testimony was struck out of the case, would be sufficient to establish an otherwise uncontradicted fact. This testimony is found in a letter of Mr. Norton, of Feb. 4, 1864, to Abram Wakeman, postmaster at New York (put in evidence by James), in which he states his claim and the date of his invention in the words following: "That the double cancelling stamp used by you in your office is my invention as far back as the year A.D. 1856, as I can most fully and satisfactorily prove. It was patented in the early part of 1863, on an application made by me a long time before then. I first began with the Post-Office Department for a change of the then existing unwieldy plan of post-marking and mailing of letters, in the year 1854, and have letters, &c., to show that fact. The Post-Office Department at Washington contains a large number of letters written by me in the years 1858–63, upon the matter of post-marking letters and cancelling stamps." (*Record*, p. 1367.)

Now, if the facts in this letter, made evidence by being put in by the defendants, are not true, it can be shown by those letters in the Post-Office Department, to which Norton's letter refers; and the record contains no certificate even that a search was made for them and that they cannot be found. Certain it is that there is not one word from Norton inconsistent with this claim.

It is true that he made another invention for defacing the stamp

by cutting. That was tried at his request very early, but was found not to work successfully in that, while it defaced the postage-stamp, it, with the utmost care, would deface and destroy the contents of the envelope. Norton tried to remedy that defect by guards on the cutting-knives. But then that canceller, which differed from the one under consideration in the fact that it cut the stamp to pieces, while the present one simply bruises it and fills it with ink, was laid aside by the Post-Office Department, as wholly worthless in practice.

WAS NORTON ANTICIPATED?

There are three persons only, whose claims as to anticipation need consideration; to wit, Charles E. Wheeler, James J. Riley, and William M. Ireland; and but two patented machines.

The anticipator whose testimony is probably most relied upon is *Charles E. Wheeler*, in 1853, at the Cleveland Post-Office. Wheeler swears that he made a quite similar invention; that he put it in use in 1853 at the Cleveland Post-Office. *Such* is his recollection. We may remark in passing, that it is a fact not a little suggestive as to the existence of Norton's *caveat*, that Wheeler swears his invention to have been made in the summer of the precise year in which Norton filed his *caveat* in the October following; disclosing a date, the year 1853, not found in any other of the patent papers but the *caveat*. Where did Mr. Wheeler get his date?

But on the twenty-eighth day of November, 1863, Wheeler himself wrote Zeverly, the Assistant Postmaster-General, that he made the invention about the first day of July, 1861, and the order issued at that time led him to make it. On the seventh day of May, 1864, Mr. E. Cowles, the postmaster at Cleveland, Ohio, by whom Wheeler was employed as a clerk, at the request of Wheeler wrote to the Postmaster-General, that the invention was made immediately upon the receipt of an order issued by the Postmaster-General; and Cowles was not appointed, as appears by the record, until after Lincoln's administration came in, in 1861, and that order was issued in July, 1861. (*Re ord*, pp. 565–566.)

The burden of proof in anticipation is upon the defendant; and no amount of parole evidence of recollection going back more than twenty years would countervail this written evidence in the matter of dates, especially when it will be seen that Wheeler gives no explanation of the fatal letter in his deposition, nor is Cowles called as a witness to account for his letter.

The testimony of Riley, which is found in Record, p. 860 and the following pages, is too indefinite as to what he made, how it was used, and how long it was used, to show that any invention was made. At the most, it was simply an experimental work, the experiment was not successful, and it was abandoned in the New York office, where he says he made it, if ever made at all; and his machine had to be re-invented as we have seen, if it ever was invented, by Gen. Dix. Besides, it was made at a time by Riley, when there was no need for such a contrivance, as he expressly testified that he used a "plain stamp-killer" instead. But, in addition to all

these weaknesses, Riley testifies that Hoole made the instrument, whatever it was, that Riley invented; and yet Hoole, when sued by the owners of the patent for infringing it, did not set up the invention of Riley in answer, and being the maker he must have known of it. It is also to be remarked, that no witness is brought to confirm Riley; and yet such an invention must have been well known, if ever made, among the clerks in the New York Post-Office.

William M. Ireland testifies that he made something which is relied upon as anticipatory in 1849, when he was in the post-office in Philadelphia. He was also there in 1861. Then he was twenty-five, being a boy of fifteen in 1851 when it is claimed that he made his anticipatory invention. Nobody confirms his story. Very possibly he did in 1861 what he claims to have done in 1851, his attention being brought to it nearly twenty years afterwards. True, he said in 1861 when he showed it, that it was his, but he forgot to remark that he made it in 1849. In 1861 there was some use for it: in 1849 there was none. In truth and in fact, the orders of 1861 set all the large offices of the United States to looking for a labor-saving machine in the matter of cancelling postage-stamps and stamping letters; and thus sprung up a large number of inventions. And years afterwards, when Congress was offering to pay the inventors of such a stamp large rewards, the memory was stimulated to forget the date.

SUPPOSED ANTICIPATORY PATENTS.

There are but two patents set up which are any thing like the device of the plaintiff's, or need a moment's thought.

The nearest one to it is Berry's English patent of April 24, 1860; and that is admittedly a year and a half too late, because the letter to King of March 31, 1859, shows Norton's invention ready for trial.

The patent of Ezra Miller, dated March 22, 1859, had two stamps together on the head of a hammer, and was attempted to be used in that way; but it was *entirely* a different machine from that of Norton, and not capable of producing any such results, and became wholly disused.

IT IS CLAIMED THERE WAS NO INVENTION IN THE DEVICE OR MACHINE.

After the struggle of the defendants to prove that so many people had invented this at so many different times, it is difficult to see how it could be claimed that there was no invention in making it. Gen. Dix thought there was. All the supposed anticipators thought there was. The Patent Office thought there was. All the Postmasters-General, whose reports are in the Record, thought there was. All the committees of Congress thought there was. The Court of Claims thought so. The Circuit Court for the northern circuit of New York thought so. Immense numbers of people have thought so, who have been trading by assignments and re-assignments of this

invention for so many years. There would not be much invention, perhaps, in simply tying two stamps together by a piece of wire or cord, and using them at one blow, which is the character of the inventions which the defendants claim as anticipatory; but is, in this perfect machine, able to have a change in the date and in the stamp, by competent devices and mechanism, so as to be readily used and easily adapted, thus making a machine requiring great thought, many experiments, and long use, testing its capabilities for its perfection.

Upon all the questions of novelty, invention, and usefulness, the great and determining fact stands forth upon the record everywhere, that during more than twenty years' use no adverse claim has ever been set up against it. No adverse use of it has ever been made, so far as appears upon this record, save where a suit was brought to test its validity against a man who was manufacturing them for the Government, who testifies, "I commenced the thing believing that Marcus P. Norton was not the inventor of the patent: I come out of it believing he was."

THE TITLE IN THE PLAINTIFF.

In whom was the title, or subdivisions of title, in these letters-patent prior to the decision of the courts of the United States, we have already claimed as *res adjudicata*. What is the state of that title since, will not be discussed in this brief, but left to the brief of my learned associate, who, having tried the case in the Court below, is more conversant with the title than myself.

OBJECTIONS TO RE-ISSUE AS AFFECTED BY TITLE.

The objections to the re-issues, which depend upon the state of the title, are also left to be discussed in the same brief by the same counsel.

OBJECTIONS TO THE RE-ISSUES UPON OTHER GROUNDS.

This class of objections, as stated, consists in a general statement that the re-issues were fraudulently made, and that they cover a different invention.

The first objection can be disposed of in a word. There is no averment in the statement of the answer, or any plea showing how, or in what manner, the fraud was committed; and general allegations of fraud relating to the action of another tribunal are not sufficient to set aside its judgment, within its own jurisdiction.

Now, this Court has just re-affirmed, in the present term in the case of *Ball et al.* vs. *Sangles*, United States Supreme Court, Oct. 7, 1880, what had frequently before been decided by the Court, that all questions upon re-issue, "whether the surrendered patents are invalid by reason of defective or insufficient specifications, or by reason of the patentee's claiming as his own invention more than he had a right to claim as new, and whether these errors have arisen from inadvertence, accident, or mistake, and without fraudulent intention,

the decision of the Commissioner is conclusive, and not subject to revision by the courts."

"But whether he has claimed more than he has invented, and if that appears on the face of the specifications, drawings, and re-issued patent, that is for the judgment of the court."

No one will claim that any thing appears upon the face of the drawings or specifications in the re-issue other and different from what was fairly, though not too distinctly, and perhaps erroneously, set forth in the original specification.

The drawings and model are the same in both. The only claim against the re-issues so far as is perceived is, that in one portion of the stamp cork is used instead of iron to make a stamping face. This certainly cannot be a new invention, hardly a new adaptation.

CAN APPELLANT JUSTIFY THE USER OF THIS PATENTED MACHINE AS AN OFFICER OF THE UNITED STATES?

This defence is put in two aspects, which resolve themselves as follows: —

First, That the Government has a right to use the invention.

Second, Whether the Government has that right or not, an officer of the Government, for the benefit of the Government solely, has; and as he did not receive any profits from the invention personally the officer is not to be held to account.

As to the first question, we suppose it will be admitted that if the Government has no right to take this property without compensation, the defendant acting in behalf of the government has not. The agent has certainly no greater right than his principal when claiming under the principal.

The first question is, Is an invention property?

Without entering upon a discussion of the question whether an invention was property at common law, as separate from the machine in which it is embodied, it cannot be doubted that under our Constitution it must be property.

Congress having by appropriate legislation provided for securing for a limited time inventors in the exclusive right to their respective discoveries, that discovery becomes (a "right,") property secured to them by Article I., Sect. 8, of the Constitution.

It is sometimes said that the Government does not grant letters-patent to operate against itself. This is an idea which appears to have obtained commonly among officers of the Government, seems to be founded on an inapt use of words.

The "right" is not a *grant* of the Government, any more than the right of enjoyment of life, liberty, and property, "secured" by the Constitution, is a grant of the Government.

It is an inherent right recognized by the Constitution, and secured to the inventors in pursuance of the provisions by an appropriate law.

It is denied that Congress could pass a law appropriating the use of a patent to the Government without compensation, because that

would be a law appropriating the right of an inventor, not securing it. But it is enough to say that no such law has been passed, and the right has been secured. The right of the inventor is one of the few descriptions of property that are distinctly recognized by the Constitution, land and slaves being two other examples.

But if the matter was left doubtful upon the construction of the provisions of Article II., it would be settled conclusively by Article V., "Nor shall private property be taken for a public use without just compensation." This property stands like every other class of property.

United States vs. *Burns.*
12 Wallace, 246.
Commeyer vs. *Newton.*
94 U.S. S.C.R., 225.

This defence claims a right in the appellant to take this property for the use of the United States at his will, or at least under the order of the Postmaster-General; and, as he used it only in doing the business of the United States, that he is not liable for its use. But no officer of the United States in time of peace can take the property of a citizen at his will for the use of the United States, leaving the owner to seek compensation where he can, whether he acts by the order of a superior, or on his own judgment of the expediency of so doing. If he does, he becomes personally liable to the owner.

Mitchell vs. *Harmony.*
13 Howard R., 115.

He is liable to account to the owner for the use and value of the same in the same manner that a private party would be. This point has been decided in an exhaustive opinion in the case of *Brady* vs. *The Atlantic Works* by Justice Clifford, 4th Clifford Reports, p. 409. And so far as we are advised there is no intimation to the contrary in any decision of this Court.

There is, however, another answer to this claim of the appellant, arising from matter of fact.

He did use this property for his own benefit. The Master, upon reference of this case to him, has found, as profits to be assessed against the appellant, the amount of clerk-hire, only, saved by the use of this machine. That is to say, that so many more clerks, at so much per year, would have been required to have done the same work in the New York Post-Office if it had been done by any other known mechanism, because the Post-Office Department required the mails to be sent out of the Post-Office at New York with a certain frequency. To meet that requirement of time in despatch of mails without the use of the patented machine, would have required double the number of clerks to be employed that were actually employed.

The Revised Statutes, Section 3860, provide that "the Postmaster-General may allow to the postmaster at New York out of the rev-

enues of his office, that is to say, the excess of box-rents and commissions over and above the salary assigned to the office, a reasonable sum for the necessary cost of clerks, &c., to be adjusted on a satisfactory exhibit of the facts."

SECT. 3861. "The salary of the Postmaster and such other expenses of the postal service authorized by law as may be incurred by him, and for which appropriation has been made, may be detained out of the receipts of his office under the direction of the Postmaster-General."

So that these savings by use of the machine were a direct personal benefit to the postmaster. He had just so much more money in his hands received from the use of this invention. If he received the profits of this invention, is it of any concern of the owners of the patent what he did with those profits? He was not bound to receive them, or intermeddle with them.

We do not, however, press this consideration further, because we think that the Master, as well as the learned Judge in the Court below, in the assessment of damages took too narrow a view of this question, which we propose to discuss in the matter of the cross-appeal of the appellee.

FOR WHAT IS THE POSTMASTER, ACTING FOR THE UNITED STATES, RESPONSIBLE TO THE OWNER OF THE PATENT?

As we have said, the Master has found a certain saving of clerk-hire by the use of the invented machine, and has given that only as profits for which the defendant James is accountable.

But he also finds that there was a very great saving in room which would be required for the occupation of a double number of clerks necessarily required if the machine had not been used.

The Master also finds that there was a great advantage in the despatch of the mails by the Government.

He also finds that the work was done in a much better manner for the Government; that the Government was thereby protected from fraud.

But he decides that no direct evidence in exactly estimated amounts was given, of the pecuniary value of these savings to the Government, and therefore such items cannot be allowed.

To these and correlative parts of the Master's Report the complainants have excepted, and, the exceptions being overruled, they are before this Court.

It will only be necessary to discuss the principles of the decision of the Master. Because, if the complainant is right as to the principle of computing the profits or damages, in the judgment of the Court the case will have to be again returned to the Master for further hearing and report.

So that the question is, whether James as an infringer is liable to account as profits for all the advantages capable of being measured by money, which accrued to him, or his principal, the Government, by the use of the machine.

Second, Is he liable for these pecuniary advantages in the nature

of unliquidated damages, either as profits or damages, to the complainant?

It is difficult to see why, if he is liable to pecuniary advantages, that a given witness may estimate in figures as savings by use of the patent in one direction, he should not be liable for the same kind of pecuniary advantages which accrued to him and his principal in every other accruing from the same use, although they are not capable of as exact computation or estimation as those at first named. The savings in both cases were actual; the advantages were actual; the pecuniary gain was actual; but the objection seems to be, that these latter are too large for computation or estimation by the witnesses.

Or, to put the matter in another form of words, the pecuniary advantages or profits were so great in these regards, that the inventor is not entitled to any thing arising of them, for that reason. If they had been a small matter like clerk-hire, he would be entitled to that saving. Being a great matter, for the testimony is that it would have been almost impossible to have done the business of the New York Post-Office without these advantages derived from this machine, then he is not entitled to any thing for these most profitable and enormous advantages and profits accruing to the defendant and his principal.

Our belief is, that the complainant is entitled to a reasonable sum, such as a Master of due discretion and prudence, under all the circumstances, ought to find from the testimony to have in a pecuniary sense accrued to the Government.

But if not, then a reasonable amount to be estimated as unliquidated damages ought to be found for complainant, as, after all, the words "profits" and "damages" are only used in accounting in patent cases as a matter of convenience. Both in fact are unliquidated damages; and because they are such, this Court has decided in the case of *Parks* vs. *Booth*, *October term*, 1879, that interest cannot be allowed upon profits because they are unliquidated damages in fact, as in case of other unliquidated damages.

In this, as in every case of unliquidated damages, therefore, to be compensated only by a sum of money, the amount is left to the wise, just, and sound discretion of the tribunal by whom the question is heard.

BENJ. F. BUTLER,

Of Counsel for CAMPBELL, *Appellee and Appellant.*

JAN 17 1881

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1880.

CAMPBELL *vs.* CASWELL & CLEXTON.

ADDITIONAL BRIEF FOR CAMPBELL.

Counsel for Caswell and Clexton has filed three briefs and what is called an addenda in this matter.

The so-called addenda relates to a question not raised before this Court by Campbell, and seems to have for its chief object the vituperation of Norton. It needs no attention.

2. Great effort is made in said briefs to avoid the effect of the assignment by Shavor and Corse to Eddy, dated December, 1876, (R. 576), by reference to the stipulation between Campbell and Eddy, dated June, 1878, under which Eddy became a party to the suit.

It is repeatedly averred in these briefs that the rights of Eddy are fixed and determined by that stipulation. The stipulation states that Eddy *claims* that his rights are fixed and determined by one instrument, and Campbell claims that they are fixed and determined by another and different instrument. The Court was to decide, of course, as to these claims. The question here is between Eddy or his representative and the representatives of Shavor and Corse, That stipulation related exclusively to a question between Eddy and Campbell. The respective rights of Eddy and Shavor and Corse, as between themselves, are not affected and were not intended to be affected by that stipulation. This is too plain for argument.

3. Much is said in these briefs about the faithlessness of Eddy to his trust, &c. This is all assumption. There is no evidence in the case to that effect. The *ex parte* affidavits made by Caswell and Clexton and filed with their motion to be made parties, are not evidence in this case. They were not offered as such and they would not have been competent if they had been offered. Eddy's rights were expressly saved by the interlocutory decree and he took a large amount of testimony to establish and define those rights and there is nothing to show but *ex-parte* affidavits filed with a motion and not in evidence, that he did not do everything he ought to have done as trustee, &c.

4. Let it be noticed that Shavor and Corse are not parties to this suit. They are not here complaining that Eddy has wronged or injured them in any manner. Caswell and Clexton, two speculators have undertaken to buy from Corse and Shavor the right to complain that Eddy has abused the trust reposed in him by said Shavor and Corse. This they cannot do. (Graham *vs.* LaCrosse, & Mil. R.R. Co., decided at this term.)

5. By the said assignment dated December, 1876, Eddy was invested with the absolute ownership of any title or interest that Shavor and Corse had in the patent in question and all the right that remained to them was the right to call for some portion of the moneys that might come into his hands under said assignment, or to go into court and ask, for some good reason to have said assignment annulled.

6. Said assignment of 1876 recites that said letters-patent are transferred to Eddy "in trust for the sole benefit of the owners thereof *in accordance with the memorandum in writing of even date herewith.*" No doubt this memorandum in writing defines the terms and conditions of said trust and the respective rights of the parties under it. Can this Court know how the moneys received or to be received by Eddy, under said trust deed, were to be divided between the parties

thereto without any knowledge of said memorandum in writing or the contents thereof?

7. On page 1658 of the record will be found an ~~argument~~ agree between Eddy and Campbell by which Eddy assigns his right to the patent in question to Campbell for $20,000 to be paid out of collections made under said patent. This agreement was admitted in evidence, by the court below without objection from any body and therefore no objection can be made to it in this court. This was an equitable and just arrangement. Eddy had not lifted a finger or paid a cent to assist in the prosecution of this suit which had been carried to judgment at great expense by Campbell. According to his own statements all the money that Eddy, Shavor, and Corse had invested in this patent was about the sum of $18,000 which was advanced to pay expenses in prosecuting claims under it and other patents prior to 1869. (R. 764.) Eddy had a right to make this compromise under the assignment of 1876, for it was simply relinquishing the right in said patent which he held under said assignment for $20,000, to be paid by infringers to him through proceedings against them by Campbell.

8. Campbell, therefore, independent of his right as the original complainant, has the same right to contest the claims of Caswell and Clexton that Eddy had, and he insists that all the right they have, if any, is to call upon said Eddy for their proportion of the said $20,000. No doubt a Court of Equity, upon a proper showing, would direct payments to be made to the several parties according to their respective rights.

9. Considering that Campbell, single handed and alone, has litigated this matter for more than three years against the General Government, it was hardly to be expected that two speculators, coming into court after the recovery of the judgment, would suggest that Campbell's bill might be dismissed and the suit retained for their benefit, thus reward-

ing their patient merit with the fruits of another man's labor. Such modesty can of course stand in court without any pleadings or proofs to support it.

Much of the greater part of the statements and arguments in the briefs of the counsel for Caswell and Clexton are founded upon the *exparte* affidavits, filed with the motion to make said Caswell and Clexton parties to this suit. These affidavits are not evidence against Campbell or Eddy, and cannot be used to affect their rights. Campbell should have the right to cross-examine those who make these affidavits, and if necessary introduce other evidence as to the truth of their allegations.

Whether Eddy was faithful to his trust or not is a question exclusively for a state court, and that seems to be the only ground which Caswell and Clexton pretend to have for their appearance in this case.

This Court cannot take jurisdiction of that question between residents of the same state.

GEO. H. WILLIAMS,
for Campbell.